

Scottish Parliament Region: Central Scotland

Case 200500253: North Lanarkshire Council

Summary of Investigation

Category

Local government: Housing; application for special case consideration

Overview

A complaint was referred to us from a Member of the Scottish Parliament (the MSP) on behalf of his constituents (Mr and Mrs C) about the way their application for special case consideration for housing transfer had been handled by North Lanarkshire Council (the Council).

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) lost an earlier transfer application from Mr and Mrs C (*no finding*);
- (b) delayed unduly in putting Mr and Mrs C's request for special case consideration before the appropriate committee (*upheld*);
- (c) made an inappropriate offer of re-housing after Mr and Mrs C were granted special case consideration (*not upheld*); and
- (d) unfairly removed their special case status for refusing that offer (*not upheld*)

Redress and recommendations

The Ombudsman recommended that the Council:

- (i) apologise to Mr and Mrs C for the delay identified in paragraph 33; and
- (ii) should take steps to review their record-keeping with regard to special case consideration to avoid recurrence.

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

Main Investigation Report

Introduction

1. The complainants (Mr and Mrs C) were previously tenants of a multi-storey flat owned by North Lanarkshire Council (the Council). Their daughter was assaulted on the landing of the flats in 2000. On 21 April 2005 their Member of the Scottish Parliament (the MSP) referred a complaint to the Ombudsman on their behalf complaining about the way their application for housing transfer had been dealt with by the Council.

2. The complaints from Mr and Mrs C which I have investigated are that the Council:

- (a) lost an earlier transfer application from Mr and Mrs C;
- (b) delayed unduly in putting Mr and Mrs C's request for special case consideration before the appropriate committee;
- (c) made an inappropriate offer of re-housing after Mr and Mrs C were granted special case consideration; and
- (d) unfairly removed their special case status for refusing that offer.

Administrative Background

3. The Council's Allocation Policy introduced in December 1999, provides for the Housing and Technical Services (Special Cases) Sub-Committee (the Sub-Committee) to consider special circumstances for re-housing if the Director of Housing and Property Services (the Director) recommends that this should happen. The Sub-Committee then decides if an applicant is to be allocated a house as a matter of urgency. The Council have confirmed that their special case provision procedures are designed to address pressing and particular needs and, since the effect is to elevate an applicant ahead of other applicants who have submitted prior valid requests for housing, the provisions are to be applied precisely. One written offer of suitable housing is made. If an offer is refused, then the special case status is withdrawn.

Investigation

4. Mr and Mrs C and their MSP supplied correspondence and documents relating to the complaints and enquiries were made of the Council. A draft report on this investigation with proposed conclusions upholding all four heads of complaint was prepared and issued to the Council, Mr and Mrs C, and the MSP. The Council challenged these findings and invited me to examine their files on Mr and Mrs C's transfer application.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C, the MSP, and the Council were given the opportunity to comment on the revised draft of this report.

**(a) The Council lost an earlier transfer application from Mr and Mrs C
(b) The Council delayed unduly in putting Mr and Mrs C's request for special case consideration before the appropriate committee (c) The Council made an inappropriate offer of re-housing after Mr and Mrs C were granted special case consideration; and (d) unfairly removed their special case status for refusing that offer**

6. Mr and Mrs C were allocated their former two bedroom multi-storey council flat at X on 13 December 1993. The first of their three children, a daughter, was born in February 1994. A second daughter was born in July 2000 and their son on December 2001. Mrs C stated that she is a carer for her mother who lives at Y. The Y area is one of high demand but low turnover.

7. Mr and Mrs C informed me that their elder daughter was the victim of a sexual assault on the landing next to the lift at the multi-storey block at X in July 2000. At a later date, their elder daughter was also threatened with a penknife by the perpetrator's older brother. Mrs C stated that she sought advice from the Council's Social Work Department at that time. She reported that her daughter was distressed and fearful of entering the lift alone. The family were advised by the Social Work Department of the appropriate steps to take in regard to referral to the police. Mrs C said she reported both incidents to the police.

8. On 15 January 2001, Mrs C obtained a letter from her family general practitioner (the GP) in support of an application to transfer from the multi-storey flat at X to a house. That letter referred to Mrs C's depression but also to her then 7-year-old daughter 'getting threatened'. The Council said that the GP's letter was not received by their Housing Department at that time. Until the birth of the couple's son in December 2001 Mr and Mrs C, in terms of their family composition, would only have been considered for a move to two bedroom accommodation.

9. According to the Director, Mr and Mrs C first contacted his Department in October 2001 advising that their daughter had been subject to an assault. This

had resulted in her suffering from stress and being unable to play outside the house and not being able to use the lifts. The Director stated that extensive investigations were carried out into the claims, including viewing closed circuit television tapes covering the location of the alleged incident. He stated that confirmation had been sought from Strathclyde Police who had advised the Council that they had no trace of reported incidents. The Council's files, which I inspected on 1 September 2006, did not include reference to enquiries after October 2001 with regard to a request for special case consideration.

10. On 4 February 2002, Mrs C applied for the tenancy at X to be registered solely in her name. On 6 February 2002, she handed in an application for transfer that, although originally dated August 2001, had been altered in her handwriting to 'Jan 2002'. She also handed in a request to be considered for a particular property in the same street in the Y area where her mother resides. Mrs C pointed out that the family were overcrowded and that she personally was suffering stress. She referred to 'other problems' which were confidential but which had been discussed with her GP, social services, the police and a housing officer. She also stated that she had seen her local councillor (Councillor 1) to request a special case with regard to circumstances which related to the well-being of her daughter. No record of the consideration of this request exists on file. Mr and Mrs C's case was not one of the 24 cases referred to the Sub-Committee by the Director between 21 March 2000 and 10 October 2002.

11. On 25 September 2003, Mrs C wrote to the Council regarding another property in the Y area that she understood would soon become available. She referred to the family's overcrowding, to incidents of assault, and to discarded needles in the flats. She referred at that time to documents concerning her daughter having been misplaced, and her housing application lost. She sought the intervention of the Housing Department to give the family priority for a transfer.

12. According to the Council, in February 2004 Mr and Mrs C were being considered for four apartment size four in a block, terraced, and semi detached properties in selected areas in the centre of the town where they reside. On advice they expanded their areas of choice. This change became effective on 4 March 2004. A request for a house in Y made on 19 March 2004 was unsuccessful, however, an offer of a three bedroom house at Z made the next

day was refused by Mr and Mrs C on 23 March 2004 but they were not penalised for that refusal.

13. On 31 March 2004, Mrs C met with the then recently appointed Area Housing Manager and with Councillor 1. The Area Housing Manager informed Mrs C by letter of 5 April 2004 that he accepted the evidence regarding an earlier date of application and confirmed that he had backdated her request for housing transfer to 15 January 2001. He also asked Mrs C to note that further consideration was being given to presenting her circumstances as a special case and that she would be contacted as soon as further information became available.

14. When I interviewed him, the Area Housing Manager stated that he did not now accept that there was evidence that a previous application had been lost. However, as a judgement call at the time, he had been prepared to back date Mr and Mrs C's application for transfer to 15 January 2001. He recalled having explored with Mr C a move to another multi-storey block, without imposition of a penalty, but this had been rejected.

15. The reference of the matter to committee was delayed initially by an error on the part of the Council's Social Work Department. After Housing had obtained authorisation on 29 September 2004 to obtain information from the Social Work Department, the error was corrected. Information was obtained by the local Service Manager from a constable at Strathclyde Police. The constable stated that there was no trace of a report relating to the alleged incident (in 2000), or evidence of a referral to the Families and Children Section of Strathclyde Police.

16. On 16 October 2004, Mr and Mrs C enquired about the availability of another three bedroom property at Y. They also contacted the MSP. The MSP, who was supportive of their case, subsequently exchanged correspondence on their behalf with the Chief Executive and the Director.

17. On 29 October 2004, the GP wrote to the Area Manager providing a statement in support of the family's application for special case consideration. The GP's letter indicated that Mr and Mrs C's daughter continued to suffer anxiety. The boys allegedly involved in the incidents lived locally and this had restricted Mr and Mrs C's daughter's lifestyle and reduced her opportunity to play.

18. The correspondence ensued concerning the date when Mr and Mrs C first actively pursued re-housing and whether an earlier request for special case consideration had been made. The Director stated that only with the GP's recent letter had evidence been provided of assault on Mr and Mrs C's daughter and their case was currently subject to further review. Following that review, the Director informed the MSP on 15 December 2004 that he intended to submit a special case to the Sub-Committee and that the request would be based upon the family being offered the next available four apartment property whilst retaining their current date of application on the Council's transfer waiting list for the Y area.

19. A meeting was arranged by Councillor 1 for Mr and Mrs C to meet the Area Housing Manager and the Divisional Manager to discuss the particular details of the special case and any additional requirements such as their children's schooling needs and Mrs C's need to be near her mother. Mr and Mrs C said that they stated at that meeting that only the North Area of the town (which included areas Y and Z) would be suitable. The Divisional Manager confirmed that while there is no record or minute of the meeting, she drafted the report seeking committee approval for special case consideration immediately thereafter.

20. The Council stated that they work on an eight week committee cycle and were in recess over the Christmas period. The case was heard at the first meeting of the Sub-Committee on 20 January 2005. Councillor 1 was not a member of that committee. The report, which was dealt with as a confidential item, stated:

'[Mr and Mrs C] are currently placed on the transfer overcrowded waiting list with a date of application of 15/1/01.

They are currently listed 4th for 4 in a block accommodation and 5th for end and mid terrace cottage type properties and 7th for semi-detached housing in [one sub area of Y], 5th and 6th for upper and lower in 4 in block respectively and 12th for cottage type properties in [another sub area of Y] letting area.

[Mr and Mrs C] have requested re-housing in an alternative location from their present accommodation following a sexual assault on their daughter in July 2000 within the lift [in the X] complex. The assault has left [Mr and

Mrs C]'s daughter traumatised and she will not use the lifts nor will she play outside the house. The incident was reported to both the Social Work Department and [the GP] with support and assistance being offered to the family. [The GP] has provided medical evidence in support of the application.

The family have requested a move from their present accommodation but wish to remain within the surrounding area as [Mrs C] provides daily support for her elderly mother and is her registered carer.

To alleviate the current difficulties of this family, Committee are requested to consider that this family be allowed to be offered the next suitable 4 apt. cottage type or 4 in a block property within the (town) area and retain their position on the transfer overcrowding waiting list for the high demand letting areas of [Y].'

21. The minute of the Sub-Committee of 20 January 2005 recorded the decision that the application for special case consideration be approved and the applicant be offered four apartment housing accommodation in a particular ward in the centre of the town. (The decision was subsequently amended by the full Council at their meeting on 28 April 2005 to read that the application be approved and that the applicant be offered suitable four apartment housing in the (town) area.)

22. The Council said that some two weeks after the Sub-Committee meeting, a property became available in the south of the town which was offered verbally to Mr C over the telephone but was refused. Mr C is adamant that no offer of a property in the south of the town was made to him.

23. On 15 February 2005, a four apartment property in the north of the town became available but this property was not specifically in the Y area. The property was offered on 17 February 2005, but was subsequently refused by Mrs C by telephone. On 23 February 2005, the Service Manager wrote to Mr and Mrs C informing her that as this offer complied with the requirements of the special case referral the Council would discharge their responsibilities. Mr and Mrs C would retain their position on the Transfer Overcrowding list and the Council would contact them directly once they were in a position to offer housing from this list. A current position statement was enclosed.

24. On 25 February 2005, the Service Manager wrote to Mr and Mrs C apologising for an error in a date in his letter of 23 February 2005.

25. On 2 and 16 March 2005, the MSP wrote again to the Chief Executive complaining about the way the Housing Department had dealt with the complainants' case. He maintained that the family should have been made a special case a long time ago; that it was highly unreasonable to make only one offer as a special case particularly where the acceptability of the house was in dispute; and that the Housing Department had sought to impose its own view of what was a suitable property on the family.

26. On 8 March 2005, the Service Manager wrote to Mr and Mrs C stating that their refusal of the four apartment property in the north of the town was being treated as a first refusal and that in terms of the Council's Allocation Policy, a refusal of any further offer of housing would result in them being relegated to the end of the waiting list.

27. The Director responded on 23 March 2005 to the MSP's letters of 2 and 16 March 2005 to the Chief Executive and commented on the extent of the Housing Department's investigations. He responded to the three specific points raised by the MSP (paragraph 25). He stated that since designation as a special case takes priority over all other applicants, a duty is placed on the Housing Department to ensure that it was indeed valid. Any delay was in his view a result of a lack of evidence rather than any maladministration by the Housing Department. The Director stated that he was sympathetic to the family's plight, but advised that any special case was made on the basis of one offer (paragraph 3). Mr and Mrs C had been given the opportunity before their case was presented to committee to clarify which areas would be suitable. The Director informed the MSP that the Housing Department could only act on the information available.

28. The Director confirmed that while Mr C had indicated, in refusing the property, that it was in an area with high crime rates, the Director said that was not reflected in the number of allocations/refusals which would be expected of an area with significant problems. With regard to its proximity to Mrs C's mother's house, the Director stated that the property offered was only a relatively short travelling distance from Mr and Mrs C's current accommodation. He indicated that Mr C had stated that another property had become available in the Y area and that he wished to be considered for this. The Director stated

that this was not in keeping with the terms of the special case designation, since the property fell within a high demand area and required to be offered in terms of the Allocation Policy. As Mr and Mrs C enjoyed special case status, they were made one offer of housing which gave priority over all other sections of the waiting lists. Following the refusal of the house in the north of the town, their application no longer enjoyed this status and was currently listed only on the Transfer Overcrowded waiting list with a date of application of 15 January 2001.

29. The Director stated that he believed his Department had acted in a professional manner at all times, had exercised great care, and had made every effort to assist the family. However, Mr and Mrs C had refused a reasonable offer of housing, which would have provided an immediate solution to their family's difficulties. This would have allowed their daughter to be moved from the location associated with her trauma, giving the minimum disruption to her schooling etc, whilst maintaining their current position on the Transfer Overcrowded waiting list.

30. Mr and Mrs C discussed the terms of this letter with the MSP. The MSP referred their complaint to the Ombudsman's office on 21 April 2005.

31. An earlier draft report was issued to Mr and Mrs C, the MSP, and the Council on 8 May 2006. The Council took issue with the findings in a letter of 6 June 2006 and invited inspection of their file relating to Mr and Mrs C's application for transfer. Subsequently, they informed me by letter of 22 June 2006 that Mr and Mrs C's application for transfer had progressed to first on the waiting list for a three bedroom four in a block property in the Y area. Following the death of the previous tenant on 30 June 2006, Mr and Mrs C were on 4 July 2006 offered their present three bedroom upper four in a block flat which is situated in the same street as Mr and Mrs C's mother.

(a) Conclusion

32. I have been unable to establish whether Mr and Mrs C made an application for transfer before February 2002. The GP's letter of 15 January 2001 could be interpreted as supporting an application already made. The Council's extant file, which I have examined, ostensibly looks complete, but does not record receipt of that letter until February 2002. If an application was not lost, the decision to backdate to 15 January 2001, is questionable. In pragmatic terms, loss of any housing transfer application was effectively remedied by the backdating of Mr and Mrs C's housing transfer

application made in February 2002 to 15 January 2001 (paragraph 13). This undoubtedly assisted Mr and Mrs C in being made the offer of their present house. I make no finding on this complaint

(b) Conclusion

33. My examination of the Council's files on 1 September 2006 uncovered one note mentioning a request for special case consideration in early 2002 but did not uncover evidence of any enquiries made after October 2001. In the absence of documentary evidence, I cannot confirm that a request for special case consideration was submitted and that contemporary enquiries were made. With regard to the second delay of ten months after 31 March 2004 in taking the case to the relevant committee, however, the Housing Department's enquiries in my view lacked direction and were unduly long. Mr and Mrs C's authorisation of 29 September 2004 for the Social Work Department to share information with Housing Department and the GP's letter of 29 October 2004 supporting a move should have been obtained at the outset and not several months later. I uphold this complaint.

(b) Recommendation

34. The Ombudsman recommended that the Council:

- (i) apologise to Mr and Mrs C for the delay identified in paragraph 33; and
- (ii) should take steps to review their record-keeping with regard to special case consideration to avoid recurrence.

(c) Conclusion

35. Mr and Mrs C were granted special case priority in respect of their elder daughter's circumstances. They were given the opportunity in March 2004 to consider a move to a nearby multi-storey block before they were granted special case consideration. A suitable house for them would, however, have been a larger property in the Y area, close to Mrs C's mother, and convenient to enable her elder daughter to continue at the same school. It would have been better practice had a minute been prepared of the December 2004 meeting prior to the matter being referred to committee. A minute might have served to clarify beforehand what would be deemed by the Council to be an appropriate offer. It is unfortunate that, after the offer was made, the full Council on 28 April 2005 required to amend the Sub-Committee minute of 20 January 2005 (paragraph 21) and that there are conflicting accounts of whether an oral offer of a property in the south of the town was made (paragraph 22).

36. The offer of the house in the north of the town was of appropriate size and type but it was not conveniently located for Mrs C to continue to care for her mother. In the circumstances the offer was appropriate but the family deemed it unsuitable for their requirements. While I understand that Mr and Mrs C were disappointed at the offer, on reflection, I do not regard the offer to be inappropriate. I do not, therefore, uphold the complaint.

(d) Conclusion

37. While the offer was appropriate for the family's needs, it clearly did not meet their requirements and Mr and Mrs C had good reasons for refusal. I accept that Mr and Mrs C and the MSP regarded the removal of special case consideration as unfair. It was, however, consistent with the Council's stated practice (paragraph 3). I do not uphold this aspect of the complaint. I am happy to note that Mr and Mrs C were re-housed as a result of their position on the Transfer Overcrowded waiting list in July 2006.

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

19 September 2007

Explanation of abbreviations used

Mr and Mrs C	The complainants
The MSP	The Member of the Scottish Parliament who referred the complaint
The Council	North Lanarkshire Council
The Director	Director of Housing and Property Services
The GP	The family's general practitioner
The Housing Department	The Department of Housing and Property Services
Councillor 1	The North Lanarkshire councillor approached by Mr and Mrs C
The Sub-Committee	The Housing and Technical Services (Special Cases) Sub-Committee
The Transfer Overcrowded waiting list	The section of the Council's housing transfer list to which Mr and Mrs C were placed following their application in February 2002