

## Scottish Parliament Region: West of Scotland

### Case 200500969: Inverclyde Council

#### Summary of Investigation

##### **Category**

Local government: Land and property; Policy/administration

##### **Overview**

The complaint concerned a housing association wishing to lease premises from Inverclyde Council (the Council). The housing association's former Director (Mr C) believed that the Council's handling of the matter was inefficient and unhelpful, resulting in unnecessary financial loss to the association. In addition, Mr C was unhappy with how the Council dealt with the complaint.

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

The complaints which have been investigated are:

- (a) alleged failure by the Council to act in a timely and efficient manner (*upheld*);
- (b) alleged failure by the Council to adhere to agreements reached during the complaints handling process (*no finding*); and
- (c) the Council's complaints handling process was of a poor standard (*partially upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) ensure that Estates staff adhere to the criteria set out within use classes as they relate to the Council's asset base when placing different types of business in suitable locations, while maintaining flexibility where appropriate;
- (ii) draft guidance for Estates staff on regular and documented communication with potential tenants, as well as how to make such communication clear and unambiguous. They should consider including an indication of the approximate timescales for dealing with enquiries, and explicit statements that costs incurred by potential tenants for conducting assessment of suitability of premises are to be borne by the potential tenant, and that pursuing an offer of tenancy from a potential tenant is exploratory and not a commitment on the part of the Council to let a specific property. In

addition, the Council should consider whether or not it is appropriate to leave premises keys with potential tenants for an unspecified and indefinite period of time;

- (iii) ensure that in future a jointly agreed record of meetings between complainants and Council staff is made, in particular recording any action points and deadlines, agreements reached, or unresolved matters; and
- (iv) complaints process must be clear on the role of Ward Councillors, in particular that they have no formal involvement in complaints handling. The Council should also remind staff of the importance of adhering to complaints handling timescales and of drawing the complaint to a formal conclusion.

The Council have agreed to the recommendations and put forward proposals on how to address them.

## **Main Investigation Report**

### **Introduction**

1. In July 2005 the Ombudsman accepted a complaint from a person who is referred to in this report as Mr C. At the time of the complaint Mr C was the Director of a housing association (the Association) operating in the Inverclyde Council (the Council) area. Mr C believed that the Council's handling of the search for a leased property was inefficient and unhelpful resulting in unnecessary financial loss to the Association. In addition, Mr C was unhappy with how the Council dealt with the complaint.

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

- (a) alleged failure by the Council to act in a timely and efficient manner;
- (b) alleged failure by the Council to adhere to agreements reached during the complaints handling process; and
- (c) the Council's complaints handling process was of a poor standard.

### **Investigation**

3. The investigation of this complaint involved obtaining and reading all the relevant documentation. Mr C supplied documentary evidence with his initial complaint to the Ombudsman, and supplied further commentary in response to my enquiries. The Council supplied commentary and documentary evidence, including copy reports and copy correspondence, in response to my detailed enquiries. I compared the evidence and accounts provided by both parties and used this to examine the manner in which the Council had dealt with the search for premises and with Mr C's complaint.

4. I have not included in this report every detail investigated but 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) Alleged failure by the Council to act in a timely and efficient manner**

5. In August 2003, the Association enquired about the possibility of Council owned premises being let to them for use as their main office. Estates staff from the Council's Economic Development Service worked with the Association to find premises. Specific premises, hereafter referred to as the Unit, were identified within an industrial estate in the Council area.

6. There was periodic dialogue, including emails, telephone conversations, letters and meetings, between Mr C and Council staff from August 2003 until mid-April 2004 when the Council's Economic Development Service informed Mr C that it had been decided not to pursue the Association's offer of tenancy at the Unit. In mid-May 2004 Mr C lodged a formal complaint with the Council's Deputy Chief Executive about the handling of the matter. Exchanges about the complaint continued until August 2005. This interaction will be covered in more detail in the course of this report.

7. In a letter of 25 February 2004 to the Council, Mr C outlined the action he was taking in relation to the Unit. His aim was to determine if the Unit identified could be used by the Association, as well as providing general information to the Economic Development Service on likely visitor trends. Mr C wrote that:

'Towards the end of last year [Officer 1, a Council Estates Officer] directed us towards the empty units ... simply because there had been quite extensive alterations carried out to create offices within the factory area. We then instructed our consultant architect to bring together proposals that took forward the specific needs of the Association in terms of reception, meeting rooms and storage facilities and we are currently at the stage of testing the indicative costs of alterations of some £100k against real market place tenders. I would emphasise that we are merely trying to establish the real costs and will not be placing any contract until other negotiations have been concluded with you ... In moving towards a possible large scale investment in the unit the Association would be looking for a reasonable period of lease. [Officer 2, a Council Estates Surveyor] explained the current complication surrounding the existing lease.'

8. A letter from Officer 2 to Mr C on 29 March 2004 said that 'I would advise that I am currently progressing your expression of interest in the possible lease of [the Unit]'. On 19 April 2004 Officer 2 wrote again to Mr C to inform him that the Council had decided not to pursue the Association's offer of a tenancy at the Unit. Officer 2 explained that he and Mr C, at a meeting in February 2004, had:

'discussed the potential problems in placing a tenant with your business use within an industrial estate. This concern was more acute given the fact that the vacant unit is located at the far end of the terrace, with all traffic having to pass the other seven industrial units. Planning Services have also expressed their concern in this respect, and more specifically

with regards the intensification of both pedestrian and vehicular traffic within the estate created by your operations.'

Officer 2 also explained that there were contractual issues concerning the existing secure tenancy within the Unit and the provision of CCTV security.

9. Mr C formally complained to the Council on 21 May 2004. In a letter to the Depute Chief Executive he said that Officer 1 had specifically directed him to the Unit and had:

'insisted we held on to the keys to allow us ease of access to allow my staff and Committee Members the opportunity to view the premises and to come to a conclusion as to its possible suitability ... Both staff and Committee saw the potential of [the Unit] but as the premises did not fully meet our operational requirements in layout etc we commissioned our consultant architects to develop our brief for the premises and produce various sketch layouts. An agreed layout was reached which had to be costed and so our consultant Quantity Surveyors were engaged for this task as we were working to a quite specific budget and it was essential that we knew whether or not our chosen option could be financed. Throughout all of this period your staff were kept apprised of our progress as the keys for the premises were still in our possession and each time we required access for our consultants we were obliged to let your staff know.'

The work done by consultants on behalf of the Association led to fee costs of £4850.50, which Mr C believed the Council should reimburse to the Association.

10. In a letter of 10 June 2004 to Mr C, the Council's Depute Chief Executive responded that 'It is very regrettable that the response to you was not more timely'. He went on to say that there were two important factors to be taken into account, namely that:

'the officers were clearly motivated by a wish to assist you fully with your business needs ... the steps which you may have taken were entirely at your own instance.'

The Depute Chief Executive also said that 'With hindsight, it can be said that [the Unit] should not have been raised'.

11. In response to my enquiries the Council advised that, with one specific exception, they do 'not make use of written guidelines relating to the matching

of applicants with particular premises'. The Council explained in more detail that:

'For ... commercial and industrial properties, whilst the Council tries as far as possible to maintain a themed approach e.g. one industrial estate is used almost exclusively by vehicle maintenance businesses, there are occasions when the Council has to deviate from the theme either to meet the needs of a potential tenant and/or to ensure that rental income is received. In short ... a more flexible approach to the letting of properties is taken ... There are no laid down procedures as regards communicating with or updating clients searching for premises. In some cases, there might be a need to keep clients informed of developments on a daily basis, in some cases on a weekly basis and there might be occasions when that period is longer. In summary, the Council's aim is to focus on the requirements of the client and, since those requirements will vary, prescriptive response timescales would not be appropriate.'

12. Mr C felt that the fact that Estates staff let him keep the keys for the Unit was proof of encouragement to look exclusively at that Unit. The Council have confirmed that Estates staff did not request the keys to be returned. Mr C wrote to the Council in August 2004 asking the Council to uplift the keys. Officer 1 replied to Mr C advising that the locks to the Unit had been changed and asked if he could dispose of the set of keys he had. In response to my enquiries the Council advised that 'It is normal practice for the Council to change locks on premises in between tenancies as a security measure'.

13. In its response to both Mr C and to my enquiries, the Council have said that Council staff had told Mr C that no commitment could be given to the Association that the Unit would be made available to them.

*(a) Conclusion*

14. I have examined all of the documents available to me. The evidence suggests that unclear communication on both sides led to a misunderstanding of and assumptions about the other's position. The initial and ongoing communication between the Association and the Council from August 2003 to February 2004 was mainly by telephone or meetings that were not formally recorded, therefore, there is no reliable evidence of what was said. However, it is clear that the Association approached the Council for assistance, and there is mention of discussion of concerns over the physical suitability of the Unit and traffic volume. It is not clear why and at what point these concerns became

reasons for the Council declining the offer of tenancy. The language used in Mr C's letter of February 2004 to Officer 2 does not indicate a commitment to the Unit, rather an assessment of suitability by the Association before negotiations and any subsequent contract.

15. I can find no documentary or corroborated evidence of explicit instruction or encouragement by the Council for Mr C to engage architects or surveyors. Mr C advised the Council of the Association's use of architects and surveyors. There is no evidence of Council staff explicitly discouraging the Association/Mr C from doing this. The fact remains, however, that engaging consultants was the Association's decision.

16. The Association first enquired about premises in August 2003. The decision not to offer a tenancy was sent to the Association in April 2004. The phrase 'progressing your expression of interest', as used by Officer 2 in his letter of March 2004 to Mr C (see paragraph 8), can be read as a positive statement. However, given the Council's stated position on this complaint, this phrase was not meant to be interpreted positively. The seven to eight months from the initial enquiry to the March 2004 letter, followed by intimation of a decision just over two weeks later, gives the appearance that there was little activity at the Council in dealing with the Association's interest in the Unit until late on in the process. This is reinforced by the Depute Chief Executive's statement to Mr C that it was regrettable that the response to him was not more timely and that, with hindsight, the Unit should never have been raised with the Association for a possible tenancy.

17. It is clear to me from the evidence that the absence of procedures and communication standards at the Council contributed to the lack of clarity on:

- whether or not the Association was a suitable business for the industrial estate in which the Unit was located;
- communication between Economic Development Service staff and Mr C;
- the status of the dialogue between Mr C and the Council before any lease could be agreed; and
- what the likely timescales were for completion of the property search and possible contractual negotiation.

On this basis I uphold this aspect of Mr C's complaint.

*(a) Recommendations*

18. The Council have informed me that since September 2004, following the appointment of a new Head of the Council's Economic Development Service, there is regular review and monitoring of Estates Officers, and that all outgoing mail is signed by the Head of Service to ensure that correspondence with tenants and potential tenants is dealt with at an appropriate level. While this is welcome, this complaint has shown that there is a need for process guidance for Estates staff when dealing with potential tenants. The Ombudsman recommends that the Council ensure that Estates staff adhere to the criteria set out within use classes as they relate to the Council's asset base when placing different types of business in suitable locations, while maintaining flexibility where appropriate.

19. The Ombudsman also recommends that the Council draft guidance for Estates staff on regular and documented communication with potential tenants, as well as how to make such communication clear and unambiguous. They should consider including an indication of the approximate timescales for dealing with enquiries, and explicit statements that costs incurred by potential tenants for conducting assessment of suitability of premises are to be borne by the potential tenant, and that pursuing an offer of tenancy from a potential tenant is exploratory and not a commitment on the part of the Council to let a specific property. In addition, the Council should consider whether or not it is appropriate to leave premises keys with potential tenants for an unspecified and indefinite period of time.

**(b) Alleged failure by the Council to adhere to agreements reached during the complaints handling process**

20. In the process of dealing with Mr C's complaint the Depute Chief Executive suggested that, as mentioned in the Council's complaints leaflet, Mr C could seek the advice and help of his Ward Councillor. This led to two meetings in October 2004 with Mr C, the Depute Chief Executive, and the Ward Councillor. The Ward Councillor was not present for the whole of each meeting.

21. At one of the meetings, on 18 October 2004, Mr C claimed that the Depute Chief Executive 'suggested that we both explore options by which 'payments in kind' could be considered'. Mr C raised the possibility of the Council not charging the Association in respect of a separate cost which would be up to £1,000. Mr C informed me that:



'[The Depute Chief Executive] was keen to pursue this as a starter and the meeting concluded with both of us agreeing to look for other options and get back to each other in due course. To be absolutely clear at this point the discussion was not dealing with part payment but ways of making full payment'.

The full payment Mr C referred to was the fee costs of £4850.50.

22. A report into the complaint written by the Depute Chief Executive in August 2005 said:

'I suggested ... I should look into some form of compensating payment ... At no point did I ever accept or give an impression that the Council was to be considered liable for the whole sums claimed by [Mr C] ... I wholly and absolutely refute [Mr C]'s assertion that I was looking at any way of making full payment.'

23. In response to my enquires the Council advised that:

'The meeting in October 2004 to which [Mr C] refers was not documented ... In hindsight, a jointly agreed note of the meeting would have been helpful.'

24. I asked Mr C if the agreement he claimed was made had been documented and confirmed between the two participants. Mr C said that as he was:

'dealing with the Depute Chief Executive of this local authority it was not unreasonable to expect the highest values of professional integrity from such an individual and [the Depute Chief Executive] also appeared genuinely concerned and committed to finding a financial solution. For these reasons I trusted in the verbal agreement that had been reached on 18 October 2004.'

*(b) Conclusion*

25. Mr C believes that the Depute Chief Executive gave an undertaking to reimburse the Association £4850.50, whereas the Depute Chief Executive believes that he gave no such undertaking. Notwithstanding Mr C's expectations, there is no corroboration of whether such an agreement was reached. There were no independent witnesses to this part of the 18 October 2004 meeting and there is nothing in writing. On this basis I can reach no finding on this aspect of Mr C's complaint.

*(b) Recommendation*

26. The Ombudsman recommends that the Council ensure that in future a jointly agreed record of such meetings between complainants and Council staff is made, in particular recording any action points and deadlines, agreements reached, or unresolved matters.

**(c) The Council's complaints handling process was of a poor standard**

27. Mr C has expressed that he was dissatisfied with the Council's handling of his complaint. He was unhappy with their response times as well as the involvement of the Ward Councillor. It is important at this stage to make clear that there is no dissatisfaction regarding the conduct or input of the Councillor himself, rather the issues are whether or not it was appropriate for the Council complaints procedure to refer to the involvement of a Ward Councillor, and whether or not the Council were right to involve the Ward Councillor in the way that they did.

28. The Council's complaints leaflet from the time (the Council Customer Feedback Procedures Leaflet) said that, under Stage 3 of the Council's complaints process, a written response would be sent to the complainant within two weeks. The leaflet also referred to the role of Ward Councillors in complaints as providing help and advice, but not being an integral step in, and having no formal part in the process.

29. The formal complaint was submitted to the Council in May 2004 and was acknowledged within four working days with advice that a reply would follow within 14 days. A formal response was sent to Mr C dated 10 June 2004, within the 14 day deadline. On 30 June 2004 Mr C challenged the Council's response and there was an exchange of correspondence, telephone messages and telephone calls until mid-September 2004 when the first meeting involving the Ward Councillor was arranged (for 5 October 2004). A second meeting was arranged for 18 October 2004. There is no further correspondence on the matter until March 2005 when Mr C wrote to the Depute Chief Executive in relation to the alleged agreement. Correspondence on this disputed agreement continued until August 2005, by which time Mr C had complained to the Ombudsman. The correspondence did not draw a formal conclusion to the matter.

30. In evidence to the Ombudsman Mr C said, in relation to the period October 2004 to March 2005, that he understood the Council was being audited and, therefore, he was aware that the Council, and the Depute Chief Executive in particular, 'had much more important matters on his agenda'.

31. In his complaint letter to the Ombudsman Mr C said that the involvement of the Ward Councillor was not clear, given his informal role. The Council, in response to my enquiries, agreed that the Ward Councillor's role was informal and that they had involved him as an 'additional procedure that was offered to debate the issues and must be regarded in that context'.

*(c) Conclusion*

32. The evidence shows that there was no undue delay in the Council's handling of Mr C's complaint from May 2004 to October 2004. From October 2004 there was no contact between the Council and Mr C until Mr C wrote to the Depute Chief Executive in March 2005 asking if progress had been made on the disputed agreement reached at the 18 October 2004 meeting. The Depute Chief Executive apologised for the delay when he responded to Mr C in May 2005. The lack of action on the part of the Council from October 2004 to May 2005 was allowed to happen, in part, because there was no record of the October 2004 meetings and no jointly agreed outcome or timescales for proceeding, as seen in (b) above. While the Deputy Chief Executive's suggestion to involve the Ward Councillor was well-intentioned, it was not significantly helpful in resolving the complaint and primarily served to confuse matters for Mr C.

33. Because of the delay in responding to Mr C after October 2004, taking into account possible mitigating circumstances as described at paragraph 30, and because the role of the Ward Councillor in the complaints process was not clear, I have partially upheld this aspect of Mr C's complaint.

*(c) Recommendation*

34. I understand that the Council's complaints procedure is to be revised, which is welcome. The Ombudsman recommends that the complaints process must be clear on the role of Ward Councillors, in particular that they have no formal involvement in complaints handling. The Council should also remind staff of the importance of adhering to complaints handling timescales and of drawing the complaint to a formal conclusion.

35. The Council have agreed to the recommendations and put forward proposals on how to address them. The Ombudsman asks that the Board notify her when the recommendations have been implemented.

21 November 2007

**Explanation of abbreviations used**

Mr C	The complainant
The Association	The Housing Association of which Mr C was a Director
The Council	Inverclyde Council
The Unit	Specific premises within an industrial estate in the Inverclyde Council area
Officer 1	A Council Estates Officer
Officer 2	A Council Estates Surveyor

**List of legislation and policies considered**

Inverclyde Council Customer Feedback Procedures Leaflet