

## Scottish Parliament Region: South of Scotland

### Case 200502246: Loreburn Housing Association Ltd

#### Summary of Investigation

##### ***Category***

Housing: Maintenance

##### ***Overview***

The complainant raised concerns about the standard of maintenance service provided for the communal landscaped area around her home.

##### ***Specific complaint and conclusion***

The complaint which has been investigated is that the Association failed to provide an acceptable maintenance service for the communal landscaped area around Ms C's home (*upheld*).

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

The Ombudsman recommends that the Housing Association ensure that the communal garden area is maintained in accordance with the terms of the ground maintenance specification.

## **Main Investigation Report**

### **Introduction**

1. On 15 November 2005 the Ombudsman received a complaint from a member of the public (Ms C) against Loreburn Housing Association (the Association) regarding the alleged failure by the Association to provide an acceptable maintenance service for the communal landscaped areas around Ms C's home.

2. The complaint from Ms C which I have investigated is that the Association failed to provide an acceptable maintenance service for the communal landscaped area around Ms C's home.

### **Investigation**

3. My investigation of this complaint involved examination of the documentation and photographs provided by Ms C. As the Ombudsman's office had recently considered a complaint about the Association regarding a similar matter, I reviewed and assessed all documentation already held by this office during my investigation. In particular, I considered Ms C's Shared Ownership Occupancy Agreement (SOOA) with the Association, Ms C's Deed of Conditions, the minutes of the Association's Appeals Sub Committee Hearing and the ground maintenance specification provided by the Association to the gardening contractor.

4. I have set out my findings of fact and conclusions. Although I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. Ms C and the Association were given an opportunity to comment on a draft of this report.

### **Background**

5. Ms C has been a sharing owner of her property since 2000 and as such enjoys the full rights of ownership, including the responsibility for internal and external maintenance. The Association provides a factoring service for the sharing owners, including Ms C. The Deed of Conditions for Ms C's property states:

'the Association or their nominee will act as Factor of the site for so long as they remain proprietors of any part of the site; the proprietor and/or occupant of each flat shall be obliged to abide by the terms of any factoring agreement currently imposed from time to time'.

6. The SOOA states that the Association will provide a service for the 'maintenance of communal garden areas' and that a service charge is payable by the Sharing Owner to the Association, which includes the costs incurred by the Association for the maintenance of the communal garden area and an associated administration charge.

7. The obligations of the contractor to the Association for the work required on the communal garden area beside Ms C's home are set out in a grounds maintenance specification. This specification includes that:

'all shrub beds, cultivated areas, raised beds, etc, shall be maintained in a neat and tidy condition' and that they should be kept 'litter, debris and weed free throughout the contract period.'

8. It also states that 'all shrubs should be pruned/cut back at the appropriate time of the growing season' and that:

'no shrubs are to be allowed to grow over footpaths/paved areas thereby restricting their access, nor be allowed to grow against doors and windows of adjacent dwellings.'

9. Prior to September 2005, the gardening contractor was required to carry out 28 annual visits and this requirement changed to 20 annual visits after September 2005.

**Complaint: The Association failed to provide an acceptable maintenance service for the communal landscaped area around Ms C's home**

10. At the time of 'purchase' of her property Ms C was of the opinion that the communal landscaped area around her home was in an acceptable condition. Over the following years, Ms C felt that the condition of the communal area had deteriorated and concluded that this was due to the Association's failure to provide an acceptable maintenance service. She states that she had:

'regularly phoned, spoken directly to gardeners, clerks of work and housing officers about the upkeep of the garden'.

11. Ms C stated that, in 2003, as a result of residents' complaints, the Association arranged for a major clearing and cutback of hedges to be carried out and an

agreement was made that the hedge would be kept below the height of the window ledge.

12. Ms C stated that in early 2005, one of the residents in the area raised the complaint about the communal landscaped area with the Association. The Association did not uphold the complaint.

13. On 18 April 2005, Ms C wrote to the Chief Executive of the Association to appeal against the decision. She stated:

'the gardening issues are not so much about the gardeners as about what they are contracted/communicated to do by Loreburn.'

14. Ms C stated that she was 'merely asking for [her] basic rights:

- to be able to walk on the path without having [her] legs ripped by bramble bushes;
- to hang out washing without it being tangled in bushes;
- to be able to look out [her] windows and see daylight;
- to be able to put up a ladder for window or gutter cleaning; and
- not to have to view all the rubbish of the day caught up in bushes or for [her] to have to dispose of.'

15. On 22 April 2005, the Chief Executive wrote to Ms C and stated:

'my staff have visited the site on several occasions and report that in their opinion the area is landscaped and maintained to an acceptable condition.'

16. He said that he had received other similar complaints and asked Ms C to complete a short questionnaire detailing suggested options to deal with the matter.

17. On 28 July 2005, the Chief Executive wrote to Ms C with the findings of his investigation. He agreed that there was a general complaint that the landscaping was unsuitable for the area. However, he explained that:

'any alteration of this landscaping would incur further significant charges which would have to be passed onto the residents in the development.'

18. He said that the feedback on a questionnaire which he had sent to the residents showed that five of the 14 residents were unhappy with the 'open space maintenance', one was happy and eight did not respond. He explained:

'it is clear, therefore, that the majority of the residents in the development do not feel strongly about this issue, and do not wish to pay additional charges. Loreburn, as a charity, does not hold funds which could be diverted to such schemes, and other tenants and owners cannot be expected to subsidise the owners...'

19. In his letter, the Chief Executive also addressed the issue of the standard of service provided by the contractor. He concluded:

'whilst there have been occasions where some improvement could be made, in general my staff are satisfied that the service provided is at least comparable with that provided in other areas, and in line with contract price.'

20. He explained that, in order to ensure value for money, the work had been competitively tendered. He said that a new contract had been tendered and that it had been written in such a way as to try to be more explicit about the standards expected and that it would also include a requirement for a resident in each development to 'sign-off' the work. He went on to explain that grounds maintenance prices have risen very sharply in recent years and that the Association needed to strike a balance between cost and service.

21. On 23 August 2005, Ms C wrote to the Chief Executive of the Association expressing her surprise and disappointment at the decision and asked that the matter be referred to the management committee.

22. On 14 October 2005, Ms C put her case to the Appeals Sub Committee for the Association. The minutes of the Sub Committee hearing record that Ms C described the condition of the communal landscaped area around her home in some detail. She also showed photographs of the area to Sub Committee members. Some of the comments recorded in her description of the area were that over the years the bushes had increased in height and spread in area, particularly behind her house; that the hedges at the boundary wall are very high and the shrubs have spread and now look ridiculous; that there were overgrown bushes and knotweed; that the overgrown area blocked the overflows at the back

of her property; that her washing line was unusable; and that her legs got scratched from the bramble bushes along the path.

23. The minutes also record that the Chief Executive of the Association is 'said to accept [Ms C's] description of the ground, as all that is in question really is responsibility for its upkeep'. In his response to this office the Chief Executive of the Association said that he felt that his comment had been taken out of context and that it referred to Ms C's description of the bushes and planting at the development etc. and not to failings in the standard of maintenance. He added:

'It can be seen from the minute that my opening remarks at the hearing in reply to [Ms C]'s complaints dealt with the type of planting, and its cut back and removal. It is also clear from the rest of the minute that the discussion dealt with alteration of the existing landscaping, rather than strict adherence to the grounds maintenance service specification which was never intended to provide such works'.

24. The Appeals Sub Committee concluded that, in line with the SOOA, it was the responsibility of the Sharing Owners at the development to cover the costs of any works to maintain and/or upgrade the grounds. They added that the Association must ensure that the pathways and drying greens are maintained to the required standard, but that any raising of the standard must be met by the Sharing Owners. The Sub Committee said that the Association would contact all Sharing Owners at the development to confirm if they were willing to pay for a one-off complete clearance of the ground area and that the job could only proceed if all the Sharing Owners were in agreement and willing to cover the cost of the work.

25. In his correspondence with this office on a related complaint, the Chief Executive of the Association advised that he believed that the gardening service was:

'more than acceptable, especially for the amount paid, and certainly in line with the standards of garden maintenance throughout other Loreburn estates'.

26. He provided copies of 'control sheets' for August to November 2005 which, he said, had been signed by the sharing owners or tenants every time the gardening contractor visited each development. The names of two residents from Ms C's

development appeared on the sheets. He stated that the bushes were regularly cut back to avoid blocking paths or light and that the removal of the shrubs was outwith the factoring agreement and well beyond the costs of the current service.

27. The Chief Executive said that the owners had confirmed that they did not wish to carry out the gardening themselves, have the service charge increased or make a one-off contribution to have the area re-landscaped and that, in these circumstances, there was little the Association could do. He said that he had also explored the possibility of dividing up the communal land to give to each individual owner, but explained the Association's lawyers had advised that it would be impractical and very expensive to change the title deeds for each owner in the development.

28. The photographs of the communal garden area provided to me by Ms C for the period May to August 2005 showed that the shrubs in front of the fence adjacent to her neighbours' properties (see Annex 2) were cut back to a reasonable height and that those in front of the fence adjacent to Ms C's property (see Annex 3) had been allowed to grow to a significantly higher level.

29. Ms C also provided me with photographs that showed untidy shrub beds containing weeds. She told me that two of the photographs provided showed that Japanese Knotweed, a highly invasive weed, had been allowed to grow in this area of the garden.

30. Since making her original complaint, Ms C has advised me that the Association has recently carried out a major cutback and tidy up of the communal garden area. She said that this has improved the area at the back and side of her property although she still has concerns about the condition of parts of the garden area.

### *Conclusion*

31. At the time of the complaint, Ms C had been making monthly payments to the Association for the maintenance of the communal garden area beside her property for approximately five years. During this time, the Association were responsible for sourcing a gardening contractor and ensuring that the contractor carried out the

maintenance of the communal garden area in accordance with the grounds maintenance specification.

32. The specification clearly states that the garden should be 'weed free throughout the contracted period'. At the appeal hearing, the Chief Executive of the Association said that he accepted Ms C's description of the communal garden area. It is clear, therefore, that the grounds maintenance specification has not been adhered to. While I note the comments provided by the Chief Executive of the Association in his response to this office I have looked at the minute of the appeal hearing and cannot agree that his comment has been taken out of context.

33. The photographs provided by Ms C (Annexes 2 and 3) show that parts of the communal garden area have been cut back to an acceptable level but the area beside Ms C's property does not appear to have been maintained to this standard. It is my view that there has been a lack of consistency in work carried out in the garden which is of the same nature and, while the grounds maintenance specification may have been adhered to in some parts of the communal garden area, it has not been in the area beside Ms C's property.

34. I accept and welcome the fact that the Association have made attempts to find potential solutions to the gardening issue. However, it is my opinion that they have not delivered the ground maintenance specification for the communal garden area adjacent to Ms C's property. As it is the Association, and not Ms C, who have a contract with the gardening contractor, then it is the responsibility of the Association to ensure that the grounds maintenance specification is adhered to. It is clear that the Association did not ensure that the gardening contractor complied with the terms of the grounds maintenance specification and that, as such, they have failed in their service to Ms C. I, therefore, uphold this complaint and recommend that the Association ensure that the communal garden area is maintained in accordance with the terms of the grounds maintenance specification.

31 October 2006



**Explanation of abbreviations used**

Ms C	The complainant
The Association	Loreburn Housing Association
SOOA	Shared Ownership Occupancy Agreement



