

Scottish Parliament Region: Mid-Scotland and Fife

Case 200501157: Fife Council

Introduction

1. On 11 September 2005 the Ombudsman received a complaint against Fife Council (the Council) from Mr C, who alleged that the Council had released personal information to his neighbour and also misled him into accepting a housing transfer.

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

- (a) his allegation that personal information was released to his neighbour; and
- (b) his allegation that he was misled into accepting a housing transfer, that incorrect information was given to him and that, as a consequence, he lost his full Right to Buy discount.

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

- (a) not upheld, see paragraphs 9 to 18;
- (b) upheld, see paragraphs 19 to 25.

4. Specific recommendations the Ombudsman is making resulting from this investigation are that the Council should:

- i. reinstate Mr C's discount to what it would have been, had he not transferred his tenancy and had he not been given incorrect/conflicting information; and
- ii. take steps to ensure that their staff pass on accurate information to their tenants, by confirming their Right to Buy in writing at the point of offer.

5. The Council have agreed to comply with the Ombudsman's recommendations and they are to be commended for this.

Background

6. Under the terms of the Housing (Scotland) Act 2001 (the 2001 Act), Part 2, Chapter 1, Section 23 (4) states that before the creation of a Scottish secure tenancy the landlord must provide the tenant with information about:

'(a) the tenant's right under Part 111 of the 1987 Act to purchase the house which is the subject of the tenancy, ..'

and (5) states that 'where the tenant's right under that Part to purchase the house is affected by any amendment to that Part or the exercise of any power conferred by that Part, the landlord must inform the tenant of that fact and of the extent to which the tenant's right to purchase is affected.'

Investigation and findings of fact

7. The investigation of this complaint involved obtaining and reading all the relevant documentation including correspondence between Mr C and the Council and emailed exchanges between Council officers. I have also had sight of the 2001 Act, 'Your Right to Buy', an explanatory leaflet issued by the Scottish Executive; the Council's Housing Allocation Policy; various internal file notes; police reports; and transcripts of alleged telephone conversations between a Council officer and Mr C's neighbour. I made a detailed enquiry of the Council's Chief Executive on 4 November 2005 and received his full response on 13 December 2005.

8. I have set out my findings of fact and conclusions for each head of complaint. I have not included every detail investigated in this report but I am satisfied that no matter of significance has been overlooked. Mr C and the Council have been given an opportunity to comment on a draft of this report.

(a) His allegation that personal information was released to his neighbour

9. Mr C said that his difficulties began in August 2003 when his next door neighbour exchanged properties with his own daughter. He said his new neighbours were noisy and began blocking his access. Separately, the Council initiated legal action against the neighbour and Mr C was cited as a witness on the Council's behalf. At that point, Mr C said that his relationship with his neighbour seriously deteriorated.

10. Mr C applied for a housing transfer and was accepted onto the list in April 2005 and he said that at about the same time he overheard (on his baby

monitor) two telephone conversations between his neighbour and the Locality Manager. He claimed that the first conversation discussed his housing application and its priority status and the second gave details of the area where he had been allocated a house and to which he was moving. Mr C was aggrieved at the release of this personal information and said that it could have led to a dangerous situation for himself and his family. In connection with this, Mr C said that the Council maintained that he used an illegal radio scanner to listen into his neighbour's calls and subsequently reported him to the police. As a consequence, the police obtained a warrant and searched his home, removing the baby monitors. Mr C said that the Council's actions caused him huge personal distress.

11. I have seen transcripts of two conversations which purportedly took place between the Locality Manger and Mr C's neighbour on 15 April 2005 and on 8 May 2005. Both are very brief: the first making reference to Mr C's request to be re-housed and saying that his application had been granted priority status; the second advising that Mr and Mrs C were about to move to a specific area of town.

12. The Council became aware of Mr C's allegations about a breach of confidentiality when Mr C telephoned the Housing Office on 23 May 2005 (although Mr C says he first contacted them on 20 May 2005). I have seen the contemporaneous note which reports that Mr C said that the Locality Manager had mistakenly left a message on his answer phone which was intended for his neighbour. A later file note dated 16 June 2005, (a record of a conversation between Mr C and a Team Leader which he says took place on 15 June 2005), said that there was no message on an answering machine but that Mr C had picked up the conversations on his radio scanner. Mr C, however, denied the use of such equipment. Mr C subsequently provided the Council with his written transcripts.

13. As a consequence of Mr C's telephone call of 23 May 2005, the Council began making enquiries and, on being questioned, the Locality Manager did not deny making one telephone call but he refuted that the second had taken place. The Council pointed out that in fact the second call was alleged to have taken place on 8 May 2005 which was a Sunday. While I note this comment and that Mr C's own transcript of the call is dated 'Monday, 8 May', it would have been an easy mistake to ascribe the Monday to 8 May, rather than 9 May.

14. There is no dispute that the first of these telephone conversations took place. The Locality Manager did not deny this. The conversation was very short and did not go into detail. However, it did mention Mr C's housing status and while this was not a matter for the neighbour's concern I do not consider that this release of information was prejudicial to Mr C. In the circumstances, I hesitate to call this maladministration but I would suggest that in speaking to third parties, the Council be more circumspect. In this case, as there was a serious dispute between neighbours, the Locality Manager's conversation was unwise, given the potential for parties to lose faith in the Council's objectivity.

15. There is doubt, however, about the date of the second conversation and whether it took place. The evidence available is inconclusive. Telephone records may give a definitive answer to this but they would not then detail the conversation which took place. Mr C's record is quite specific and on balance I do not dispute his recall. Nevertheless, as above, I do not feel that the information released was prejudicial, referring as it did to a particular area of town and not a particular street. Therefore, I do not make a finding in this regard.

16. Mr C said that, as a consequence of telling the Council about the conversations which he said he heard and the way in which he heard them, the Council reported the matter to the police. He said that this resulted in a visit by police officers who held a warrant to search his home and that they then removed his baby monitors. The whole procedure caused him huge distress.

17. The Council told me that after Mr C advised the Team Leader that he had overheard conversations using a radio scanner (but see paragraph 12), the officer concerned approached Legal Services for advice. The advice received was that by using such equipment Mr C was in breach of Section 1 of the Regulation of Investigatory Powers Act 2000, which is a criminal offence. The Chief Executive told me that, while the Council does not have a particular policy for staff referring matters to the police, he believed that they have a public duty to do so if it seemed that an offence was being committed. In this case, the Team Leader had a further conversation with Legal Services and then gave a statement to the police which resulted in their visit and search of Mr C's home.

18. Mr C denied to me that he used a radio scanner to listen to his neighbour's conversations. He said he accidentally overheard the conversations. He believed the Team Leader's actions were totally unreasonable in the

circumstances. However, I have to disagree. The note of his conversation of 16 June 2005 with the Team Leader is quite specific in its reference to a radio scanner. The use of a baby monitor as a tool for overhearing telephone conversations appears to me quite memorable and, on balance, I think that if Mr C had mentioned such an instrument it would not have been forgotten and would have been recorded. After some consideration, Council officers took the view that an offence had been committed and the matter was reported to the police. I cannot criticise them for that and, while the search of his home must have been extremely unpleasant for him, I cannot conclude that this occurred as a result of any maladministration or service failure. Accordingly, I do not uphold this aspect of the matter.

(b) His allegation that he was misled into accepting a housing transfer, that incorrect information was given to him and that, as a consequence, he lost his full Right to Buy discount

19. Mr C made an application for a housing transfer in April 2005. His application was awarded 120 management points and on 29 April 2005 he was offered and accepted a new tenancy starting on 9 May 2005. He said that he was initially told that a transfer would affect his Right to Buy but later this advice was amended. Because of the confusion and because he was concerned that acceptance would lead to changes in his Right to Buy discount, on 15 June 2005 he specifically asked the Area Manager to confirm the situation. In the presence of Mr C, the Area Manager then spoke to House Sales (part of Housing Service) and was told that, as the move was determined to be on management grounds, the discount to buy would remain the same.

20. In early June 2005, Mr C submitted an application to buy his new home which was initially turned down on the basis that he had rent and council tax arrears. He then made a second application about which the Council wrote advising that the Scottish Secure Tenancy Order 2002 prevented Mr C from retaining his previous Right to Buy discount. Mr C was aggrieved at this refusal and complained that the Council misled him into accepting a housing transfer on the basis that his Right to Buy discount would remain the same.

21. In a letter to Mr C of 28 July 2005, the Chief Executive admitted that Mr C was given incorrect information about the situation and offered his sincere apologies. But, he said, under the terms of the Scottish Secure Tenancy Order 2002, tenants are only allowed to retain their previous Right to Buy discount under very specific circumstances and that unfortunately these did not apply to

Mr C. This is explained in the booklet 'Your Right to Buy', which Mr C received when he made his applications to buy. The Chief Executive explained this further to me in his letter of 12 December 2005. He said that tenants are only able to retain the Right to Buy discount on pre-2001 Act terms and conditions where the landlord has sought to recover possession of the tenancy under specific management grounds which requires the Council, as landlord, to provide suitable alternative accommodation. The grounds include, amongst other things, overcrowding, the intention to demolish or carry out substantial work, special needs, etc.

22. Mr C's housing transfer application was credited with 120 management points but the Chief Executive said that the protected Right to Buy did not apply to Mr C as the Council had not sought to recover possession on management grounds, as defined in the 2001 Act.

23. In the Chief Executive's view, if the correct information had been given to Mr C when he made enquiries, it would have been open to him to refuse the offer, to remain in his then existing house which he could have bought on his protected Right to Buy or he could have accepted a transfer on a reduced Right to Buy. But he said, as Mr C requested the move because he feared for his and his family's safety, it is likely that this situation would have taken priority over any future plans he may have had to buy his house.

24. I have considered the Chief Executive's view but it is clear that Mr C was given incorrect information by the Council. He was told by the Council that the transfer of tenancy would not affect his Right to Buy and that his discount would be unaffected. This was not the case and I, therefore, uphold this complaint.

Recommendations

25. I accept that Mr C requested the transfer because he feared for the safety of his family and this fear may well have overridden any concerns about the effect of the new tenancy on his Right to Buy. However, it is not possible to know what decision Mr C would have made had he been given correct information. In the circumstances, the Ombudsman recommends that if Mr C does decide to buy his new house, he is able to do so on terms equivalent to those which would have applied had he retained his Right to Buy discount.

26. In addition, the Ombudsman recommends that the Council takes steps to ensure that their staff pass on accurate information to their tenants, by confirming their Right to Buy in writing at the point of offer.

30 May 2006

Explanation of abbreviations used

Mr C

The complainant

The Council

Fife Council