

Scottish Parliament Region: Central Scotland

Case 200501794: Falkirk Council

Summary of Investigation

Category

Local Government: Finance; Policy/Administration

Overview

The complaint concerns the way in which the Council handled a lease between themselves and the complainant.

Specific complaints and conclusions

The complaints which have been investigated are about:

- (a) misleading information given (*partially upheld*);
- (b) delay before issuing rent and rates bill (*not upheld*); and
- (c) failure to investigate complaint properly (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) apologise for the confusion caused about the rateable value (RV); and
- (ii) apologise for their failure to investigate properly Mr C's formal complaint.

The Council have accepted these recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. On 2 October 2005 the Ombudsman received a complaint from Mr C about the way in which Falkirk Council (the Council) handled the lease for a property in Falkirk.

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

- (a) the council officers misled him about the rates of the property;
- (b) the Council delayed until December 2003 before issuing a rent and rates bill;
and
- (c) the Council failed to investigate his formal complaint properly.

Investigation

3. The investigation of this report involved obtaining and reading all the relevant documentation, including correspondence between Mr C and the Council. I have also had sight of the terms upon which the Council was prepared to lease the premises to Mr C, dated 6 September 2002. On 27 January 2006 I made a detailed enquiry of the Council and their reply to me was dated 1 March 2006. While I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

(a) Council officers misled him about the rates of the property

4. Mr C took over the lease of the premises in September 2002 and he since alleged that Council officers misled him about the likely rates due on the property. He said he based his decision to lease the property on this incorrect information. He said that, in particular, an officer in the Economic Development Department advised him that his rates could be expected to be based on an RV of £8,000 and that the Council sought bank references on this amount.

5. In response to my enquiries on this point, the Council said that the estimated RV discussed with Mr C was based on a pro-rata calculation of the total rateable value of the property concerned. They said that this reflected the partial occupancy proposed by Mr C and that the information they provided verbally was for guidance only. The Council confirmed that the bank reference they obtained

was for this estimated amount as this would determine Mr C's ability to meet his financial obligations to them. They pointed out that the full RV for the entire property was £21,700 and that an estimated RV of £8,000 reflected a partial occupation.

6. Until he received his rates bill in December 2003, Mr C said that he was unaware that his rates would be based on a RV of around £21,000 and I can confirm that I have seen no information in the correspondence available to me to suggest the correct RV of the property.

7. Nevertheless, I have no doubt that information was given informally to Mr C in an effort to be helpful. However, it was not until 11 May 2004, after correspondence with the Ratings Officer, that his liability was confirmed (that is, his liability between 1 September 2002 and 31 March 2003 with the benefit of empty rates relief, was £4,261.71 and for the period 1 April 2003 to 31 March 2004 was £8,657.95). In connection with this, the Council said that it is the responsibility of the occupier to ascertain the costs, including the rates, associated with a property and, therefore, it was incumbent upon Mr C himself to confirm the situation. While this is undoubtedly the position, rates information was given to Mr C by Council officers and while this was made in good faith there was clearly a misunderstanding. The Council said that £8,000 was a pro rata figure, while Mr C thought it was the full RV. Given this confusion, I suggest that at the outset of negotiations, the Council make it absolutely clear to their potential business tenants (perhaps in any correspondence detailing terms of occupation) that it is for them to determine their own rates liability. Mention of RV for premises should include reference to the full amount only and not any possible figure which may be arrived at as a consequence of partial occupation. Taking the foregoing into account, I partially uphold this aspect of Mr C's complaint but the Ombudsman considers that any confusion caused could be remedied by an apology.

(b) The Council delayed until December 2003 before issuing a rent and rates bill

8. Although Mr C took over the premises in September 2002, he said that it was not until December 2003 that a rent and rates bill was issued. At this point he learned the correct RV of around £21,000. He said that, had he known this figure earlier, he could have made efforts to restrict the amount for which he was

responsible by vacating the premises sooner.

9. As the occupant of the property, Mr C was responsible for the associated rates liability. As far as the rent was concerned, about the time he took entry, in September 2002, he had been sent a letter by the Head of Economic Development (dated 6 September 2002) outlining the terms of his occupancy and notifying him of his monthly rental charge of £250. I have seen no evidence to suggest that this charge was amended and therefore must conclude that this was what Mr C understood he should pay.

10. The Council advised me that initially it was intended to collect rent payments by standing order but, due to an oversight, arrangements were never verified or concluded and direct debit arrangements were not implemented. (When responding to my enquiries the Council confirmed that this had been addressed through their internal audit process.) Later, when the initial three month occupation came to an end, Mr C was allowed to remain in occupation on the same terms and conditions. The Council said that he eventually agreed to settle the accrued rent in a single payment covering the year he had by that time been in occupancy.

11. The Council should have sent Mr C timely notification of his rent account. They did not do so and this was, therefore, an oversight. Nevertheless, I am satisfied that this has now been addressed by the Council. However, since taking occupancy of the premises Mr C was aware of the amount of rent he should pay. It was up to him to clarify the situation with regard to his rates (paragraph 7). In the circumstances outlined above, I cannot conclude that Mr C can claim any injustice as a consequence of this situation and accordingly I do not uphold this aspect of the matter.

(c) The Council failed to investigate his formal complaint properly

12. On 18 May 2005, Mr C initiated the Council's complaints procedure by formally complaining to the Chief Executive about the way this matter had been handled. She replied to him on 3 June 2005, saying that there had already been correspondence with the Head of Economic Development (who had investigated the matter) and a Councillor and that Mr C had been informed of his responsibility for rates. Mr C replied on 20 July 2005 and said that he had never disputed this responsibility but that the focus of his complaint was about the way the Council

handled the entire situation which resulted in him not being formally advised of his rent and rates until December 2003. He said he had never been given a proper explanation for this delay.

13. The Chief Executive's response of 8 August 2005 said that her position remained unchanged but that, despite Mr C occupying the property from September 2002, there was no record of him ever contacting the Non Domestic Rates Office, as was his responsibility, until December 2003. In conclusion, she did not intend to take matters further.

14. In their response to me of 1 March 2006, the Council took the view that, previously, Mr C's complaint had been properly investigated and that he had been advised. However, it is my opinion that their response in relation to my enquiries gave more detail, in particular, with regard to the circumstances which may have led to Mr C's belief that the RV of the property was £8,000. This did not appear in correspondence with Mr C. In the circumstances, I uphold this aspect of complaint and the Ombudsman recommends that Mr C be given an apology.

15. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

29 August 2006

Explanation of abbreviations used

Mr C

The complainant

The Council

Falkirk Council