

## Scottish Parliament Region: West of Scotland

### Case 200503264: East Dunbartonshire Council

#### Summary of Investigation

##### **Category**

Local government: Housing repairs

##### **Overview**

The complainants (Mr and Mrs C) raised concerns about East Dunbartonshire Council's (the Council) failure to pay for their share of repairs in a four unit property where the Council owned one of the units. They also complained about the length of time taken by the Council to answer correspondence.

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

The complaints which have been investigated are that:

- (a) the Council did not have the necessary procedures in place to deal with enquiries from home owners and to process repairs on buildings in which they own one of the units (*not upheld*);
- (b) the Council failed to train its staff and amend its processes in anticipation of the Tenements (Scotland) Act 2004 (*upheld*);
- (c) there is no process in place for arbitration in cases where there is a dispute between the Council and owner-occupiers regarding repairs and, additionally, that the Council cannot serve a statutory notice on itself to carry out repairs (*not upheld*); and
- (d) the Council took a long time or failed to respond to requests and correspondence from Mr and Mrs C (*partially upheld*).

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

The Ombudsman recommends that the Council:

- (i) should meet the legal costs incurred by Mr and Mrs C in pursuing the issue of the Council's obligations under the Tenements (Scotland) Act 2004;
- (ii) make a further payment of £150 to Mr and Mrs C for their time and trouble in pursuing this matter and their subsequent complaint;

- (iii) apologise to Mr and Mrs C for their failure to respond to their enquiries in August and October 2004; and
- (iv) take steps to ensure that any enquiries are promptly and appropriately dealt with even if they are received by the wrong department.

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

## **Introduction**

1. On 22 February 2006, the Ombudsman received a complaint from a man and a woman (Mr and Mrs C) about East Dunbartonshire Council's (the Council) failure to fund their share of costs for the re-roofing of a building in which they owned one of the properties. They also complained about the length of time taken by the Council to reply to correspondence. Mr and Mrs C made a formal complaint to the Council on 7 December 2005. They exhausted the Council's complaints procedure on 3 February 2006.

2. The complaints from Mr and Mrs C which I have investigated are that:
- (a) the Council do not have the necessary procedures in place to deal with enquiries from home owners and to process repairs in buildings in which they own one of the units;
  - (b) the Council failed to train its staff and amend its processes in anticipation of the Tenement (Scotland) Act 2004;
  - (c) there is no process in place for arbitration in cases where there is a dispute between the Council and owner-occupiers regarding repairs and, additionally, that the Council cannot serve a statutory notice on itself to carry out repairs; and
  - (d) the Council took a long time or failed to respond to correspondence from Mr and Mrs C.

## **Investigation**

3. In the course of this investigation I have examined correspondence between Mr and Mrs C and the Council as well as the Council's complaints file on the matter, made written enquiries to the Council on the specific points of complaint and examined the relevant legislation pertaining to this case.

4. I have set out, for each head of complaint, my findings of fact and conclusions. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Both Mr and Mrs C and the Council have been given the opportunity to comment on a draft of this report.

### *Legislation and policies*

5. The Tenements (Scotland) Act 2004 (the Act) came into force on 28 November 2004. Schedule 1 of the Act states that decisions on work to the property can be made as 'scheme decisions'. Decisions are reached by simple majority of votes allocated and one vote is allocated to each flat. Once a scheme decision has been made it is binding on all owners.

6. The Council did have processes for reviewing policy in line with new legislation. The Council did consider the Act, but only how it would apply in situations where they were the majority owner. They did not consider situations where they were the minority owner.

### **Investigation of all points of complaint**

7. Mr and Mrs C resided in a block of four flats. In this block, three of the flats were owned privately and the remaining flat was owned by the Council. The roof of the building was damaged; this resulted in water ingress to Mr and Mrs C's flat. During the period from August to October 2004, they contacted the Council on several occasions to discuss how to proceed with having the repairs made to their roof. Nobody was able to tell them who had responsibility for this type of work. Eventually, Mr and Mrs C were given contact details for Officer 1 at the Council's Repair Management Centre. They wrote to him on 18 October 2004 but did not receive a reply.

8. Mr and Mrs C wrote to the Clerk of Works at the Council on 11 January 2005, to inform them that the roof was leaking and requesting further information on how they could proceed with re-roofing work. They received a reply from the Repairs Co-ordinator (Officer 2) on 25 January 2005. He informed them that the Council were in the process of selling the property and that they were not willing to fund their share of re-roofing costs while the sale was pending. The Council's policy was to refuse to take part in full re-roofing work if there was a Right to Buy application in place for one remaining Council-owned flat in a block of four. There followed an exchange of correspondence in which Mr and Mrs C stated that the Council had to fund their share of the work under the Act. The Council continued to refuse to contribute to the cost of re-roofing.

9. Mr and Mrs C took advice from the Citizens' Advice Bureau and discovered that the Council's Environmental Health Department (EHD) may be able to mediate in the matter or order the work to be carried out for health and safety reasons. They formed the impression that the EHD would be unwilling to intervene in a situation when the Council was the party blocking work being carried out.

10. Under the Housing (Scotland) Act 1987, the service of repairs notices is a discretionary power which should be exercised in the case of serious disrepair or disrepair likely to lead to serious disrepair. This type of notice is reserved for more serious defects that would require the replacement of a roof.

11. The statutory nuisance provisions of the Environmental Protection Act 1990 allow action to abate a nuisance. In a roofing situation this would mean that repairs would be required in order to prevent water ingress but would not require full re-roofing. The Council have always been willing to fund work on the roof but not full re-roofing. They stated this in a letter of 10 February 2005 to Mr and Mrs C.

12. It would be possible for the EHD to serve a repairs notice on the Council, however, the Council have stated that it would be unusual for the EHD to do this. If the EHD find that work to a building is necessary, they will liaise with the repairs department in the Council to have this work done.

13. Mr and Mrs C engaged the services of a solicitor (Solicitor 1) in March 2005 as they were unable to obtain a satisfactory response from the Council. On 14 March 2005, Solicitor 1 wrote to the Maintenance Co-ordinator (Officer 3) to inform him that a Tenement Management Scheme Meeting (the Meeting) was being held under the Act by the owners of the flats in the property and that the Council was invited to attend.

14. The Meeting was held on 21 March 2005. The Council did not attend. It was agreed by majority vote at the Meeting, that the block should be re-roofed. All owners present agreed to this. Solicitor 1 wrote to the Council on 25 March 2005 to inform them of the outcome of the Meeting and reminded them that the decision taken at the Meeting was binding on all owners under the Act.

15. On 20 April 2005, Mr C held a meeting with Officer 3. Mr C has told me that this meeting was only arranged after he had repeatedly tried to contact Officer 3 to provoke a response to Solicitor 1's letter. It was agreed that the Council would fund their share of re-roofing costs. Officer 3 indicated a number of conditions which the Council wished to impose on the project; he agreed to put this in writing before the end of the week. Mr C informed me that Officer 3 was made aware of the importance of a written agreement before work could proceed. Mr C repeatedly called Officer 3 after this meeting, as he had not received the letter within the timescale indicated. The letter (dated 12 May 2005) eventually arrived on 16 May 2005. The letter stated that the Council would meet a quarter share of the re-roofing costs and set out the conditions which had been agreed upon during the meeting. Having received this assurance, a quote for the work was formally accepted by the owners.

16. On 31 May 2005, Officer 3 wrote to Mr and Mrs C and stated that the Council were withdrawing their offer of a quarter share of funding. The reason for this was that the resident of the Council owned flat had applied to purchase the flat from the Council.

17. On 9 June 2005, Solicitor 1 wrote to Officer 3 to inform him that the Council was legally bound by the scheme decision. As no response was forthcoming, Mr C wrote to the Head of Housing Support (Officer 4) on 15 June 2005. As no response was received, Mr C called Officer 3 to inform him that he would be taking legal action to force the Council to pay their share of the costs. There were subsequently ongoing discussions with the Council.

18. On 25 August 2005, the Council wrote to Solicitor 1 and stated that they would meet their share of re-roofing costs.

19. Having considered the events surrounding the complaints and the evidence provided, I have reached the following conclusions.

**(a) The Council do not have the necessary procedures in place to deal with enquiries from home owners and to process repairs in buildings in which they own one of the units**

*Conclusion*

20. The Council's procedure, in a situation where the question of common repairs arises, is for repairs staff to seek advice from Legal Services in order to obtain further information, as titles differ from place to place. The Council did have a procedure in place to deal with enquiries about repairs from owners in buildings where the Council owns a property. The procedure did not, however, ensure that enquiries were correctly answered. This was because the Council had failed to consider how the legislation would affect them in situations where they were the minority owner and also in situations where a Right to Buy application was in place.

21. The problem in this case was that the policies did not address the situation where the Council were a minority owner. This led to Mr and Mrs C going to considerable trouble to find a solution to their problems.

22. This confusion caused wider delays and prolonged the process for Mr and Mrs C due to the fact that the Council, on several occasions, withdrew from funding the re-roofing after initially having accepted to fund their share.

23. As a result of this complaint, the Council has become fully aware of how the Act affects them. All key repairs staff have been briefed on this point and processes have now been amended to comply with the Council's obligations under the Act. The Council have apologised for the fact that they were slow to acknowledge the implications of the Act and have also offered Mr and Mrs C a £150 payment for the inconvenience caused.

24. I sympathise with Mr and Mrs C for the difficulties which the Council's failings caused to them, however, I consider that the Council did eventually address this aspect of the complaint in advance of a formal complaint being made to the Ombudsman. In these circumstances, technically I do not uphold this complaint. If this action had not been taken by the Council, the complaint would have been upheld. Additionally, I am extremely concerned that the procedure in place did not take into account relevant legislation and that the Council took approximately nine months to become aware of how the legislation affected them and to train their

staff accordingly. I have addressed this issue as a separate complaint at (b) below.

**(b) The Council failed to train its staff and amend its processes in anticipation of the Tenement (Scotland) Act 2004**

*Conclusion*

25. The Council's procedure precluded carrying out repairs if a Right to Buy application had been made on the property in question. Based on this policy, the Council refused to meet their quarter share of re-roofing costs. They were, in fact, liable for these costs under the Act.

26. Mr and Mrs C were required to engage a solicitor to obtain information on the nature of the Council's obligations. The Council took several months to acknowledge its obligations even after having been informed of the legal position by Solicitor 1.

27. Council Officers should be knowledgeable about the laws which affect them. They should be able to advise members of the public on the correct procedure to follow in a situation where common repairs are required. The Council Officers failed to do so in this case. During the events Mr and Mrs C are complaining about, the Council had not amended their procedures to take into account their obligations under the Act.

28. The Council have apologised to Mr and Mrs C for the fact that Housing Staff did not respond more quickly to Solicitor 1's letter of March 2005. They have accepted that they were slow to acknowledge the impact of the Act. They have, as previously stated, offered a £150 payment in acknowledgement of the inconvenience caused to Mr and Mrs C. As a result of this complaint the Council has become more aware of their duties in situations where they are a minority owner. The Council have informed me that their processes have now been amended to comply with duties under the Act and a further staff training session on the Act was held in June 2006.

29. I am extremely concerned that the Council took nine months from the date when the Act came into force to train their staff appropriately and to become fully aware of their obligations under this legislation despite this being drawn to their



attention by Solicitor 1. This was not acceptable and was a considerable failing by the Council. Mr and Mrs C also informed me that the stress involved in this process impacted on their mental health, their time and their finances. They also stated that the time taken by the Council and their process failures caused them major distress and caused them to delay their future plans.

30. I note that the Council have apologised and offered a financial remedy as well as carrying out further staff training and amending their processes. I do not think that this remedy goes far enough. Mr and Mrs C consulted a solicitor because of the Council's failures. They were subjected to severe inconvenience in having to pursue this matter and also in complaining to the Council and this office. If the Council had addressed the situation, trained their staff as they should have done and provided the correct advice, Mr and Mrs C would not have needed to take this action. I, therefore, uphold this complaint.

*(b) Recommendations*

31. The Ombudsman recommends that the Council should meet the legal costs incurred by Mr and Mrs C in pursuing the issue of the Council's obligations under the Act and make a further payment of £150 to Mr and Mrs C for their time and trouble in pursuing this complaint.

**(c) There is no process in place for arbitration in cases where there is a dispute between the Council and owner-occupiers regarding repairs and, additionally, that the Council cannot serve a statutory notice on itself**

*Conclusion*

32. The Act provides for the resolution of disputes by application to the Sheriff. This option was open to the complainants to resolve this matter. In these circumstances, I do not find that the Council had the duty to provide an arbitration process in this case. I, therefore, do not uphold this part of the complaint.

33. It is possible for the Council to serve a repairs notice on itself. However, it would not have been appropriate to use a statutory repairs notice in this situation for two reasons. Firstly, the Council did not consider that the water ingress constituted serious disrepair or that it was likely to lead to serious disrepair. Secondly, the Council have internal procedures for dealing with situations which

make serving a statutory repairs notice on itself unnecessary. I consequently do not uphold this part of the complaint.

**(d) The Council took a long time, or failed to respond to correspondence from Mr and Mrs C**

*Conclusion*

34. Mr and Mrs C wrote to Officer 1 in the Repairs Management Centre on 18 October 2004. This course of action was recommended to them when they made an enquiry call to the Council around that time. They had also sent an enquiry email to the Council in August 2004 using contact details found on their website. They stated that they did not receive replies to either of these communications.

35. Mr and Mrs C have provided me with a timeline of correspondence sent to and received from the Council. Mr C held a meeting with Officer 3 on 20 April 2005. At the end of the meeting, Officer 3 stated that he would confirm what they had discussed in writing by the end of the week. Mr C received a response dated 12 May 2005. This is a delay of approximately two weeks. Other than the instances mentioned above, I have not been able to identify any other unacceptably long periods of time during which correspondence went unanswered.

36. On the whole, the time taken by the Council to respond to correspondence from Mr and Mrs C was acceptable. I have, however, identified three occasions when there were delays in getting in touch with Mr and Mrs C. The Council have apologised to Mr and Mrs C for the 'fact that Housing Repairs Staff did not respond quicker to your solicitor's letter of March 2005'. In his letter of 12 May 2005, Officer 3 apologised for the delay in responding to Mr C.

37. Although the Council have not confirmed that they received the email or the letter of 18 October 2004, on the balance of probabilities, I do believe that these were sent. Even if this correspondence was sent to the wrong person within the Council, a reply should have been sent to Mr and Mrs C and steps should have been taken to direct their correspondence to the correct department. I, therefore, partially uphold this complaint.

*(d) Recommendations*

The Ombudsman recommends that the Council apologise to Mr and Mrs C for their failure to respond to their earlier enquiries in August and October 2004. The Council should also take steps to ensure that any enquiries are appropriately dealt with even if they are received by the wrong department.

27 February 2007

**Explanation of abbreviations used**

The Act	The Tenement (Scotland) Act 2004
Mr C and Mrs C	The complainants
The Council	East Dunbartonshire Council
EHD	The Council's Environmental Health Department
The Meeting	The Tenement Management Scheme Meeting held on 21 March 2005
Officer 1	A Council Officer in the Repair Management Centre
Officer 2	The Council's Repairs Co-ordinator
Officer 3	The Council's Maintenance Coordinator
Officer 4	The Council's Head of Housing and Home Support Services
Solicitor 1	Mr and Mrs C's solicitor

**List of legislation and policies considered**

Tenements (Scotland) Act 2004

Housing (Scotland) Act 1987

Environmental Protection Act 1990