

Case 200801890: South Lanarkshire Council

Summary of Investigation

Category

Local government: Finance: non-domestic rates

Overview

The complainant (Mrs C) was aggrieved that South Lanarkshire Council (the Council) unreasonably awarded her tenant (the tenant) empty property relief for the property she owned after she had been awarded it, and while he was continuing to use the premises for storage purposes. She complained that she was not notified that she was no longer entitled to the three month exemption period or that the tenant had been awarded the relief. She further complained that the Council were pursuing her for monies she did not owe.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council unreasonably awarded empty property relief to the tenant after Mrs C had already been awarded it (*not upheld*);
- (b) the Council's decision to award empty property relief to the tenant was wrong because he was using the premises for storage purposes and they were not empty (*partially upheld to the extent that the Council did not make more reasonable enquiries beforehand to inform their decision making process on how to classify a property as 'empty'*);
- (c) the Council incorrectly interpreted The Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994 (the Regulations) to mean 'non-trading' (*partially upheld to the extent that the Council did not make more reasonable enquiries beforehand to inform their decision making process on how to classify a property as 'unoccupied'*);
- (d) the Council failed to notify Mrs C that the tenant had been awarded the relief (*upheld*);
- (e) the Council's application form is misleading as it refers to 'empty property' rather than 'unoccupied' and does not warn applicants that they may lose the exemption if someone with a prior interest in the property makes a successful application at a later date (*upheld*); and

- (f) the Council wrongly continued to pursue Mrs C for the £343.51 they alleged she owed (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) take the issue of non-domestic rates for discussion to the Scottish Association of the Institute of Revenues, Rating and Valuation (IRRV) before making any changes to their current procedures;
- (ii) should conduct a full review of their policies and procedures on this matter, following discussion with the IRRV, and provide clear guidance notes for staff to ensure that customers are kept informed of any changes to awards already made; and
- (iii) amend their application form to explain the definition of unoccupied property relief and include appropriate caveats/warnings. Rating notices should similarly be reworded to avoid confusion.

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

I am pleased to note that, before the report was published, the Council accepted my recommendation that they write off the £343.51 Mrs C owed. This was in recognition of the fact that they intend to review their practices and procedures on non-domestic rates in light of this complaint, and in recognition of the poor customer service Mrs C received.

Main Investigation Report

Introduction

1. On 10 October 2008, the Ombudsman received a complaint from the owner (referred to in this report as Mrs C) of a commercial property in South Lanarkshire. She was aggrieved that South Lanarkshire Council (the Council) had awarded her tenant (the tenant), empty property relief for the property she owned after she had already been awarded the relief, and while he was continuing to use the premises for storage purposes. She complained that she was not notified at the time this award was made, and only became aware of it two months later when she received a revised rates notification and the Council pursued her for monies she believed she did not owe.

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

- (a) the Council unreasonably awarded empty property relief to the tenant after Mrs C had already been awarded it;
- (b) the Council's decision to award empty property relief to the tenant was wrong because he was using the premises for storage purposes and they were not empty;
- (c) the Council incorrectly interpreted The Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994 (the Regulations) to mean 'non-trading';
- (d) the Council failed to notify Mrs C that the tenant been awarded the relief;
- (e) the Council's application form is misleading as it refers to 'empty property' rather than 'unoccupied' and does not warn applicants that they may lose the exemption if someone with a prior interest in the property makes a successful application at a later date; and
- (f) the Council wrongly continued to pursue Mrs C for the £343.51 they allege she owes.

Investigation

3. In investigating Mrs C's complaint, I obtained and examined copies of the Regulations and copies of correspondence and documents from the Council. I made detailed written enquiries of the Council and spoke with the Revenue Managers of two other Councils. I also discussed the complaint with Mrs C.

4. 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) The Council unreasonably awarded empty property relief to the tenant after Mrs C had already been awarded it

5. On 16 September 2007, Mrs C applied to the Council for empty property relief on the non-domestic rates for a property she owned in South Lanarkshire. In her application, Mrs C said that the property had been tenanted for the period December 2005 to 23 August 2007 and the tenant had been using it as a store up until he left. Mrs C claimed exemption from the rates for three months from 24 August 2007 by completing the Council's 'Application for Empty Property Relief' form. This form included the statements:

'Generally speaking premises have to be completely unoccupied to qualify for empty property relief although part empty industrial subjects may still qualify'; and

'Every property is entitled to a single period of 3 months exemption when empty, from the start of the empty period, but you should be aware that if the property has been empty prior to your interest in it, then you may not qualify for any period of exemption. After this initial 3 month period rates are charged at 50% of the normal amount for the remainder of the empty period, unless the property falls into one of the categories below. The empty property rate does not apply to the following categories of property, which are entitled to exemption when empty.

- (1) Industrial properties
- (2) Properties with a rateable value of less than £1,700
- (3) Properties unoccupied due to death or insolvency of the ratepayer
- (4) Properties which are prohibited by law from occupation (proof required)
- (5) Properties which are under a compulsory purchase order (proof required)
- (6) Listed buildings, buildings subject to preservation order or ancient monuments'.

The statements were in accordance with the Regulations which came into effect on 1 April 1995.

6. Although initially refused, as she had not supplied documentary evidence to support her claim, Mrs C was later awarded the relief on 3 October 2007 and was given a three month exemption from 24 August 2007 to 23 November 2007

and a 50% reduction for the period immediately following up to 31 March 2008. She was sent a rates notification on 10 October 2007.

7. Unknown to Mrs C, her tenant then applied for the relief on 9 January 2008, saying that no trading had taken place after 31 December 2006 (it was later deemed that he had made a mistake and the date should have been December 2005). The tenant was awarded the three month exemption on 9 January 2008 for the period 25 December 2005 to 24 March 2006. In the course of my investigation, the Council confirmed that Mrs C was not notified at that time that she was no longer entitled to the three month exemption, or that it had been awarded to the tenant.

8. I asked the Council what procedures they followed in making this award and if they believed they had acted reasonably in awarding the relief retrospectively to the tenant, and removing it from Mrs C. In their reply, they said that there was no time limit for applying for the relief and the award was in accordance with the Regulations. The Regulations state that the rating of an unoccupied property takes place after a property has been unoccupied for a continuous period of three months, meaning that the exemption can only be awarded for the first three months that a property is unoccupied. Therefore, following the award of relief to the tenant, the first three months of inoccupation changed from the period 24 August 2007 to 23 November 2007 to the period 25 December 2005 to 24 March 2006. In order to comply with the Regulations, which refer to the property rather than the person, the exemption had to be removed from Mrs C.

(a) Conclusion

9. Having considered the Regulations and the sequence of events in this case I am satisfied that the Council acted correctly, and in line with the Regulations, in awarding the exemption to the tenant and withdrawing it from Mrs C. Accordingly, I do not uphold the complaint.

(b) The Council's decision to award empty property relief to the tenant was wrong because he was using the premises for storage purposes and they were not empty

10. In a form dated 2 March 2007 which she supplied to the Council, Mrs C stated, 'the premises had not been used by the tenant since Xmas 2005, although they were held to lease'. As a result of that information, a visit to the property took place on 14 March 2007 to establish if they were vacant. The

officer noted the presence of an advertisement advertising the property for sale through a website and marked the visit form '100% relief due'. The record of the visit does not say whether or not the visiting officers looked inside the premises. In two further forms sent by Mrs C, dated 29 June 2007 and 16 September 2007, she said that her tenant was using the premises for storage. At the time she returned these forms, no empty relief had been applied for, or awarded, following the tenant being in liquidation.

11. The Council said the evidence supplied by the tenant on 9 January 2008 was a copy of the 'To Let' details from the website mentioned at paragraph 10, along with a letter from the company accountant confirming that no trading took place after 31 December 2005.

12. Mrs C continued to dispute that the premises were empty and said on 14 April 2008 that she had seen business materials stored in the property during her own landlord's inspection. On 6 May 2008, she told the Council that she believed the inspectors had failed to inspect the whole premises as the lower floor was accessed separately.

13. As Mrs C had repeatedly told the Council that the tenant was using the premises for storage right up until he gave up the lease I asked them if they had acted correctly in making the award when the premises were clearly not empty. In their initial reply, the Council said that in order for them to award empty property relief, the premises must, in terms of the Regulations, be unoccupied. This meant that the premises could not be open, trading or in use in connection with the ratepayer's business. They said there was no requirement for the premises to be completely empty or void of stock, furniture, fixtures or fittings. This apparently followed a change to the Regulations with effect from April 1995 where, prior to this, the premises had to be 'unoccupied and unfurnished'. The alteration to simply 'unoccupied' signified that empty property relief could be awarded where stock, furniture, fixtures or fittings were still in the premises and the Council said they interpreted this as meaning 'non-trading'. The Council said that, although there was no written guidance on this particular issue, a check had been carried out with other local authorities which confirmed that this was a generally accepted interpretation of the Regulations across Scotland.

14. In response to my further questions on this matter, the Council said as a result of my enquiry they had made a formal request to other Scottish local authorities and responses had been received from 19 of them, with details of

the circumstances in which they would award empty property relief. Of those who responded, 13 took the same approach as the Council, and would have allowed the relief to the tenant. The Council provided details of all the authorities who replied, but not of those who disagreed with their decision. I was, however, concerned that six authorities would not have allowed the exemption and contacted two of them to seek their opinion on whether the Council's interpretation of the Regulations was correct. Both Revenue Managers I spoke to said that they would not have awarded the relief to the tenant, citing the fact that the tenant had enjoyed 'beneficial occupation' and quoted case law, *John Laing Construction v Kingswood Assessment Committee 1948*. Both Revenue Managers said they disagreed with the Council's decision on the grounds that the premises were being used for storage purposes. Where premises were being used for these purposes, or there were any fixtures and fittings in place, then the tenant had 'beneficial occupation' and, in their opinion, was liable for rates.

15. I asked the Council if it was appropriate to make the award in January 2008 on the basis of an inspection undertaken in March 2007, when the period claimed was for 25 December 2005 to 24 March 2006. I also asked whether that inspection was conducted in line with normal policy and procedures, and whether the premises were inspected inside as well as outside. On the same subject, I asked if they had sought evidence of the property being advertised on the internet for the period claimed. The Council advised that the award had been made on the basis of the inspection undertaken in March 2007 and that verification visits were only carried out in a small percentage of cases. Where visits were undertaken it was to ensure that the ratepayer was not trading whilst claiming empty property relief, or to try to establish the position following the insolvency of the tenant, where they were held to lease. The Council have confirmed that the premises were only inspected from the outside in March 2007 and were not inspected again prior to the award being made in January 2008. The evidence supplied by the tenant in January 2008 was a copy of the 'To Let' details from the website mentioned at paragraph 10 above, along with a letter from the company accountant, confirming that no trading took place after 31 December 2005; the Council did not seek any further evidence.

(b) Conclusion

16. It is not the role of this office to interpret legislation and the Council have acknowledged that they have no written procedures in relation to empty property relief. However, they plan to review this situation and establish

detailed procedures and produce guidance notes to cover all aspects of the award of the relief. These guidance notes will specify clearly the definition of an unoccupied property, taking into account the procedures adopted by other Scottish rating authorities. The review should be completed by the end of the financial year 2009/2010. Accordingly I partially uphold the complaint to the extent that the Council did not make more reasonable enquiries beforehand to inform their decision making process on how to classify a property as 'empty'.

(c) The Council incorrectly interpreted the Regulations to mean 'non-trading'

17. The Council said that although they have awarded empty property relief since 1995, there are no current, written procedures to define how they classify a property as 'non-trading'. They said that empty property relief could only be authorised by the Team Leader and the Revenue Officer, both of whom are experienced officers and have been in post since 1996. Empty property relief is only authorised when the claim is submitted together with independent evidence to confirm that the premises are 'non-trading'. Types of evidence accepted include statements from two neighbours confirming non-trading status, zero or minimal fuel bills, confirmation from letting agents, confirmation from accountants, proof of advertising the property to let, receipts for work carried out during refurbishment or any other evidence which is acceptable to the Council. They have acknowledged that they have no written procedures in relation to interpreting the Regulations as meaning 'non-trading'.

(c) Conclusion

18. It is not the role of this office to interpret legislation and the Council have acknowledged that they have no written procedures in relation to interpreting the Regulations as meaning 'non-trading'. However, they plan to review this situation and establish detailed procedures and produce guidance notes to cover all aspects of the award of the relief. These guidance notes will specify clearly how the Regulations are to be interpreted as regards non-trading, taking into account the procedures adopted by other Scottish rating authorities. The review should be completed by the end of the financial year 2009/2010. Accordingly I partially uphold the complaint to the extent that the Council did not make more reasonable enquiries beforehand to inform their decision making process on how to classify a property as 'non-trading'.

(b) & (c) Recommendation

19. The Ombudsman recommends that the Council take the issue of non-domestic rates for discussion to the Scottish Association of the Institute of Revenues, Rating and Valuation (IRRV) before making any changes to their current procedures. All councils in Scotland are members of this Forum and could, therefore, agree how best to interpret the Regulations and produce common policies and procedures.

(d) The Council failed to notify Mrs C that the tenant had been awarded the relief

20. The tenant was awarded empty property relief on 9 January 2008 which, by default, meant Mrs C was no longer entitled to the three month exemption period, however, she was not notified of this. The first indication she had was in the rates bill dated 5 March 2008 which reduced the relief awarded from £1686.68 to £1023.86 but the notification did not make clear that she was no longer entitled to the exemption period. In response to an enquiry from her son-in-law about the rates bill of 5 March 2008, a Revenue Assistant in the Council wrote to Mrs C on 8 April 2008 clarifying that it is the property which attracts the three month exemption period, and not the person. Although the Revenue Assistant explained that she was no longer entitled to the single period of three months' exemption she still did not tell Mrs C that the relief had been awarded to the tenant. Instead, she said that the period Mrs C had claimed from 24 August 2007 up to 29 February 2008 was due at 50% only. It was not until a telephone conversation three days later on 11 April 2008, some two months after the award had been made, that Mrs C discovered that the tenant had been awarded the three month exemption.

(d) Conclusion

21. The Council have admitted that Mrs C was not notified when the tenant was awarded the empty property relief previously awarded to her. The failure to notify Mrs C meant she was not able to make provision for the increased rates bill which followed. Accordingly, I uphold this complaint.

(d) Recommendation

22. The Ombudsman recommends that, following discussion with the IRRV, the Council should conduct a full review of their policies and procedures on this matter and provide clear guidance notes for staff to ensure that customers are kept informed of any changes to awards already made.

(e) The Council's application form is misleading as it refers to 'empty property' rather than 'unoccupied' and does not warn applicants that they may lose the exemption if someone with a prior interest in the property makes a successful application at a later date

23. The Regulations refer throughout to 'unoccupied' lands, heritages and buildings. The Council's application form for the relief, however, is entitled 'Non-Domestic Rates Application for Empty Property Relief' and includes the statement 'Generally speaking, premises have to be completely unoccupied to qualify for empty property relief'. The form uses a mixture of the words 'empty' and 'unoccupied'. This was a source of confusion for Mrs C (and potentially other applicants), who believed that as the tenant was using the premises for storage purposes then they were not 'empty' and he was not entitled to the relief. I asked the Council if this was a standard form used by all local authorities and, in response, they said that as far as they were aware each Scottish local authority uses their own application form for this relief.

24. The form does include the caveat/warning 'every property is entitled to a single period of 3 months exemption when empty, from the start of the empty period, but you should be aware that if the property has been empty prior to your interest in it, then you may not qualify for the period of exemption'. It does not, however, warn applicants that they may lose the exemption if someone with a prior interest in the property makes a successful application at a later date.

(e) Conclusion

25. The Council have admitted that the wording of their application form is misleading and would be better entitled Unoccupied Property Relief. They also agree with me that further information should be given to explain the definition of unoccupied. The form also needs to cover what the Council believe is the rare situation that Mrs C found herself in when the tenant successfully applied for the relief after she had been awarded it. Accordingly, I uphold this complaint.

(e) Recommendation

26. The Ombudsman recommends that the Council amend the application form to explain the definition of unoccupied property relief and include appropriate caveats/warnings. Rating notices should similarly be reworded to avoid confusion.

(f) The Council wrongly to continued to pursue Mrs C for the £343.51 they alleged she owed

27. I am satisfied that the Council acted correctly in removing the award from Mrs C in line with the terms of the Regulations. As a consequence of that decision, the Council were obliged to take steps to recover the relief she had previously been awarded.

28. The Council have issued a summary warrant notice for the outstanding amount of £312.28 and a penalty fee of £31.23 has been added to the amount the Council alleges Mrs C owes.

29. Mrs C has been embarrassed by the Council's threat of legal diligence to recover the amount due.

(f) Conclusion

30. The Council have acted correctly in taking steps to recover the monies now owed by Mrs C. Accordingly, I do not uphold this complaint.

(f) Recommendation

31. I am pleased to note that Mrs C has already received an apology from the Chief Executive for the fact that she had asked twice for information which had not been provided. Although the Council acted correctly in taking steps to recover the monies owed by Mrs C, I am also pleased to note that, before the report was published, the Council accepted my recommendation that they write off the £343.51 Mrs C owed. This was in recognition of the fact that they intend to review their practices and procedures on this matter in light of this complaint, and in recognition of the poor customer service Mrs C received.

32. The Council have accepted all other recommendations and will act on them accordingly. The Ombudsman asks that the Council notify him when the recommendations have been implemented.

Explanation of abbreviations used

Mrs C	The complainant
The Council	South Lanarkshire Council
The tenant	The tenant of the property owned by Mrs C
The Regulations	The Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994
IRRV	Institute of Revenues, Rating and Valuation

List of legislation and policies considered

The Non-Domestic Rating (Unoccupied Property) (Scotland) Regulations 1994