

Scottish Parliament Region: Mid Scotland and Fife

Case 200501640: Fife Council

Summary of Investigation

Category

Local government: Housing; Sheltered Housing and Community Care

Overview

The complainant (Mr C) raised concerns that Fife Council (the Council) inappropriately pursued him for a support charge in connection with his sheltered housing.

Specific complaint and conclusion

The complaint which has been investigated is that the Council inappropriately pursued Mr C for a support charge in connection with his sheltered housing (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 16 September 2005 the Ombudsman received a complaint on behalf of a man, referred to in this report as Mr C. The complaint related to a support charge levied by Fife Council (the Council). Mr C felt that he should not be liable for the charge because the Council had not made him aware of it and it was not detailed in the tenancy agreement he had signed.

2. The complaint from Mr C which I have investigated is that the Council inappropriately pursued Mr C for a support charge in connection with his sheltered housing.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant information, including correspondence between Mr C, his MP and the Council, copies of the Council's sheltered housing agreements and information and internal correspondence of the Council. 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.

Complaint: The Council inappropriately pursued Mr C for a support charge in connection with his sheltered housing

4. Mr C signed a tenancy agreement with the Council in May 2003 for sheltered housing. Within hours of signing the agreement, the Council contacted Mr C and advised him that an error had been made, as the agreement he had signed was not correct. The Council advised that mention and details of the support charge had not been included in the tenancy agreement he had signed. The Council held the opinion that regardless of the content of the tenancy agreement, Mr C was liable to pay the support charge as they felt the legislation did not offer them discretion over an individual's requirement to pay.

5. Mr C complained to the Council, stating that he believed he was not liable for the charge as it was not specified in the tenancy agreement he had signed. He also pointed out that support charges, separate from rent charges, had not been mentioned to him verbally or in writing during the process of application or informal acceptance of a tenancy.

6. Mr C continued to correspond with the Council and in March 2004 the Council agreed that Mr C had not been given any written information about the support charges prior to signing the tenancy agreement. The Council apologised to Mr C for this and decided, in recognition of the distress and delay Mr C had experienced, to waive the charge for a period of one year from Mr C's date of entry to the property. The Council also undertook to review their procedures with regard to support charges and the communication of them to prospective tenants.

7. Mr C was not satisfied by this, and continued to complain to the Council. As previously, Mr C believed that he should not be liable for the charges at any point whilst the tenancy agreement he signed remained in force. He asked the Council to agree to this. During the course of correspondence on this matter it became clear that the copy of the tenancy agreement that Mr C had signed was incomplete. The Council supplied Mr C with copies of the missing portions.

8. The information given in the additional pages supplied to Mr C contained incorrect information about the individual and cumulative amounts of the support charge. As part of his complaint to the Council, Mr C queried this in relation to the invoice he had been sent for the payments due for the financial year 2004/2005. The Council accepted that this error had been made and advised Mr C that this was evidence of the confusion that had occurred around the charge and the administration of it.

9. In August 2005 the Chief Executive wrote to Mr C and apologised for the further errors that had been made and, in recognition of these and the delay Mr C had suffered, indicated that he would instruct the relevant department to waive the charge for the remainder of the financial year 2004/2005. The Chief Executive made clear that the Council believed Mr C was liable to pay the charges from the financial year 2005/2006 onwards and that Mr C would be supplied with a corrected tenancy agreement to sign. Mr C refused to sign this agreement and brought his complaint to the Ombudsman.

Conclusion

10. It is not the Ombudsman's role to give a legal view on whether Mr C's tenancy agreement requires him to pay the support charges. However, it is not disputed that the Council made errors in not giving Mr C any written information about the support charges prior to his signing of the tenancy agreement and in

not ensuring that the tenancy agreement he signed was complete and correct. It must be taken into account, however, that the Council did make Mr C aware of these errors within hours of his signing the agreement and, following Mr C's complaint about the issue, decided to waive Mr C's liability for the charge for the first year of his tenancy in recognition of the distress and delay he had experienced. In recognition of their subsequent error in supplying Mr C with incorrect information, the Council also decided to waive Mr C's liability for the support charges for the remainder of the financial year 2004/05. The Council remain of the opinion that they have now appropriately rectified the errors they made, apologised to Mr C and, in waiving his liability for payment from May 2003 to April 2005, made amends for the errors. I believe this represents a commendable response by the Council to the errors they made and Mr C's complaints. The Council believe that Mr C is liable for payment of the support charges from financial year 2005/06 onwards for the sheltered housing service he is receiving. I believe this is a reasonable position for the Council to maintain and, therefore, I do not uphold the complaint.

Explanation of abbreviations used

Mr C

The complainant

The Council

Fife Council