

Scottish Parliament Region: South of Scotland

Case 200500216: Scottish Borders Housing Association Ltd

Summary of Investigation

Category

Housing: Registered social landlords; Right to Buy

Overview

The complainant raised a number of concerns in connection with his application to buy his home: that the Association took too long to complete the sale; that although the sale was dependant upon repairs being completed they too were delayed and that personal, confidential information was released to the complainant's solicitors without his prior approval

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) failure to progress house sale (*not upheld*);
- (b) failure to carry out essential repairs in a timely manner(*upheld*); and
- (c) release of personal information to a third party without permission (*not upheld*).

Redress and recommendations

The Ombudsman recommends the Association:

- (i) apologise to Mr C for their failure to complete repairs in a timely manner; and
- (ii) reinforce this apology with an appropriate payment to recognise the injustice caused to Mr C as a consequence.

Main Investigation Report

Introduction

1. On 30 September 2005, the Ombudsman received a complaint from Mr C concerning the way in which Scottish Borders Housing Association (the Association) dealt with his request to buy his house in terms of the Housing (Scotland) Act 2001. He said that, in all, the procedure took two years and six months.

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

- (a) failure to progress the sale;
- (b) failure to carry out essential repairs in a timely manner; and
- (c) release of personal information to a third party without permission.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C, his solicitors and the Association. I have also had sight of correspondence and e-mails passing between the Association's staff and a copy of the repairs section of the Association's Maintenance Policy in force at the time. I have made reference to the appropriate sections of the Housing (Scotland) Act 2001. On 21 March 2006, a written enquiry was made of the Association and their detailed reply was received on 10 April 2006.

4. My findings and conclusions are set out below and, although I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Mr C and the Association have been given an opportunity to comment on a draft of this report.

(a) Failure to progress the sale

5. Mr C said that the Association delayed unduly in completing the sale of his house. As a consequence, he believed that he and his family had been forced to live in poorer conditions longer than should have been necessary; his legal fees were higher; and if he had waited to apply to buy, he would have qualified for a higher discount.

6. In May 2003, Mr C submitted an application to buy under the terms of the Housing (Scotland) Act 2001 and on 15 August 2003 the Association confirmed their offer to sell. However, solicitors acting on behalf of Mr C disputed the Association's calculation of discount to apply to the selling price and it was not until some five months later, on 28 January 2004, that the solicitors said that they had received Mr C's instructions to conclude the missive at the price originally proposed. In the meantime, in September 2003, Mr C had reported a number of outstanding repairs to his home and at the same time as confirming their client's instructions to conclude the missive, the solicitors also enquired about the progress of the repairs. On 23 September 2003 the Association accepted Mr C's condition that certain repairs would be completed in advance of the sale.

7. I understand that Mr C was advised verbally on 5 February 2004 that specialist contractors were required to attend to the repairs and that in all likelihood he and his family would require to be decanted. However, it was not until 25 March 2004 that it was confirmed that a survey of work had been completed and that specialist contractors had been requested to provide estimates.

8. The solicitors held the missives concluded on 1 April 2004 and conveyancing work began. Then, on 12 July 2004, Mr C intimated to the Association that he also wished to purchase an area of mutual ground to the front of his house. This was acknowledged by them the next day but, because another tenant was affected by the request, the Association advised that enquiries would have to be made of him. This was followed by a letter of 16 July 2004, asking Mr C to telephone to arrange a site visit. (The Association's copy of this letter is annotated indicating that, as nothing was heard, staff had telephoned repeatedly to try to gain access, although Mr C denied that this was the case.) A further letter of 19 July 2004 informed Mr C that his request to purchase the land would be considered at the next meeting of the Association's Board of Management on 11 October 2004, although this was later postponed to their meeting of 1 November 2004. In point of fact, Mr C's request was not considered then, as the Chief Executive advised, when she visited Mr C's house on 4 November 2004, because the Association said they had been unable to arrange a visit to view the land in question in advance of the meeting. There was a general acknowledgement at the meeting that the house sale was being delayed by the repair work and Mrs C indicated to the Chief Executive (at their meeting on 4 November 2004) that, in the circumstances, she and her

husband were prepared to accept a cash settlement in lieu of their completion, allowing them to do the works themselves. The Chief Executive said that in December 2004 she made a verbal offer of a settlement but that this was refused, because, Mr C said, the offer was too low and would not cover the cost of the repairs.

9. The Association also maintained that access problems affected the ability of specialist contractors to carry out repairs which were required to be completed to allow the house sale to go ahead (but see paragraph 8 above). A letter was sent to this effect to Mr C on 11 January 2005, although Mr C denied that any contact details had been left for him to arrange access. The matter of the land sale was also detrimentally affecting the progress of the sale of the house to Mr C, as the matter required to be discussed with the other affected tenant and, on 26 January 2005, the Association suggested to Mr C's solicitors that the property sale progress alone. A letter dated 31 January 2005 from the solicitors replied denying that there had been access problems on Mr C's part and suggested that, given that work required to be completed in advance of the sale, work should be completed now or the costs should be deducted from the sale price. The Association confirmed their agreement to explore these suggestions on 1 February 2005, and on 21 March 2005 they expressed their willingness to authorise a deduction of £3201 (representing the full estimate for the woodworm and damp treatment works outstanding). The Association commented that, although this was contrary to their normal practice, they did this in an effort to conclude the sale quickly.

10. However, other repairs remained outstanding (outside drain unblocked, renew/repair bathroom floorboards, roof repairs). Further repairs were also reported in about April 2005 and an internal memo between the Chief Executive and the Association's repairs co-ordinator confirmed that these needed to be completed as soon as possible, as the completion of the house sale could be affected. But, on 6 June 2005, as Mr C did not feel that the Association were handling the situation well, he made a formal complaint to the Chief Executive. The complaint then began to progress through the Association's internal complaints process.

11. A Customer Complaints Panel Hearing was held on 27 July 2005 and

concluded that, while a number of delays occurred, these were because of the unique nature of the application; some periods of delay were the responsibility of the complainant and his solicitors; and the Association were responsible for 25 weeks delay. In view of this they offered compensation of £278.10, that is, the difference between Mr C's rent and the mortgage he would have been paying if the house had already been conveyed to him. The compensation was to be paid on completion of the sale.

12. Meanwhile, I understand that all the repairs agreed as a condition of the sale were completed by 24 June 2005.

13. Mr C's solicitors wrote to the Association on 30 August 2005, which the Association said was the first contact with them since 21 March 2005 when the reduced offer had been made. The solicitors requested the Association to provide duplicate copies of correspondence. This was sent to them the next day. On 10 October 2005, the solicitors contacted the Association again, accepting the offer made in March and a standard security was sent to the solicitors for their client to sign on 13 October 2005. A cheque for settlement was made by the solicitors on 28 November 2005 (that is, the date the sale was concluded) but incorrectly made payable to the Scottish Borders Council. This was immediately returned as it needed to be payable to the Association and a new cheque was sent by the solicitors on 6 December 2005, with a caveat about it being presented, as the solicitors questioned the principal disposition and deed of conditions they had received as they said they were different to what had been agreed previously. A month later (5 January 2006) the Association replied to Mr C's solicitors enclosing a fresh disposition and deed of conditions. They explained that the latter had been amended to reflect changes in the law but they did not offer an explanation of having made changes which required to be corrected in the disposition.

14. Because the Association considered that the cheque for settlement had not been provided when it was due and because it had been requested that it not be presented, they wrote to the solicitors on 1 February 2006 saying that Mr C owed rent. The solicitors, however, disputed this saying that the reason the cheque could not be presented was because the Association had, without agreement, changed the disposition and had introduced a new deed of condition without reference to them as Mr C's solicitors. They maintained that it was unreasonable

for their clients to be held responsible for rent because of problems caused by the Association. It is my understanding from the Association's response to me dated 10 April 2006 that they have waived the interest charges normally payable where a sale proceeds but funds are withheld.

(a) Conclusion

15. There is no doubt that this was a complicated house purchase which took too long to complete. It was closely associated with repairs and the introduction of a request to purchase mutual ground. While Mr C maintained that the delay was entirely the fault of the Association, there is clear evidence that both he and his solicitors played a role (for example, it took at least four months for them to accept the Association's offer to sell and seven months for them to respond to the reduced offer made on 21 March 2005). The Association themselves concluded, after their Customer Complaints Panel Hearing and before the complainant raised this matter with this office, that they were responsible for 25 weeks of delay and, after considering the evidence available to me, I agree that it was no more than that. An offer of compensation was made representing the difference between what Mr C might have paid for a mortgage against the amount he paid in rent (that is, £278.10). This was offered in full and final settlement and on the basis that the sale would conclude quickly. It was proposed that the payment would be made on completion of the sale, although Mr C said that he has not received such a payment.

16. In the circumstances, after considering the matter very carefully, I consider that the Association had fully addressed this aspect of the matter in advance of a formal complaint being made to the Ombudsman. Accordingly, I cannot conclude that there was further maladministration on this score. It is of great concern, however, that the sale was not concluded until some two and a half years after the application to buy was made.

17. Mr C said that his legal fees were higher than necessary and, while this may have been the case, he and his solicitors contributed to the delay. He also said that if he had waited longer to submit a Right to Buy application he would have qualified for a higher discount. However, this does not take account of the fact that, had he waited, the valuation of his property would have been higher both with the passage of time and as the property would have been in better condition. In

the circumstances, I take the view that Mr C was not financially disadvantaged as a consequence.

(b) Failure to carry out repairs in a timely manner

18. Mr C is aggrieved that, although in April and September 2003 he reported a number of repairs requiring attention, it was not until 24 June 2005 that they were completed (the list of repairs which Mr C said required attention was extensive including faulty sealant to windows, a damaged roof, insect infestation and woodworm, wet rot, water penetration, leaking gutters and blocked drains). He said that his family had to live in unsatisfactory conditions as a consequence of the Association's failure.

19. It is understood from the foregoing that the completion of the repairs was closely tied to the sale of Mr C's house. I am aware from the Association's response of 10 April 2006 that on 23 September 2003 they agreed that the sale could not be concluded until the repairs were carried out. However, there is little information available to me between that date and 28 January 2004, when solicitors enquired about the repairs and their progress. After that date, it was not until 25 March 2004 that all the required surveys had been carried out to identify exactly what work was required in order to instruct contractors and not until over a year later (October – November 2004) when roof repairs were completed. Between times, there is evidence of internal 'chasing' in response to Mr C's solicitors' enquiries but matters progressed slowly.

20. As indicated above, the Association's Chief Executive visited Mrs C at home on 4 November 2004 in order to discuss issues surrounding the land sale. At that time, Mrs C indicated that with regard to the house sale, she and her husband would be prepared to accept a cash settlement in lieu of the works being carried out and in December the Chief Executive says she made a verbal offer but that this was refused (see paragraph 8). The Chief Executive then requested her staff to produce a full report on what remained to be done. An internal memo of the same date referred to difficulties the Association's contractor said he was experiencing in gaining access to Mr C's home, that he had tried three times over the last six weeks without success and that, despite the fact that he had left cards asking Mr C to call, nothing had happened. In the circumstances, the Association said they wrote to Mr C on the same day requesting access. However, Mr C subsequently

denied that any contact numbers had been left for him to call. This information was reiterated by Mr C's solicitors in their letter to the Association of 31 January 2005. They suggested that, in order for the sale to progress, the Association should either do the works immediately or deduct their cost from the sale price. (Although it is noted that Mrs C rejected an offer made to her in November 2004.) Meanwhile, a specialist survey concerning rot and woodworm was carried out.

21. On 1 February 2005, the Association replied to the solicitors saying that they would look further into their suggestions and on 21 March 2005 they wrote authorising a deduction for the works required. The amount agreed reflected the costs outstanding for woodworm and damp treatment.

22. Other works remained to be attended to and on 3 May 2005 an internal memo from the Chief Executive to the Repairs Coordinator asked that these be completed as soon as possible. On 6 May 2005, a further memo recorded agreement being reached with Mrs C about what work was outstanding and that this had been given priority status. I believe all outstanding works were completed by 24 June 2005 (see paragraph 12).

(b) Conclusion

23. It appears to me that, despite their close association with the house sale, there was little sense of urgency to complete repairs. With regard to the issue of access, I am again of the view that both the complainant and the Association had a role to play. Mr C denies presenting difficulties with access or that contact details were provided for him to get in touch with the contractor and the Association have not provided evidence that these details were left. The Association, in their response of 10 April 2006, also made specific reference to their then maintenance officer and his failure to progress matters. However, after the repairs were reported in September 2003, it took at least until the following February (2004) for the Association to respond and that was only after solicitors enquired on Mr C's behalf. Similarly, there was a delay (of one year and four months) after the repairs were reported before the Association arranged a specialist survey for the rot and woodworm problems. This was a failure on the part of the Association and I, therefore, uphold this aspect of the complaint.

(b) Recommendations

24. While the Association have acknowledged the delay in the house sale by offering compensation, they do not appear to have acknowledged their failure to complete repairs in a timely manner. The Ombudsman, therefore, recommends that they now make an appropriate apology and reinforce this with a suitable payment. This should be calculated on a basis similar to their previous compensatory offer, taking into account the delays outlined above, to reflect the injustice caused to Mr C as a consequence.

(c) The release of personal information to a third party without permission

25. As part of his complaint Mr C said that, in their letter to his solicitors of 28 April 2005, the Association released information to the effect that he had outstanding rent arrears of £178.80 and that a Notice of Proceedings had been issued. Mr C was aggrieved at this and said it should not have happened.

26. In their response of 10 April 2006 the Association maintained that it is perfectly normal to advise solicitors acting on behalf of clients in house purchases about any rent arrears, as it has a material bearing on the Right to Buy. They said a Right to Buy application can be cancelled where arrears persist and, therefore, they were merely ensuring that all the material facts were with Mr C's solicitors. They argued that there was no question of breach of confidentiality as they were bound to ensure that all the facts affecting the Right to Buy application were with the solicitors.

(c) Conclusion

27. I am satisfied that it was appropriate to advise Mr C's solicitors of a matter which may have affected the progress of the sale, including the fact that a Notice of Proceedings for recovery of possession had been issued. Accordingly, I do not uphold this aspect of the complaint.

26 September 2006

Explanation of abbreviations used

Mr C

The complainant

The Association

Scottish Borders Housing Association