

## Scottish Parliament Region: Central Scotland

### Case 200500542: East Dunbartonshire Council

#### Summary of Investigation

##### **Category**

Local government: Housing; Repairs and Maintenance of Housing Stock

##### **Overview**

The complainant (Mrs C) raised a number of concerns: that her grandfather's (Mr A) flat was in an unfit condition; that he was being denied access to communal ground; and that her complaints on this matter had not been dealt with appropriately.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) Mr A's house was not maintained adequately (*not upheld*);
- (b) Mr A was denied access to communal ground (*not upheld*); and
- (c) Mrs C's complaints were not handled appropriately (*partially upheld*).

##### **Redress and recommendation**

The Ombudsman recommends that the Council emphasise, in guidance issued to Council staff, that complainants should be reminded of their rights to take their complaint further in any formal response from East Dunbartonshire Council.

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

## **Main Investigation Report**

### **Introduction**

1. On 5 July 2005, the Ombudsman received a complaint from a woman referred to in this report as Mrs C. Mrs C's grandfather, Mr A, was a tenant of East Dunbartonshire Council (the Council). He had lived in the same flat for 42 years (flat A). On 29 November 2004, Mrs C wrote to the Council to say she was appalled at the condition he was living in. She listed a number of specific points and questions and raised concerns that she had about a neighbour denying Mr A access to the bin area and that the back garden, which she thought he rented, had been sold. She also said she had telephoned the Council and that Council staff had been rude and unhelpful. She received a brief response, on 2 December 2004, to say that the Head of Housing had visited Mr A and met Mrs C's mother (Mrs B) prior to 29 November 2004 and work would be undertaken. The letter indicated there would be a further response to Mrs B concerning the questions of ownership of the garden and outstanding issues and also to Mrs C in response to her letter.

2. On 6 January 2005, the Council wrote again to Mrs C saying that the roof repair had been completed, Mr A had been offered alternative accommodation and they apologised for the manner of their response to one of Mrs C's telephone calls. The letter did not respond to a number of points Mrs C had raised on the grounds that Mr A had been offered a housing transfer.

3. Following contact with the Ombudsman, Mrs C asked for her complaints to be considered again and she received a further response from the Council on 31 May 2005. Mrs C remained unhappy with the details of the response and contacted the Ombudsman again.

4. The complaints from Mrs C which I have investigated are that:
- (a) Mr A's house was not maintained adequately;
  - (b) Mr A was denied access to communal ground; and
  - (c) Mrs C's complaints were not handled appropriately.

## **Investigation**

5. The investigation of this complaint involved reading the correspondence between Mrs C and the Council. The Council also responded to specific questions raised by this office.

6. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

### **(a) Mr A's house was not maintained adequately**

7. The Council said that, following a telephone complaint from Mrs B on 25 November 2004, the Head of Housing visited Mr A on 26 November 2004. It is not clear what concerns were raised at that visit but, in the letter of 31 May 2005 to Mrs C, the Council said that, based on those discussions, priority was given to repairing the roof and arranging a transfer to a more suitable property.

8. On 2 December 2004, the Council had written to Mrs C and informed her that the roof had been repaired and Mr A had been given the offer of ground floor accommodation. In response to my enquiries, the Council said this offer was made on a discretionary basis as the accommodation to which he moved had been refused three times, allowing the Council to allocate by discretion to the most appropriate person on the list rather than to the next person on the list.

### **(a) Conclusion**

9. When they received Mrs C's concerns, the Council were also in discussions with Mr A and Mrs B. As a result, the roof repair was undertaken quickly and completed by 6 January 2005 and, when it was clear the accommodation was no longer suitable for Mr A, the opportunity was taken to offer him an alternative. I, therefore, do not uphold this complaint.

### **(b) Mr A was denied access to communal ground**

10. In her initial letter of complaint, Mrs C said one of Mr A's neighbours was denying him access to the bin area and said that he had bought the garden area. As indicated in their letter to Mrs C of 2 December 2004 (see paragraph 1), Mrs B had already complained to the Council about this and they had written to Mrs B on 15 October 2004 to say they were investigating.

11. In her subsequent letter of complaint of 15 May 2005, Mrs C asked again if they could confirm whether the Council had sold this ground and why it was done without Mr A's permission. The Council provided Mrs C with a map of the area indicating which area of the garden had been associated with Mr A's flat. Mrs C was unhappy with this and went to the Land Registry and found that land had been sold to the former owner of a neighbouring flat (flat B) in 1994. Mrs C felt that this denied her grandfather from having access to a drying area, and she believed he had been charged for cutting the grass and that some of the area sold would have been rented to him under his original missives.

12. There was detailed correspondence on this point between the Council and this office over a number of months. In this, the Council said that, at the time of the sale in 1994, they had been aware the extent of the ground being sold to flat B was unusual but site visits were held which showed the tenant in question was clearly occupying this area. Council tenancy agreements rarely showed the garden ground allocated to a flat and, in any event, under the 'Right to Buy' legislation tenants were entitled to purchase ground that they were using at the time of the purchase and not when a tenant took occupation.

13. The Council also said that when another neighbouring tenant (flat C) made a 'Right to Buy' application, they became aware there could be access issues for flat A. They, therefore, decided that a servitude right of access would be granted to flat A. This would give them the option of agreeing that the occupier of flat A could use a portion of the ground to the rear of neighbouring tenements. The Council confirmed that garden maintenance was not a part of Mr A's rent. He had been part of a free garden maintenance scheme which included grass cutting but had ceased to be in 2000, when they started to charge for this.

*(b) Conclusion*

14. From the correspondence relating to the sale of flat B from 1994, it is clear that the Council considered that under the 'Right to Buy' legislation the tenant of flat B was using the ground and entitled to purchase it. They were aware that the amount of ground was unusual and did undertake a site visit to clarify this. When, during the sale of flat C, they became aware there might be access issues if that

sale proceeded, they created a servitude for flat A. There is no evidence that any concerns were expressed about this until 2004. I do not uphold this complaint.

**(c) Mrs C's complaints were not handled appropriately**

15. Mrs C says she complained by telephone on 24 November 2004 and received a telephone call from the Housing Services Manager that day. She was unhappy with the response and telephoned her MSP on 25 November 2004 and was advised to make sure she completed the complaints procedure. She telephoned again and was also unhappy with the way she was spoken to. In her letter of 29 November 2004 to the Head of Housing, she asked for a full copy of the complaints procedure as she had only received a summary booklet.

16. A letter of acknowledgement, including a brief response to her concerns, was sent to her on 2 December 2004 and a further response on 6 January 2005. The letter of 6 January 2005 included a full copy of the complaints procedure and said:

'Assuming [Mr A] accepts our offer of [...] there is little mileage in me discussing a number of your points in your letter as this has now be (sic) superseded by the transfer offer.'

17. In her letter of 16 May 2005, asking for her complaint to be dealt with at the next stage of the complaints procedure, Mrs C says she had not done so before this time as she had been given the impression that these points could no longer be raised. Having done so, she received an acknowledgement on 18 May and a full response on 31 May 2005.

*(c) Conclusion*

18. Apart from a brief delay over the Christmas/New Year period, 2004/2005, Mrs C's complaints were dealt with within the time scales then applicable in the Council's complaints procedure. Also, given Mrs C and Mrs B both complained on behalf of Mr A, it is understandable that the Council had Mrs B as the main point of contact and considered that their actions following a meeting with Mr A and Mrs B had resolved the main concerns.

19. The letter of 6 January 2005 did enclose a copy of the complaints procedure, which included the right to appeal a decision. However, given the sentence quoted above (see paragraph 16), it is not unreasonable that Mrs C believed that her

specific concerns could not be taken further. I, therefore, partially uphold this complaint.

*(c) Recommendations*

20. The Ombudsman recommends that the Council emphasise, in guidance issued to Council staff, that complainants should be reminded of their rights to take their complaint further.

21. 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.

28 November 2006

**Explanation of abbreviations used**

Mrs C	The complainant
Mr A	The complainant's grandfather
Mrs B	The complainant's mother and Mr A's daughter
The Council	East Dunbartonshire Council
Flat A	Mr A's flat
Flat B	A neighbouring flat
Flat C	A neighbouring flat