

Case 200600929: Viewpoint Housing Association Ltd

Summary of Investigation

Category

Housing associations: policy and administration

Overview

The complainant, Mr C, complained that Viewpoint Housing Association Ltd (the Association) had implemented a decision to withdraw a meals service provided to his mother-in-law (Mrs A) contrary to the terms of her tenancy agreement. He also complained that his complaint to the Association about this had not been adequately responded to.

Specific complaints and conclusions

The complaints which have been investigated are that the Association:

- (a) removed the provision of a full meals service contrary to the terms of Mrs A's tenancy agreement (*upheld*); and
- (b) failed to adequately respond to Mr C's complaint of March 2006 (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Association:

- (i) apologise to Mrs A for varying her agreement without adequate consultation;
- (ii) ensure that future tenant consultations are meaningful and properly recorded; and
- (iii) apologise to Mr C for their failure to adequately respond to his complaints.

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

Main Investigation Report

Introduction

1. On 23 June 2006 the Ombudsman received a complaint from a man, referred to in this report as Mr C. His complaint was on behalf of his mother-in-law, Mrs A, a tenant of Viewpoint Housing Association (the Association) in receipt of Extra Sheltered Housing. He complained that the Association had implemented a decision to remove a meals service contrary to the terms of Mrs A's tenancy agreement and that his complaint about this had not been adequately handled by the Association.

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

- (a) removed the provision of a full meals service contrary to the terms of Mrs A's tenancy agreement; and
- (b) failed to adequately respond to Mr C's complaint of March 2006.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation including correspondence between Mr C and the Association, information documents produced by the Association and Mrs A's tenancy agreement. 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 Association were given an opportunity to comment on a draft of the report.

4. Mrs A is an elderly lady who took up residence in sheltered accommodation offered by the Association in September 2001. Under the terms of the tenancy agreement she signed (the Assured Tenancy Agreement) the Association agreed to provide various services for which Mrs A was charged. These included a sum attributable to 'Food'. Paragraph 3.1 of the Assured Tenancy Agreement stated that 'if any variation to the services provided by the Association becomes necessary, the Association will consult with the Tenant on the proposed changes'. Paragraph 6 of the Assured Tenancy Agreement stated that 'the terms of this tenancy agreement may not be varied except with the prior written consent of the Association and the Tenant'. Another, unsigned, document provided to Mrs A indicated that the Association would provide her with a level of support known as 'Extra Sheltered Housing'. This was described as 'All the services of sheltered housing are

provided, with the special addition of two meals a day served in the dining room'.

5. In early 2006 the Association decided to discontinue the full meals service because demand for it was so limited that it was no longer a financially viable service for the Association to undertake. They formally notified Mrs A of this in a letter of 3 March 2006. The Association told Mrs A that the full meals service would end from 3 April 2006.

6. Mrs A's daughter, Mrs C, had been made aware of the removal of the service during a telephone call of 28 February 2006 about a different matter and wrote to the Association later that day enquiring about the details of the decision and what it meant in practice for her mother.

7. The Association replied to Mrs C on 2 March giving further details of the decision that had been made and the measures that were being taken with regard to Mrs A's nutritional needs following the removal of the service. The Association explained that a number of tasting sessions were being arranged for Mrs A to sample products from potential suppliers of meals she could prepare herself. The Association told Mrs C that, following the removal of the meals service, Mrs A's rent charge would reduce. Following this letter, Mr C wrote to the Association on 7 March. He asked for confirmation that the Association's decision meant that no hot meals would be provided from 3 April onwards. He also asked the Association to comment on how their actions in making, and implementing, this decision related to their responsibilities as set out in the Tenant's Handbook.

8. On 9 March 2006 the Association replied to Mr C's letter. They explained the steps they had taken to try to minimise the effects of the removal of the service from those tenants, like Mrs A, who were currently receiving it. These included arranging tasting sessions for Mrs A to sample the products of alternative meals providers, liaison with the local authority to ensure Mrs A's needs were being addressed and ensuring that adequate cooking facilities were available for Mrs A to use. In response to Mr C's question about the Tenant's Handbook, they advised Mr C that the Tenant's Handbook had been revised in 2004 and asked for further details as the parts of the Handbook he had referred to did not seem to refer to relevant issues. Shortly after receiving this letter, Mr C contacted the Association and was supplied with the revised Tenant's

Handbook. He then wrote again to the Association indicating that part of the revised Tenant's Handbook that he referred to.

9. On 15 March 2006 Mr C complained to the Housing Manager, as indicated in the Association's Complaints Procedure, that the removal of the full meals service had been undertaken contrary to paragraph 6 of Mrs A's Assured Tenancy Agreement (see paragraph 4 above).

10. Mr C's complaint was acknowledged on 17 March 2006, and he was advised that a full response would be sent within 28 days. Mr C wrote to the Housing Manager on 18 March 2006 pointing out that the Association's complaints procedure stated that he should receive a response within ten days. He also asked for the name of the 'Director/Secretary' as noted in the Tenant's Handbook as the person who would deal with an escalated complaint.

11. The Housing Manager supplied Mr C with a full response on 21 March 2006, well within the target set in the procedure. She explained that the Assured Tenancy Agreement that Mr C referred to had been superseded by a Scottish Secure Tenancy Agreement in 2003 and that this new agreement did not include the requirement for the Association to provide a full meals service. She explained that discussions with individual tenants had been held in February 2006 and that Mrs A had told the Association that she would inform Mr and Mrs C of the changes. When it became clear that Mrs A had not done this, the Association decided to take steps to inform Mr and Mrs C. The Housing Manager told Mr C that the Association were working closely with other bodies and catering providers to ensure that Mrs A's welfare was maintained. The Housing Manager advised Mr C of the name of the Chief Executive of the Association.

12. Mr C wrote to the Housing Manager on 24 March 2006. He explained that he was not aware of a new tenancy agreement having been put in place and asked for a copy of the Scottish Secure Tenancy Agreement to be sent to him. He also asked for information about who had been present to witness Mrs A's signing of the agreement and what advice had been given to her.

13. The Housing Manager responded to Mr C on 30 March 2006. She explained that the Scottish Secure Tenancy Agreement had been introduced by the Housing (Scotland) Act 2001 (the Act). She said that the Association had taken account of each tenant's capacity to sign the document and that each

tenant had had the right to include their family or legal representative had they wished and that Mrs A had chosen not to have her family present. She said that the warden had witnessed Mrs A's signature and that the Tenant Participation Officer present at the signing recalled that Mrs A's lawyer had also been present.

14. After receiving the letter of 30 March 2006, Mr C wrote again to the Housing Manager pointing out that no copy of the signed Scottish Secure Tenancy Agreement had been sent with the letter and requesting that one be sent. He also asked for a copy of a document entitled 'Guide to [the Act]' (the Guide) that the Association had produced.

15. Mr C had not received a copy of the signed Scottish Secure Tenancy Agreement by 18 April 2006 and wrote again to the Housing Manager explaining that he was not satisfied with her response to his complaint and advising that he would now write to the Director/Secretary of the Association as indicated in the Tenant's Handbook. He sent a complaint addressed to the 'Director/Secretary' on the same date, outlining the issues he had and requesting a copy of the signed agreement.

16. The Housing Manager wrote to Mr C on 27 April 2006. Her position was now given as 'Director of Housing Services'. She told Mr C that the Association had been unable to locate a copy of the Scottish Secure Tenancy Agreement signed by Mrs A, but enclosed an unsigned copy of the agreement and the Guide. She also explained that the Director/Secretary post had been replaced by a Chief Executive.

17. Mr C wrote to the Director of Housing Services on 7 May 2006, advising that he believed, in the absence of a signed copy of the Scottish Secure Tenancy Agreement, that the Assured Tenancy Agreement was the relevant document related to dealings between Mrs A and the Association. He also noted that he had not yet received an acknowledgement of the complaint he had made on 18 April 2006. He brought up the issue of non-acknowledgement again in another letter he wrote to the Director of Housing Services on 17 May 2006.

18. On 22 May 2006 Mr C complained to the Chairperson of the Association that he had not received any response to his complaint of 18 April 2006 addressed to the 'Director/Secretary' and briefly outlined his complaint. He also

pointed out that page 3 of the Guide stated that 'All rights contained within existing tenancy agreements will be preserved within the new tenancy agreement' and said that this seemed to be incorrect as the Association had suggested that the Scottish Secure Tenancy Agreement removed the requirement for written consent on any alterations to it.

19. On 24 May 2006 the Chief Executive of the Association acknowledged Mr C's letter of 22 May 2006. She advised that she would look into his complaint and contact him thereafter.

20. Mr C wrote to the Chief Executive on 26 May 2006. He explained that he was unhappy that the complaints procedure noted in the Tenant's Handbook had not been adhered to and requested a full response to his complaint from the Chairperson by 6 June.

21. On 6 June 2006 Mr C wrote again to the Chairperson of the Association complaining that his complaint of 22 May 2006 had not been acknowledged or responded to. He said that if he did not receive an acknowledgement by 10 June 2006 he would take his complaint to the Ombudsman.

22. On 7 June 2006 the Chief Executive wrote to Mr C. She pointed out that the Housing Manager had given Mr C her name in the letter of 21 March 2006. She explained that Mr C's letter of 22 May 2006 was responded to by her as it complained about a matter that she had not investigated. She also explained that Mr C's letter of 18 April 2006 had not been received by the Association until 9 May 2006. She gave her conclusion that the Housing Manager/Director of Housing Services had dealt appropriately with Mr C's complaint and answered the points he had raised. She reiterated the reasons Mr C had given for escalating his complaint in his letter of 18 April 2006 (that is, that he had not received a copy of the Scottish Secure Tenancy Agreement that had been signed by Mrs A and that the warden was not a sufficiently independent witness) had been covered.

23. Mr C responded to the Chief Executive on 8 June 2006. He disagreed with the Chief Executive that the new tenancy agreement was the relevant agreement between Mrs A and the Association given that neither party could produce a signed copy of it. He also explained that Mrs A's solicitor had advised Mr C that she had not been present at any signing of a Scottish Secure Tenancy Agreement by Mrs A. He asked that his complaint be escalated to the

Chairperson. The Chief Executive responded on 13 June 2006 stating that she considered the points raised to have been dealt with previously and that the matter was now closed.

24. Mr C brought his complaint to the Ombudsman on 22 June 2006.

(a) The Association removed the provision of a full meals service contrary to the terms of Mrs A's tenancy agreement

25. Section 6 of the original tenancy agreement signed by Mrs A and the Association stated: 'The Terms of this tenancy agreement may not be varied except with the prior written consent of The Association and The Tenant'. Paragraph 1.14 of the Scottish Secure Tenancy Agreement stated:

'No part of this Agreement may be changed except in the following circumstances:

- we (the Association) and you (the tenant) agree in writing to change it; OR ...
- we or you apply to the sheriff under Section 26 of [the Act] for an order to change the tenancy agreement and the sheriff grants such an order.'

26. The Association have maintained that the Scottish Secure Tenancy Agreement was signed by Mrs A and that it did not include a requirement to provide a meals service. Mr C has told me that, to the best of Mrs A's own and her family's knowledge, she did not sign a Scottish Secure Tenancy Agreement and that she is not in possession of a signed copy of a Scottish Secure Tenancy Agreement. The Association, whose normal practice is to retain a signed copy of all tenancy agreements, have not been able to locate a copy of a Scottish Secure Tenancy Agreement bearing Mrs A's signature.

27. Under the terms of Section 11(1)(e)(ii) of the Act and the Housing (Scotland) Act 2001 (Scottish Secure Tenancy Etc) Order 2001 any Assured Tenancy Agreement was automatically converted to a Scottish Secure Tenancy Agreement on 30 September 2002. All statutory rights and obligations of a Scottish Secure Tenancy Agreement were transferred to holders of Assured Tenancy Agreements on this date regardless of whether they had signed a Scottish Secure Tenancy Agreement. Section 54 of the Act obligated the Association to consult with any tenants in relation to proposals relating to standards of service or housing management. Section 26 of the Act created the statutory right of the Association to apply for a variation of a tenancy to the sheriff (as noted in paragraph 25 above).

28. I asked the Association what steps were taken to consult with Mrs A about the changes to the services they would provide to her. They told me that the Association consulted all tenants via the Autumn 2005 Tenant's Newsletter; that the issue was discussed during 2005 and 2006 with the Tenant's Forum and that verbal discussions were held with Mrs A in February 2006. The Association felt that this complied with section 54 of the Act and paragraph 8.4 of the new tenancy agreement. This paragraph stated that the Association would consult tenants about making or changing proposals for changes in rent and service charges, that tenants' views would be taken into account before a final decision was made and that comprehensive information about any consultation subject would be given in an accessible form and within a reasonable time.

29. The Association's Autumn 2005 Tenant's Newsletter contained an article dealing with a general review of services, a diagram giving some of the reasons why a review of services was required and included a feedback form that tenants could complete and return to the Association. None of these specifically mention any changes to, or removal of, food or meals services.

30. The Association provided me with minutes of the Tenant's Forum meetings in April and October 2005 at which the review of services was discussed. Neither of these specifically mention any changes to, or removal of, food or meals services.

31. I asked the Association to supply me with any records of discussions with Mrs A about the removal of the meals service. Other than mention of the consultation in their letter to Mr C, the Association did not supply me with any further evidence.

(a) Conclusion

32. While there is disagreement over which tenancy agreement applies to Mrs A's tenancy, this is, to a great extent, irrelevant as the terms of the Act required that Mrs A be consulted in relation to proposals related to standards of service or housing management. I consider that the Association's consultation via the Tenant's Newsletter was so vague and generalised as to be meaningless, and neither this, nor the minutes of the Tenant's Forum indicate that any specific reference was made to the meals service being withdrawn. Clearly, the full meals service was only relevant to a very small number of the

Association's tenants but the Association have not produced any evidence of meaningful discussion with Mrs A herself about the withdrawal of the service. I do not, therefore, consider that the Association have met the requirements of either of the tenancy agreements with regard to the removal of the full meals service and, therefore, I uphold the complaint.

(a) Recommendation

33. The Ombudsman recommends that the Association:

- (i) apologise to Mrs A for varying her agreement without adequate consultation; and
- (ii) ensure that future tenant consultations are meaningful and properly recorded.

(b) The Association failed to adequately respond to Mr C's complaint of March 2006

34. The Association's complaints procedure as stated in the Tenant's Handbook was in force when Mr C made his formal complaint on 15 March 2006. The procedure had three stages as follows:

'Stage One: A complaint in writing to the appropriate person (Technical Services Manager, Housing and Homes Manager or Gardening Manager) to be acknowledged within 5 working days of receipt and to be responded to within 10 working days of receipt.

Stage Two: the person complaining has the right to refer the complaint to the Director/Secretary if they are not satisfied with the outcome of Stage One. The letter should clearly state why you consider your complaint has not been satisfactorily resolved. The letter will be acknowledged within 5 working days of receipt and be responded to within 10 working days. If meeting these deadlines is not possible, you will be informed in writing why this is the case and given a new timescale within which the Association will respond.

Stage Three: the person complaining has the right to refer the complaint to the Association's Chairman of the Committee of Management if they are not satisfied with the outcome of Stage Three. The Chairperson may, if appropriate, consult with other Committee Members to obtain their views on your complaint. The complaint should be addressed to 'The Chairperson, c/o The Director (Complaints Procedure – Private and Confidential)' at the Association's address.'

35. As noted in paragraphs 9 to 17 above, Mr C complained on 15 March 2006. This was responded to in line with the Complaints Procedure. Mr C questioned the Housing Manager's assertion that Mrs A had signed a Scottish Secure Tenancy Agreement and sought a copy of this agreement. The Housing Manager did not send Mr C a copy as requested, and did not refer to his request in her letter of 30 March 2006. When he had not received the requested copy by 18 April 2006 Mr C escalated his complaint to stage two. Mr C did, however, continue to correspond with the Housing Manager (whose title had now changed to Director of Housing Services) and it was through her that Mr C indicated that he had not yet received a response to his escalated complaint.

36. As he had not received an acknowledgement or response to his complaint of 18 April 2006 by 22 May 2006, he progressed his complaint to stage three. It was explained that his letter of 18 April had not been received by the Association until 9 May 2006 when he included a copy of it in a letter to the Housing Manager. His complaint was acknowledged and responded to by the Chief Executive, who had taken the place of the Director/Secretary as the respondent for stage two complaints during an ongoing reorganisation at that time (see paragraphs 18 to 22).

37. Following the response from the Chief Executive, Mr C remained dissatisfied and his letter of 8 June 2006 indicated that he still wished his complaint to be considered at stage three of the process. The only response to this letter was the Chief Executive's letter of 13 June 2006 (see paragraph 23).

38. I asked the Association why the Chairman had not acknowledged or responded to Mr C's complaint. The Association told me that the Chairman did not have anything to add to the Chief Executive's response.

(b) Conclusion

39. Stage one of the complaints procedure was properly responded to by the Association. The Association did not properly respond to Mr C's complaint at stage two of the process as the letter was received on 9 May 2006, but no acknowledgement was sent until after Mr C's letter of 22 May 2006 was received. However, beyond this, the second stage was properly adhered to, with the substitution of the Chief Executive for the Director/Secretary. The third stage of the complaint's procedure, however, was not adhered to. The

Association have told me that the Chairman had nothing to add to the Chief Executive's response but, this being the case, in my view he should have written to Mr C explaining this. As it was, the Chief Executive did not even refer to the Chairman having been aware of Mr C's complaint.

40. Beyond the administrative aspects of the complaints procedure, there are other issues with how Mr C's complaints were dealt with. The Housing Manager's response of 30 March 2006 ignored Mr C's request for a copy of the new tenancy agreement to be sent to him, although this was later rectified, and the Chief Executive's letter of 7 June 2006 also ignored Mr C's argument that in the absence of a signed copy of the new tenancy agreement, the previous tenancy agreement remained in force. Given all of the above, I uphold the complaint.

(b) Recommendations

41. The Ombudsman recommends that the Association apologise to Mr C for their failure to adequately respond to his complaints.

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

Explanation of abbreviations used

Mr C	The complainant, Mrs A's son-in-law
Mrs A	The aggrieved, Mr C's mother-in-law
The Association	Viewpoint Housing Association Ltd
The Assured Tenancy Agreement	The tenancy agreement signed by Mrs A in September 2001
Mrs C	Mr C's wife
The Act	The Housing (Scotland) Act 2001
The Guide	The Association's Guide to the Act

List of legislation and policies considered

The Housing (Scotland) Act 2001

The Housing (Scotland) Act 2001 (Scottish Secure Tenancy Etc) Order 2001