

Scottish Parliament Region: West of Scotland

Case 200601899: East Dunbartonshire Council

Summary of Investigation

Category

Local government: Homelessness

Overview

The complainant (Mr C), complaining on behalf of the aggrieved (Mrs A), was concerned that East Dunbartonshire Council (the Council) failed to provide Mrs A with appropriate advice on two occasions when she attended the Council's Housing Department for advice prior to selling her home and making a homelessness application.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to provide Mrs A with appropriate advice on two occasions when she attended the Council's Housing Department for advice prior to selling her home and making a homelessness application (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 22 September 2006, the Ombudsman received a complaint from a man, referred to in this report as Mr C, on behalf of a woman, referred to as Mrs A, about East Dunbartonshire Council (the Council)'s alleged failure to provide Mrs A with appropriate advice on two occasions when she attended the Council's Housing Department for advice prior to selling her home and making a homelessness application.

2. The complaint from Mr C which I have investigated is that the Council failed to provide Mrs A with appropriate advice on two occasions when she attended the Council's Housing Department for advice prior to selling her home and making a homelessness application.

Investigation

3. The investigation of this complaint involved obtaining copies of all the correspondence between Mr C and the Council. In addition I had sight of: an interview record sheet dated 10 January 2006; handwritten notes recording conversations between Mrs A and Council officers on 23 February 2006 and 2 March 2006; minutes of a Housing Appeals Board hearing dated 21 August 2006; relevant extracts from the Code of Guidance on Homelessness; and a leaflet entitled 'A Guide to Homelessness Services in East Dunbartonshire'.

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

Complaint: The Council failed to provide Mrs A with appropriate advice on two occasions when she attended the Council's Housing Department for advice prior to selling her home and making a homelessness application

5. On 10 January 2006, Mrs A attended the Council's Housing Department to seek advice, as she was aware that she would be homeless in the near future because her ex-partner, who was a guarantor for the mortgage on her home, wished to sell the house. An Interview Report Form (the Form), dated 10 January 2006 and completed by a Housing Officer (Officer 1), was provided to me by the Council. The Form recorded the purpose of the interview as being

'Forced sale'. The central section of the form, headed 'Result of Interview: Give brief resume of discussion with tenant and conclusion reached and any action to be taken' stated:

'Since separating 2½ years ago, [Mrs A] has remained at above address whereby herself + ex partner have pd ½ each of mortgage. He now wishes to sell property although no action has been taken yet. Advised her re homeless within 2 months and once house on market etc to get back in touch. She advised would be able to stay with mum if need be on temp basis as wouldn't be poss to stay in B+B as son is autistic. Waiting list form completed with medical + passed to [an officer of the Council], advised to seek advice re solicitors etc, send out any info re mortgage to rent scheme, blue badge for son as disabled. [Mrs A] doesn't work, advised of homeless process if she has to – make new aptment in order to fill homeless application.'

6. In the section of the Form headed 'Future Action', Officer 1 recorded:

'Send info re mortgage to rent + blue badge.

Spoke to [an officer of the Council] – won't qualify for mortgage to rent.

Sent details out 12.01.06 re CAB [Citizens Advice Bureau].'

7. On 23 February 2006 Mrs A submitted an application for homeless priority to the Council. The records indicate that Mrs A attended the Council's offices to submit the application and spoke with Officer 1. A note, handwritten by Officer 1, dated 23 February 2006 stated:

'[Mrs A] advised house in her name only but since split from ex-partner 2½ years ago, as he was Guarantor and they paid ½ mortgage each had to sell as he was unable to get 2nd mortgage. Sold for 97½K o/s mortgage of 33K only o/s debt to be paid. Will split profit 50/50 though lawyer advised should give anything as doesn't need to. Check re status if someone is guarantor can you obtain a 2nd mortgage.'

8. An undated note on the same notepaper, but in a different hand (presumably Officer 1's Manager) states:

'[Officer 1], can we confirm what her mortgage payments were monthly, whether he was paying half the mortgage instead of child maintenance, if he was, can't see why she had to sell? Checked re- guarantor, would not stop him taking out a mortgage as long as he could afford it. Can you call her back in and clarify mortgage payments.'

9. A further note by Officer 1, dated 2 March 2006 states:
'Spoke to [Mrs A] who confirmed mortgage payments £175 per month, 15 pay interest, ex-partner pays her £100 cash in hand for mortgage, maintenance of £25 per week is paid direct to DWP [Department of Work and Pensions].'

10. On 27 March 2007, the Council wrote to Mrs A with a decision regarding her application. There were three main criteria that the Council had to consider for Mrs A's application to be successful – they needed to satisfy themselves that (a) she was homeless; (b) she was in priority need; and (c) she had not become homeless intentionally. The Council were satisfied that Mrs A was homeless and in priority need but considered that Mrs A had become intentionally homeless. The Council told Mrs A that their investigation of her circumstances revealed that the sale of her home could not have been forced by her ex-partner even though he was guarantor, as the property was in Mrs A's name only. The Council also noted that the Department of Work and Pensions were paying the interest on the mortgage and, therefore, there was no need to sell the property.

11. Mr C then wrote to the Council on Mrs A's behalf to appeal the decision. The final stage of the appeal process was a hearing of the Housing Appeals Board (the Board). The minutes of the Board's hearing record that 'The Board unanimously agreed that the appeal be dismissed'. However, the minutes went on to state:

'Furthermore, it was requested that an improved system of interview record keeping be established within Housing and Protective Services.'

The minutes do not elaborate on the reason for this request.

12. Mr C, in making his complaint to the Ombudsman, believed that what was said during the interview on 10 January 2006 and the discussion on 23 February 2006 was of key importance to Mrs A's case. He pointed out that the Code of Practice on Homelessness states that an act or omission made in good faith, where someone was genuinely ignorant of a relevant fact, should not be treated as deliberate. Mr C believed that, because Mrs A sought advice from the Council about her situation she could be shown to have acted in good faith. Mr C believed that Mrs A being declared intentionally homeless came about as a result of poor advice being provided to her by the Council. Mr C pointed out that the Board, by requesting a change to the way interviews were recorded, appeared to have acknowledged that there were flaws with the way discussions

with Mrs A had been recorded. Mr C believed that, because the records of conversations with Mrs A were called into doubt, there was consequently doubt raised about whether correct and full advice was provided to Mrs A. Mr C considered that, as Mrs A's appeal hinged on whether she had acted in good faith, the apparent failure in record-keeping should have been taken into account by the Board in considering whether the decision to decline Mrs A's application was fair.

13. In response to my enquiries, the Council stated that there was only one occasion on which Mrs A had sought and been given advice prior to her homelessness application being received; that was on 10 January 2006. The only other meeting between Mrs A and the Council was on 23 February 2006, when she handed in her homelessness application. I note that, by then, the sale of the house was already in progress.

14. The Council said that the advice Mrs A had been provided on 10 January 2006 was correct and was based on the information Mrs A had given to Officer 1 at the time. They said that Mrs A had told Officer 1 that she was being forced to sell her home by her ex-partner. The Council said that the Form recorded the main points discussed. They said that the Form did not specifically mention intentionality, however, the Council said this would have been routinely covered along with the other three criteria relating to homelessness (homelessness, priority need and local connection). The Council said that Mrs A chose not to disclose the full picture during the interview and that Officer 1 did not record routine verbal information given out which did not appear relevant at the time.

15. The Council emphasised that, at the time of the interview on 10 January 2006, Mrs A claimed that the sale of her home was being forced by her partner and that it was on that basis that advice was provided to her. The Council said that it was only later, once the homelessness application was received and once an investigation into Mrs A's circumstances were carried out that it transpired that the sale was not forced. The Council stated that had Mrs A admitted that the sale of the property was not forced during the interview, specific details regarding intentionality would have been recorded on the Form.

16. In addition, the Council provided me with a copy of a leaflet, entitled 'A Guide to Homelessness Services in East Dunbartonshire' (the Guide), which they say had been given to Mrs A at the interview on 10 January 2006 and

again when Mrs A submitted her application on 23 February 2006. The Guide stated:

'You must not be intentionally homeless

The Council must satisfy itself that you did not deliberately do something or fail to do something which resulted in you becoming homeless. Eg: refusing to pay rent for no good reason or leaving the parental home without a compelling reason why you could not return. We will only investigate whether you are intentionally homeless if we believe that you may be homeless and in priority need. Intentionality depends on the applicant having acted, or failed to act, deliberately and being aware of all the facts.'

17. With regard to the minutes of the Board's meeting, the Council explained that the Board had indicated at the hearing that the Housing Department should keep notes of interviews, as it had been indicated that no notes had been kept in this instance. However, the Council said that, in fact, records had been kept and they submitted the documents described at paragraphs 5 to 9 above.

18. The Council said that the reference to an 'improved system' being put in place, which Mr C had interpreted as the Board finding fault with the Council's record-keeping, was inaccurate. The Council said that members of the Board might have said something along the lines of 'Housing should ensure that interview record keeping is carried out and consideration given to the level detail.' The Council also pointed out that the officer who took the minutes had not taken the Board's meeting minutes for some time and that a couple of practices routinely carried out did not take place. The Council said that the officer in question was no longer employed by them.

Conclusion

19. I note that, prior to Mrs A submitting her homelessness application, the only occasion on which the Council gave her advice was on 10 January 2006. I note that a discussion between Mrs A and Officer 1 took place on 23 February 2007, but I consider that it would be unreasonable to expect that any advice should have been given to Mrs A on that occasion because the application had only just been submitted and Officer 1 had not yet investigated Mrs A's circumstances. In any event, my understanding is that the sale of her home was in progress by then and, therefore, any advice would have been too late to change matters for Mrs A.

20. The key event in this case was, therefore, the interview on 10 January 2006. What was said by either Mrs A or Officer 1 during this interview cannot be known for certain. The interview was not witnessed by any third parties nor was it tape recorded. As a result, it is difficult to know exactly what advice was provided to Mrs A and, therefore, to establish beyond doubt whether that advice was sound.

21. While it is difficult to state with certainty that Mrs A was correctly advised, I conclude, on the basis of the available evidence, that it is likely she was. This judgement is made on the balance of probabilities and is based on the fact that the Form is unambiguous in recording that Mrs A was seeking advice regarding a forced sale. Given that, I consider that the Council's argument that there would have been no need to discuss the issue of intentionality at length is a persuasive one.

22. It seems unlikely to me that Officer 1 would not have recorded specific details, or raised a specific query about, intentionality had there been any suspicion that Mrs A's circumstances might fall foul of the rules in that regard. My view on this is reinforced by the fact that details of Mrs A's sole ownership of her home were recorded by Officer 1 on 23 February 2006. I consider that makes it likely that Officer 1 would have recorded any relevant details on 10 January 2006, had Mrs A provided them during that interview. The note recording the meeting on 23 February 2006 shows that, once Officer 1 was advised of Mrs A's financial situation and the fact that she was the sole owner of her home, the implications of Mrs A's case with regard to intentionality were clear to Officer 1, as the note questions whether someone who is a guarantor can get a second mortgage and, therefore, questions whether the sale was really forced. Given that, it seems unlikely to me that, had Mrs A given a full explanation of her circumstances of 10 January 2006, she would not have been advised that there might be issues with regard to the rules on intentionality.

23. In addition, I note that Mrs A was given a copy of the Guide, which provided further details regarding the criteria for homelessness applications. I also note that she was sent information regarding the Citizen's Advice Bureau. She was, therefore, provided with appropriate sources of further information by the Council.

24. I consider that, while the evidence that Mrs A was given correct advice is not strong enough to put the matter beyond doubt, what evidence there is points

to correct advice having been given. In the circumstances and on balance, I conclude that it is likely the advice given to Mrs A was correct.

25. I am unable to say why the minutes of the Board's meeting mention a request for interview record-keeping to be improved. The evidence I have seen shows that careful and appropriate records were kept by Officer 1. The Council have stated that the minutes were not accurate and that this was due to a lack of experience by the person taking the minutes. While I note the explanation provided by the Council, I have asked them to ensure that, in future, minutes of Board hearings are accurate and that minute takers are given sufficient training to ensure that minutes are properly taken. In this case, the inaccuracy in the minutes led to no injustice or hardship for Mrs A, but it was potentially confusing and led Mr C and Mrs A to believe there was a flaw in record-keeping where, in fact, there was none.

26. To conclude, I am satisfied that an appropriate record of the interview was kept by Officer 1 and that there is no evidence that Mrs A was incorrectly advised by Council. In the circumstances, I do not uphold the complaint.

19 September 2007

Explanation of abbreviations used

Mr C	The complainant
Mrs A	The aggrieved
The Council	East Dunbartonshire Council
The Form	An Interview Report Form dated 10 January 2006
Officer 1	The Housing Officer who saw Mrs A on 10 January 2006 and 23 February 2006
The Board	The Housing Appeals Board
The Guide	The Council's Guide to Homelessness Services in East Dunbartonshire

List of legislation and policies considered

Code of Guidance on Homelessness