

Case 200503558: Shire Housing Association Ltd

Summary of Investigation

Category

Housing: anti-social behaviour/complaint handling

Overview

The complainant (Mrs C¹), who was a member of the Management Committee of Shire Housing Association Limited (the Association), raised a number of concerns relating to the alleged anti-social behaviour of her neighbours and the Association's subsequent administration of her request to be re-housed. She said that, as a result of her complaint, she was asked to resign from the Association's Management Committee.

Specific complaints and conclusions

The complaints which have been investigated are that the Association:

- (a) did not take appropriate action regarding Mrs C's complaints (*not upheld*);
- (a) took an unnecessarily long time to offer alternative accommodation to Mrs C (*not upheld*);
- (b) made an offer of accommodation to Mrs C which was unsuitable in terms of the Association's letter of 29 August 2005 (*not upheld*); and
- (c) put Mrs C under pressure to resign from the Management Committee because she had made a complaint about the Association as a resident (*partially upheld*).

Redress and recommendation

The Ombudsman recommends that the Association make a full formal written apology to Mrs C for requesting that she should consider resigning from the Management Committee, without giving her the opportunity to respond to the allegations made about her.

The Association have accepted the recommendation and will act on them accordingly.

¹ The complaint was made jointly by Mr and Mrs C, however, for ease of reporting the complainant is referred to as Mrs C throughout the report.

Main Investigation Report

Introduction

1. Mrs C and her family took up residency of a Shire Housing Association Limited (the Association) house in 2001. Over the next four years tension between Mrs C and a neighbouring family grew. In May 2005 an airgun pellet was fired through Mrs C's house window. She complained to the Association and the incident was investigated by the police. Further incidents followed including: a stone being thrown at Mrs C's husband; neighbours' children entering Mrs C's garden without permission; and Mrs C's children being intimidated by local children. Mrs C complained to the Association, requesting that they take action to address the anti-social behaviour she and her family were being subjected to by other tenants of the Association. She also requested that she be re-housed by the Association.

1. Following the receipt of her complaint, the Association asked her to resign from the Management Committee. Mrs C was unhappy with this and also with the Association's response to her complaint and she subsequently complained to the Ombudsman.

2. The complaints from Mrs C which I have investigated are that the Association:

- (a) did not take appropriate action regarding Mrs C's complaints;
- (b) took an unnecessarily long time to offer alternative accommodation to Mrs C;
- (c) made an offer of accommodation to Mrs C which was unsuitable in terms of the Association's letter of 29 August 2005; and
- (d) put Mrs C under pressure to resign from the Management Committee because she had made a complaint about the Association as a resident.

Investigation

3. Written enquiries were made of the Association and of Mrs C. Documentation relating to the complaint was also examined, together with the Association's 'Code of Governance' for Committee members, 'Void Control and Allocations' guidance and 'Anti-Social Behaviour' guidance.

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

(a) The Association did not take appropriate action regarding Mrs C's complaints

5. Mrs C advised me that her family were the victims of anti-social behaviour from a family who lived three doors away. Following a previous incident when a breach of the peace had resulted, the family allegedly causing the anti-social behaviour were served an interdict to stay away from Mrs C's door. Despite this, Mrs C stated that her family were subjected to continued intimidation. Mrs C said 'the Association was made aware of everything but did nothing to help'.

6. In May 2005 an incident occurred where Mrs C's house window was shot at by an airgun. Mrs C suspected the neighbour was responsible and contacted the Association to complain. She was advised that, given the seriousness of the allegation, she should report the matter to the police. The police subsequently investigated the matter, however, they were unable to identify the culprit and no further action was taken.

7. Following this, Mrs C wrote to the Association on 17 May 2005 to say that, while the police could not prove who fired the airgun, 'it was obvious who has done this'. She went on to say that she felt that it was only a matter of time until someone was injured and considered that she should move away before this happened. The Association responded on 23 May 2005 advising Mrs C that, in the absence of proof, they were unable to take any action to assist.

8. At the request of Mrs C, on 10 August 2005 the Association visited her at her home to discuss the allegations of anti-social behaviour. At this meeting, Mrs C explained that she considered that her family were being intimidated by the neighbours and that she felt the Association were being unsupportive in her attempts to be re-housed.

9. The Association explained that, at that time, the allegations made by Mrs C were uncorroborated, however, it was agreed that the Association would liaise with the community police to ensure that all of the issues raised were examined. The possibility of mediation was suggested by the Association. The record of the meeting indicated that, while Mrs C was reluctant, she did agree to consider this option if the other party was agreeable.

10. Mrs C then wrote to the Association on 18 August and 21 August 2005 documenting several recent instances of anti-social behaviour towards her family. She advised the Association that her family was living in fear and she was concerned for the wellbeing of her children. She asked what the Association was prepared to do to help them.

11. In her reply to Mrs C of 29 August 2005, the Director of the Association (the Director) advised her that they were currently in the process of gathering further information in relation to her complaint and would liaise with the police to ensure a joint approach was adopted to resolve the issues.

12. The Director went on to acknowledge that Mrs C considered her family to be at risk and suggested a course of action that may help. She said 'whilst the Association has insufficient evidence at this time to take enforcement action against any third party, your personal concerns are nevertheless taken very seriously by this organisation. For this reason the Association is prepared to offer you a Management Transfer to alternative accommodation, should you wish to consider such an option'.

13. Mrs C was advised to let the Association know as quickly as possible if she wished to consider this option. She accepted the Association's offer to re-house her, by way of a telephone call on 15 September 2005.

14. In the meantime, on 7 September 2005, a meeting was held between the Association and the police to consider the 'history of disagreement' between Mrs C and her neighbour and to identify and agree a joint and coordinated approach to future action. It was recognised at that time that, while both the police and the Association had been contacted on various occasions by both families complaining about the actions of each other, there was no evidence to corroborate or support the issues raised.

15. The police had offered advice to both sides but took no further action, considering the reports to be low level complaints 'resulting from a fundamental clash of personalities between the families'. The record of the meeting shows that the Association also considered that the situation was 'a clash of personality' between the families.

16. The possibility of mediation was discussed at the meeting between the Association and the police, however, it was felt that given the involvement of

solicitors and the breach of the peace charge, it was 'unlikely that this course of action would be effective'. It was agreed, therefore, that in the absence of an immediate solution, both the police and the Association would continue to monitor the situation between the two families.

17. Mrs C subsequently informed the Director of her willingness to participate in independent mediation, only to decide later that she no longer felt that mediation was an appropriate course of action.

18. The Association told me that, while there had been ongoing tension between Mrs C and her neighbours, the situation escalated following the incident in May 2005 when an airgun was fired, causing damage to an upper floor rear window. They also told me that in addition to the complaint from Mrs C about her neighbour, they had also received complaints from Mrs C's neighbours alleging inappropriate behaviour by Mrs C.

19. The Association recognised that there was insufficient independently corroborated evidence to justify taking enforcement action against any of the parties involved. They also recognised, however, that Mrs C said that she felt unsafe in her home and, on that basis, offered her a Management Transfer to remove her family from the immediate area.

20. The Communities Scotland Performance Standard requires Housing Associations to 'deal appropriately with antisocial behaviour, and where appropriate, to work in partnership with others to manage such behaviour'.

21. The Association provided me with a copy of their written procedures to deal with 'Neighbour Disputes and Anti-Social Behaviour' complaints. The guidelines required complaints to be categorised in terms of seriousness, with the action to be taken depending on the category. I have mentioned previously that the police considered the matter to be a 'low level complaint'; this informed the approach taken by the Association to categorise the complaint.

22. The Association's guidance suggested exploring a number of options, with a view to remedying the situation. These included mediation and Management Transfer and I note that the Association considered those options as appropriate.

23. The Association's guidance in relation to 'Emergency Housing of the Void Control and Allocations' also identified the option of a Management Transfer in 'emergency situations'. I asked the Association to clarify why, if the complaint was adjudged to be low level and not, therefore, an emergency, a Management Transfer was offered.

24. The Association told me that, while they did not consider the case of Mrs C to be an emergency, they recognised the need to assess the situation from her perspective. They told me that the aims of their anti-social behaviour policy were to understand the issue from the perspective of the complainant; take a victim centred approach to the situation; and adopt a policy of early intervention to resolve issues and prevent escalation. The offer of a Management Transfer was considered to be the most effective way of meeting these aims.

(a) Conclusion

25. I have no doubt that the situation Mrs C and her family found themselves in was extremely distressing. It is clear that tension between the neighbours existed for some time prior to the airgun incident and I have sympathy with Mrs C's concerns about the safety of her family and the potential that someone could be injured as the tension grew.

26. The question I have been asked to consider, however, is whether the Association took appropriate action to deal with Mrs C's complaint. The Association is guided by a Performance Standard (set by Communities Scotland) that directs 'where appropriate' they should work in partnership with others to manage such behaviour (that is, allegations of anti-social behaviour). In addition, to ensure that the Association responds in the most appropriate way to such complaints, they have also developed organisational procedures to provide guidance on dealing with allegations of anti-social behaviour.

27. The guidance ('Neighbour Disputes and Anti-Social Behaviour') provides advice on legal remedies available to resolve disputes, however, I would expect those to be pursued only where all other attempts for resolution had failed. It also suggests 'alternative remedies' which should be considered. These include mediation where 'both parties should be willing to participate' and voluntary 'Management Transfer'.

28. Mediation was considered by the Association but, ultimately, Mrs C said that she would not be willing to participate in this course of action. The

Association, as required by the Performance Standard set by Communities Scotland, also worked in partnership with the police in relation to the complaint and I am satisfied that, given the lack of corroborative evidence and the view of the police that this was a 'low level' complaint, the Association acted appropriately.

29. I am conscious that the Association had also been asked to consider complaints from Mrs C's neighbours about Mrs C's conduct. In the absence of corroboration, one way or another, I recognise that this was a difficult situation for the Association to resolve effectively.

30. Mrs C wrote to the Association on 18 August and 21 August 2005 concerning fears about her family's safety. I was impressed with the timing and content of the response from the Director which was sent on 29 August 2005 and offered a Management Transfer to alternative accommodation. This was in keeping with the Association's policy, addressed the expressed fears Mrs C had for her family and was an attempt by the Association to resolve the complaint.

31. I am satisfied that the Association worked in partnership with the police to consider how best to deal with the situation; they also followed their internal guidance in relation to categorising the complaint and considering options to resolve the issue.

32. Taking account of the evidence I have examined, I am satisfied that the Association took appropriate action on receipt of Mrs C's complaint. I do not, therefore, uphold this complaint.

(b) The Association took an unnecessarily long time to offer alternative accommodation to Mrs C; and (c) The Association made an offer of accommodation to Mrs C which was unsuitable in terms of the Association's letter of 29 August 2005

33. The Association's letter to Mrs C of 29 August 2005 said:

'Any offer of alternative housing would be intended to remove you from the threat that you perceive and will be made as quickly as possible. The organisation will attempt to meet your other personal and geographical requirements, although you should note that this cannot be guaranteed.'

34. Mrs C confirmed on 15 September 2005 that she would accept the offer of a Management Transfer and explained that there were two areas that she would not wish to be re-housed in.

35. On 22 September 2005 the Association wrote to Mrs C to confirm that, as she had requested, she would not be offered a property in two specific areas.

36. On 24 September 2005, Mrs C enquired about the possibility of securing a property in one of the Association's new build developments, which were still under construction. The Association advised her that the new build properties would not be available until February or March 2006 and as there would only be two properties large enough to accommodate her family, no guarantee could be given to re-housing Mrs C within those developments.

37. The Association told me that an offer of alternative accommodation was made to Mrs C on 2 February 2006. They acknowledged that the process took longer than was desirable, however, they also told me that the property was the first similar sized one, which was at least comparable with Mrs C's current accommodation, to become available since their offer of a Management Transfer was made in August 2005. The Association provided me with a list of all vacancies which had occurred between September 2005 and February 2006 which confirmed that the first suitable property was offered.

38. Normal practice in Management Transfers is to allow two days for the acceptance of the offer of an alternative property, however, in this case the Association extended the deadline by 11 days, to 13 February 2006. Mrs C did not respond to the offer and it was subsequently withdrawn. In her complaint to the Ombudsman, Mrs C explained that the property offered was two miles away from her home and was located in the street next to the local supermarket where everyone in the area shopped. She considered that this, together with the time it had taken to make the offer, was unreasonable.

39. While I understand the reasons Mrs C did not consider the offer to be a suitable one, she failed to advise the Association. I am also mindful that, while the property offered may have been close to the supermarket, it was not on a direct route to the shop in question. I further consider that had the possibility of meeting someone from Mrs C's previous location been a factor for the Association to consider then most, if not all of the Associations stock could have been considered as unsuitable by Mrs C.

(b) Conclusion

40. The decision to offer Mrs C a Management Transfer was due to the Association's assessment that there was insufficient independently corroborated evidence to justify taking enforcement action against any of the parties involved and in recognising Mrs C's assertion that she was now living in fear and was concerned for the wellbeing of her children. The Association also considered that the offer of a Management Transfer would support the aims of their anti-social behaviour policy.

41. As both the Association and the police had categorised the complaints as 'low level', the situation could not, therefore, be described as an 'emergency'. However, it is clear to me that the Association offered the first suitable property to become available (see paragraph 38). I, therefore, do not uphold the complaint.

(c) Conclusion

42. The offer of accommodation made by the Association to Mrs C was comparable with her current accommodation. I saw nothing in the offer which was made to Mrs C to indicate that the property was unsuitable, in relation to the Association's letter of 29 August 2005. For that reason, I do not uphold this complaint.

(d) The Association put Mrs C under pressure to resign from the Management Committee because she had made a complaint about the association as a resident

43. Mrs C was a member of the Association's Management Committee. She told me that she was aware that the Association had received allegations suggesting that she had abused her position on the Management Committee by influencing the allocation of Association properties.

44. She said that the Director told her that, as she was making complaints about the Association, and in light of a forthcoming audit by Communities Scotland, the Director considered that Mrs C should resign from the Management Committee.

45. Mrs C said she was shocked at this request. She felt that the Association were accepting unsubstantiated rumours about her and were not prepared to

investigate the allegations prior to arriving at a decision with regard to her position on the Management Committee.

46. Following the request from the Director, Mrs C said that she received a letter from the Chairperson of the Management Committee advising her to resign. She said that the letter went on to say that, if she did not resign, a special meeting would be convened whereupon Mrs C would be removed from the Management Committee.

47. I confirmed that on 14 December 2005, the Chairperson of the Management Committee did indeed write to Mrs C about her position on the committee. He referred to two alleged instances of Mrs C stating that she could use her position on the Management Committee to influence decisions on allocations and evictions. He said he was aware that the Director had asked Mrs C to resign her position, however, as she had chosen to disregard that informal approach he was now writing to her to request her resignation.

48. The letter went on to say that, if Mrs C did not resign, the Chairperson would seek approval for a special general meeting, at which time he would formally request that she be removed from the Management Committee.

49. The Association told me that the decision to ask for Mrs C's resignation was not based on the complaint made by Mrs C about the Association in her capacity as a tenant, rather the decision was based solely on the opinion of senior officers that the allegations received about Mrs C misrepresenting her role as a member of the Management Committee presented a risk to the reputation of the Association and its governing body.

50. Following receipt of the letter (dated 14 December 2005) Mrs C wrote to the Association expressing her concern that she 'had not been asked at any point for my side of the story, it is obvious that you have made up your mind about who is right and wrong'. The Association responded by stating 'in response to your request for a meeting, this can be arranged ... alternatively you may wish to meet with the full Management Committee at a Special Meeting which can be arranged to discuss the matter'.

51. The Association told me that in agreeing a meeting with Mrs C, they sought to keep the matter at an informal level, and so complied with Stage 1 of

their complaints process which promotes 'direct and more informal contact with the complainant'.

52. My examination of the rules for committee membership confirmed that 'when a complaint in writing of conduct detrimental to the interests of the Association has been communicated to the member complained about by the secretary not less than one calendar month before the meeting, that member may be expelled by a resolution carried by the votes of two thirds of the members present in person or by proxy and voting on a poll at a special general meeting of the Association of which notice has been duly given'.

53. However, the rules also state that the member should be called upon to answer the complaint and to attend the meeting convened for this purpose. At such a meeting the members should consider evidence in support of the complaint and such evidence as the member may wish to place before them in their defence.

54. The Association told me that had the matter been presented to the Management Committee Mrs C would have been provided with the opportunity to speak to the matter. I found nothing in the paperwork I examined to indicate that Mrs C was advised of this.

55. The Association's 'Risk Management' module states, 'The Management Committee consider the development of the Association has been built on developing a reputation for achieving targets, delivering a quality service with quality staff and a committed Management Committee. It is essential that these critical elements continue to promote the reputation of the Association without which the Association will not continue to develop'.

(d) Conclusion

56. Mrs C said that the Director had verbally encouraged her to resign from the Management Committee. This is substantiated in a letter from the Chairperson of the Management Committee to Mrs C in December 2005 (see paragraph 48). The Chairperson went on to say what action he would take should she fail to resign (see paragraph 49).

57. It is important to reflect, however, that the Association made their decision based on Mrs C's membership of the Management Committee, and not based on any complaint that Mrs C had made about the Association.

58. However, in attempting to keep the matter on an informal level, in line with Stage 1 of their complaints policy, the Association dealt with Mrs C as though she was the complainant, when in fact the complaint related to her position on the Management Committee.

59. My examination of the evidence has shown that the Association did not investigate the complaints about Mrs C's alleged abuse of her position on the Management Committee. Rather, it appears that a decision was made to remove Mrs C from the Management Committee based only upon receipt of an allegation, without considering evidence in support of the allegation. Mrs C did not have the opportunity to respond to these allegations.

60. It is perhaps understandable that the Association were concerned about their reputation for delivering a quality service and the potential impact that the allegation may have had on perceptions of that service. Nevertheless, Mrs C should have been given the opportunity to answer the complaint, as required in the rules. In the circumstances, I do not consider that it was appropriate for the Director to informally ask her to resign from the Management Committee.

61. Having considered the evidence in relation to this complaint, I do not agree that the Association put Mrs C under pressure to resign from the Management Committee because she had made a complaint about the Association as a resident, however, I do consider that based on allegations received about Mrs C, pressure was put on her to resign from the Management Committee. I, therefore, partially uphold this complaint.

(d) Recommendation

62. The Ombudsman recommends that the Association make a full formal written apology to Mrs C for requesting that she should consider resigning from the Management Committee, without giving her the opportunity to respond to the allegations made about her.

63. The Association have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Association notify her when the recommendations have been implemented.

Explanation of abbreviations used

Mrs C	The complainant
The Association	Shire Housing Association Ltd
The Director	The Director of the Association

List of legislation and policies considered

The Association's 'Code of Governance' for Committee members

The Association's 'Void Control and Allocations' guidance

The Association's 'Anti-Social Behaviour' guidance