

Scottish Parliament Region: Central Scotland

Case 200502954: North Lanarkshire Council

Summary of Investigation

Category

Local government: Repairs and maintenance of housing stock

Overview

The complainant (Ms C) raised concerns about the problems she experienced in her previous home and afterwards, when she transferred to her current house and that North Lanarkshire Council (the Council) failed to acknowledge their assurances that her Right to Buy discount would be unaffected.

Specific complaints and conclusions

The complaints from Ms C which have been investigated are that:

- (a) the Council failed to acknowledge the dreadful living conditions she had to endure and the damage caused to her home (*not upheld*); and
- (b) the Council failed to acknowledge the assurances made to her that her Right to Buy discount would be unaffected (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) in the event of Ms C seeking to buy her house, allow her to do so on terms equivalent to those which would have applied had she retained her Right to Buy discount; and
- (ii) ensure that a process is in place to provide tenants with written advice, in advance of any new tenancy, of possible changes to their Right to Buy.

Main Investigation Report

Introduction

1. On 30 January 2006, the Ombudsman received a complaint from Ms C concerning the problems she experienced in her previous home. She said that, between August and December 2003, her former home required extensive work to remedy the problem of sewage collection in the solum of the property and thereafter remedial work was required both inside and out. She alleged that the Council failed to acknowledge the dreadful living conditions she had to endure and the damage caused to her home. She said that she was ultimately rehoused but that the Council then failed to acknowledge the assurances made to her that her Right to Buy discount would be unaffected.

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

- (a) the Council failed to acknowledge the dreadful living conditions she had to endure and the damage caused to her home; and
- (b) the Council failed to acknowledge the assurances made to her that her Right to Buy discount would be unaffected.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between Ms C and the Council, and relevant internal memoranda. I have also had sight of Ms C's claim to the Council's insurers and associated correspondence; and have made reference to the Council's Allocations Policy and appropriate sections of the Housing (Scotland) Act 2001. On 7 June 2006 I made a detailed written enquiry of the Council. Their response was dated 13 July 2006.

4. While I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Ms C and the Council were given an opportunity to comment on a draft of this report.

(a) The Council failed to acknowledge the dreadful living conditions she had to endure and the damage caused to her home

5. Ms C said that during the early part of 2003 she became aware of an unpleasant smell at her previous home which, by the summer, became almost unbearable. She reported this to the Council and work in relation to the clearing and jetting of drains was instructed. Because this did not resolve the problem, similar work was repeated and Ms C said that on 8 August 2003 she was

advised that the water collecting in the solum of her house was contaminated with sewage. Ms C said that the work continued for the rest of the year with outside contractors being appointed in December when the work eventually finished. She maintained that while she asked to be decanted, the areas offered to her were unacceptable. She said that for a long period her house was like a building site, although she and her son continued to live there. She alleged that as a result of the work, her property, including carpets and decoration were damaged. Similarly, a drive she laid was destroyed. As a consequence, she said, she met with the Area Housing Manager who suggested that she pass a claim to him which he would submit to the Council's insurers. She said she first did this on 11 February 2004 but her claim went astray. Her duplicate claim was eventually repudiated by the Council's insurers on 3 February 2005.

6. Ms C was of the view that the Council failed to appreciate the difficult conditions in which she and her son had to live and that, in the circumstances, it was unreasonable that her insurance claim was rejected.

7. The Council's response to my enquiries dated 13 July 2006 confirmed that exploratory work began in Ms C's former home on 4 August 2003 and throughout the month efforts were made to clear and jet the drains and establish the source of the foul water. The matter was referred to the Department of Housing and Property Services engineering section and a specialist contractor was instructed on 7 October 2003. The drains were surveyed by CCTV on 14 October 2003. This confirmed that there was damage to the combined sewer which needed repair, the ground level of the underfloor area was well below the external levels causing water to gather, and the water table in the garden was high, possibly exacerbating the problem. It was suggested that water may have been present in the solum for some time but that now it was being fouled by pollution from collapsed drains causing the bad odour of which Ms C complained.

8. Extensive works began on 4 November 2003, both inside and outside the property, and were carried out by the specialist contractor. The work was completed on 13 November 2003. However, the Council said that Ms C continued to complain of water being present below the floor but on inspection it was not found to be contaminated. The Council noted that the weather around this time was inclement with heavy snow and rain. Nevertheless, the Council

agreed to tank the solum with a waterproof membrane and work started on 26 November 2003, completing on 16 December 2003.

9. The Council said that, prior to the work, Ms C was offered temporary accommodation (as at that time the work was only anticipated to take four weeks) in a furnished dispersed unit. However, this was not acceptable because of her shift patterns and because she did not wish to disrupt her son who was at university. The Council acknowledged that the work would be disruptive, involving the rolling back and relaying of carpets, but they thought that this could be managed, particularly as a major part would be outside the house. However, they said the work took longer than anticipated, principally due to the additional work tanking the solum (see paragraph 8).

10. I have spoken to the Area Housing Manager, who confirmed that it must have been unpleasant until the sewage problem was resolved but he said that this aspect of the matter was dealt with by November, although there was still evidence of a little rainwater in the solum. He advised me that Ms C was an excellent tenant with high standards and she had become very concerned about the condition in which she and her son were living. He said that the Council had tried to mitigate the situation and provided Ms C with a carpet (to minimise any damage to her own) and, because of the smell of chemicals used in the treatment of the solum area and timbers, before Christmas 2003, again offered temporary housing. They said at this stage Ms C said she did not wish to move, having suffered problems for some time, but that she intended to spend the festive period with her mother. Later, temporary accommodation was again offered but Ms C said that she was unwilling to move to it on a temporary basis and asked for consideration that it be made permanent. The Council said that although they agreed, after visiting the property, Ms C indicated that she did not wish to move.

11. Ms C said that she was unwilling to move because the offers the Council made her were so far unacceptable. She said that it was then suggested that she identify a suitable property.

12. From their response, it is clear to me that the Council were aware of Ms C's view that her confidence in her former house had been 'shattered' and that she felt she needed to be re-housed as a consequence. This was despite the Council's view that the works had been successfully completed in December 2003. They said Ms C did not re-lay her carpets or set out her

furniture. Because of this, they said that discussions were held with her with regard to a transfer through the possibility of discretionary housing (the Council explained that this was housing in lesser demand or housing which, for a variety of reasons, could have been refused at least three times). The Council pointed out that, as she did not have a request for re-housing lodged on their waiting list, she was not suitably placed for transfer, especially in the areas where she had expressed an interest. In the circumstances, the Council said that they had been unable to assist with an immediate transfer.

13. However, in early March 2004 Ms C contacted the Housing and Property Services Department regarding a house at X Street. She reiterated her concerns about the house in which she was living and said that this was affecting her health because of stress and anxiety and also her son's social life and education. The Council said they, therefore, agreed to review the situation, particularly in view of Ms C's insistence that there was still a problem with the house (although this has not been confirmed by the present tenant) and that she could not regularise her life. A homeless application was then processed and confirmed to Ms C on 26 April 2004. The Council considered that this was in accordance with their statutory duties and Ms C's problems regarding the house in which she was living. They confirmed that homeless legislation was used and priority given because of Ms C's personal response to events and the ongoing stress the situation caused her. The property at X Street was then offered to Ms C, the same day (that is, on 26 April 2004) and she moved in on 10 May 2004.

14. In the meantime, Ms C was pursuing a claim for compensation for damage to her property. In this connection, I have had sight of her claim to the Council's insurers dated 11 February 2004 and a report submitted by the Area Housing Manager of 30 July 2004, which referred to the work done and the disruption experienced by Ms C. He acknowledged that her former house had been decorated and furnished to a high standard and that she had paid for alterations to her driveway. However, after requesting further reports and information, on 3 February 2005 the claim was repudiated by the Council's insurers on the basis that the Council had not been negligent. (Ms C had alleged that reports were prepared by people with no experience of her problems, but, from sight of the reports, I did not find this to be the case.) It was explained to the complainant that, to prove negligence, it was necessary to show that the Council were responsible for the damage that occurred to her property. The insurers said that the Council had no prior knowledge of a problem and could

not have done anything to prevent it. It was confirmed that as soon as the Council became aware of the situation they began taking action to resolve it.

(a) Conclusion

15. Ms C believed that the Council did not appreciate the difficult conditions in which she had to live, or the damage to her property. However, the evidence provided by the Council showed that they offered her temporary accommodation prior to the work commencing (see paragraph 9); they made her another offer in December agreeing to make it permanent; and they provided a carpet to save damage to her own (paragraph 10). However, these solutions were not acceptable to Ms C, who, by the Council's admission, was an excellent tenant with high standards. She felt unable to move to areas or accommodation she considered were unacceptable (and this was a matter for her discretion), despite the alternative of remaining at home while the work was being completed. Over the festive period, she preferred to move in with her mother. Later, she identified a house in which she was interested and this was subsequently offered to her (paragraph 13).

16. Ms C also made a claim to the Council's insurers for the damage she said she suffered but this was repudiated (paragraph 14). I sympathise with the situation in which Ms C found herself but I have seen no evidence to suggest that her claim was improperly handled. Her claim was rejected on the basis that there was no negligence on the part of the Council, that they did not have advance warning that there could be a problem with the drains and hence take avoidable action. As soon as the Council became aware of the problem, they set about trying to resolve it. This took longer than anticipated but that was because it was discovered that the situation was not straightforward, specialist contractors were required to do the work (paragraphs 7 and 8). Taking all the foregoing into account, I cannot uphold these aspects of Ms C's complaint. It was evident to me that the Council were sympathetic to Ms C and tried to mitigate her problems. There was no evidence to suggest that her claim was incorrectly handled.

(b) The Council failed to acknowledge the assurances made to her that her Right to Buy discount would be unaffected

17. Ms C accepted the offer of the house at X Street on 26 April 2004 (paragraph 13). She claimed that, before moving, she had asked what would happen to her Right to Buy discount if she wanted to buy and she maintained that she was told that it would remain unchanged because of the circumstances

of her situation. Ms C said that in March 2004, when she made enquiries about her current house in X Street, she specifically telephoned to enquire about her Right to Buy discount and was told that it would be unchanged. Ms C complained that when she applied to buy her house in October 2004, the offer to sell showed that she had lost her entitlement to discount. She, therefore, did not pursue the sale.

18. In their formal response to my enquiries, the Council said that they were unaware of any enquiry from Ms C about the impact a change of house would have on her Right to Buy. However, they said that in accordance with the standard letting process she would have been advised, on 26 April 2004 when signing the missives of the house at X Street, that the discount entitlement had changed. Nevertheless, I have not been given any confirmation or documentation in support of this. In response to my further enquiries on this point, the Council advised me that while there are limited written records available, the interview on 26 April 2004 took the form of a standard house viewing and opportunity to sign the new tenancy agreement. Also, that in all cases, general information would have been given that the Modernised Right to Buy would apply and that this would likely involve a lesser element of discount.

19. Ms C raised the matter with her MSP, who contacted the Council on her behalf, and this prompted the Council to seek legal advice and advice from the Scottish Executive. They said that the advice received was that the legislation only allowed for the retention of the former Right to Buy where the individual was re-housed to facilitate the demolition of a property either through development or repair needs. In Ms C's case, the Council confirmed that she had been re-housed because of her personal circumstances and feelings with regard to her previous house. Accordingly, the Council took the view that they could not maintain (or reinstate) Ms C's discount.

(b) Conclusion

20. I accept the Council's conclusion that the circumstances surrounding Ms C's move were not such as to allow her to retain her Right to Buy discount but I am unable to reconcile their view that they had no record of any enquiry from Ms C about the impact a change of house would have on her Right to Buy with her claims to have sought assurance on this point (paragraphs 17 and 18). The Council stated that, in accordance with their standard procedure, she would have been advised when signing the new missive, but they have not provided any evidence to show that this happened.

21. It is a requirement of the Housing (Scotland) Act 2001 (Part 23(4)) that:
'Before the creation of a Scottish secure tenancy the landlord must provide the tenant with information about (a) the tenant's right under Part 111 of the 1987 Act to purchase the house which is the subject of the tenancy,...

22. There is clearly a difference of view between Ms C and the Council about whether she was given assurance about her Right to Buy entitlement. Furthermore, there is an underlying issue about consequent changes to Ms C's rights and how the Modernised Right to Buy affected those rights. The Council have confirmed that on the day she signed for the tenancy of the property at X Street Ms C was told that the Modernised Right to Buy would apply (see paragraph 18). I accept this, however, after careful consideration, I have concluded that insufficient time was given to allow proper consideration of the information. As outlined in paragraph 21, the Council should have provided Ms C with information about her rights to purchase before the creation of her new tenancy. This would have allowed her time to consider the effects of such a change. The council stated that general information was given to Ms C at interview on the day she signed the tenancy, but I do not think that this gave her sufficient time to consider (or seek advice on) the implications that this would have on her Right to Buy. In all the circumstances, I conclude that the Council's procedures were insufficiently robust in this regard. I, therefore, uphold the complaint.

(b) Recommendation

23. Accordingly, the Ombudsman recommends that, in the event of Ms C seeking to buy the house in X Street, she is able to do so on terms equivalent to those which would have applied had she retained her Right to Buy discount.

24. In addition, the Ombudsman recommends that the Council takes steps to ensure that a process is put in place to provide tenants with written advice, in advance of any new tenancy, of possible changes to their Right to Buy discount.

27 March 2007

Explanation of abbreviations used

Ms C

The complainant

The Council

North Lanarkshire Council