

Case 200703152: North Ayrshire Council

Summary of Investigation

Category

Local government: Housing; Sheltered housing and community care

Overview

The complainant, Mr C, raised a number of concerns about a decision by North Ayrshire Council (the Council) to remove warden provision from sheltered housing. He said there had been a failure to consult with tenants and that the information available to Councillors when the decision was made was inadequate. He also complained about the process of implementation; the transition provisions; and communication generally, including the Council's response to complaints raised.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council did not consult with tenants prior to the decision (*upheld, to the extent that the decision not to consult was made without legal advice which would have been required to make it soundly based*);
- (b) information provided to Councillors, prior to the decision, was inadequate (*not upheld*);
- (c) there was insufficient planning for the process of implementation and transition provisions (*upheld*); and
- (d) communication throughout was inadequate (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) review their procedures for ensuring appropriate legal advice is obtained and recorded prior to significant decisions;
- (ii) use the implementation of this decision as a case study, to ensure appropriate planning is in place for future service changes;
- (iii) ensure that, for future service changes, adequate and appropriate communication planning is undertaken and monitored; and

- (iv) review the information currently provided to tenants about the new system and ensure that systems are in place to allow tenants to communicate with the Council simply and effectively.

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

Main Investigation Report

Introduction

1. On 7 February 2008 North Ayrshire Council (the Council) voted to end warden provision in sheltered housing as part of their budget process for 2008/2009. Tenants were informed by a letter dated 8 February 2008. In response to complaints made to them, the Council said that they had to ensure they made the best use of resources and had decided to target those with the greatest need, whether in sheltered housing or at home. They detailed actions taken to ensure affected tenants would be supported.

2. In his complaint to the Ombudsman, Mr C said that the Council had failed to consult with tenants in line with relevant legislation; that information provided to Councillors at the meeting of 7 February 2008 was inadequate; that implementation and transition provisions had not been appropriately thought through; and that there was no evidence of project planning. Mr C was also concerned about the level of communication throughout and in response to the complaint raised.

3. The complaints from Mr C which I have investigated are that:

- (a) the Council did not consult with tenants appropriately prior to the decision;
- (b) information provided to Councillors, prior to the decision, was inadequate;
- (c) there was insufficient planning for the process of implementation and transition provisions; and
- (d) communication throughout was inadequate.

Investigation

4. In investigating Mr C's complaint I obtained copies of relevant correspondence and documents from the Council. I also made detailed written enquiries. I interviewed a group of tenants; Council staff and three Councillors who had chaired key meetings within the budget-making process.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report. Abbreviations are explained as they arise and in an annex to this report.

Background

6. Changes were made to warden provision in Sheltered Housing in the Council area in 2000. Prior to then, warden cover was provided day and night and there was always a warden or a relief warden in each Sheltered Housing unit. In 2000 the Council decided that a community alarm scheme (provided by the South Ayrshire Monitoring Scheme – SAMS) would be introduced. This would mean tenants would be able to call for assistance when a warden was not available and that a warden would not always be required on site. The report recommending the change referred to the need to adapt to an aging population and to allow the Council to extend their services in this regard.

7. The budget process for 2007/2008 was the first following the 2007 local government election. The Council set up a cross-party Budget Strategy Group to consider and discuss budget proposals. In January 2008 seminars were held for all Councillors and the formal budget proposal was put to the full Council on 7 February 2008, when the decision to withdraw warden provision and extend the community alarm scheme was approved as part of the 2007/2008 budget.

8. The Corporate Director of Social Services (the Director) said that when preparing for the 2007/2008 budget the Council had been required to achieve 3% saving from the Social Services budget. They developed and used a prioritisation matrix to assess all their services and decided a service where they would recommend changes would be the warden provision in sheltered housing units. On 20 December 2007 a note was presented to the Budget Strategy Group on this point.

9. The note said the removal of warden provision would lead to savings of four hundred and thirty thousand pounds. Two hundred thousand pounds of this would be used by the Council to extend the alert service so alert staff would now provide cover twenty four hours a day, seven days per week. Also, every tenant would have a morning call and an evening call if required. The note also said legal services had been asked to comment on a right to buy issue and confirmed that the sheltered housing units would remain exempt. Following this, the proposal was submitted to the full Council as part of the Social Services budget.

**(a) The Council did not consult with tenants prior to the decision; and
(b) Information provided to Councillors, prior to the decision, was inadequate**

10. The Social Services budget was presented at a seminar open to all Councillors in January 2008. At the full Council on 7 February 2008, the Director was asked to answer specific questions about the new system and the Council was informed that the extension to the Alert Service would also be made available to older people who wished to remain in their own home.¹ A motion was raised to delay the decision until tenants had been assessed. This motion was rejected after a vote. At the next full Council meeting on 5 March 2008, a further motion asked that the decision be delayed until, amongst other factors, a consultation was undertaken. This motion was again rejected after a vote by the Council.

11. It has been suggested by Mr C that the failure to consult breached the Housing (Scotland) Act 2001, which requires landlords to consult where changes are likely to significantly affect the tenant. The Tenancy Handbook provided to all tenants with their tenancy agreement by the Council repeated this requirement. At interview, the Director said that Council officers had discussed the issue of consultation prior to this matter being put to the Council. There was no record of this discussion but she remembered that they had been concerned about what they could consult on, in advance of a decision being made, and the uncertainty for staff whose jobs would be affected.

12. The Council accepted that the legal obligation to consult was not discussed with their legal services staff prior to the decision. However, they had considered the legal position in the light of complaints raised and, in response to my enquiry, said that in their view the changes made were not so significant as to trigger this requirement. They said this was supported by the Tenant Handbook, which said there would be cover but not that a warden would be present all the time. In practice, the Council said, as cover was provided by SAMS and the Alert Service, the only changes were that each unit would no longer have a named warden and wardens would no longer encourage social events. (Although it was not a requirement of the warden service, I was advised that some wardens would organise social events at Sheltered Housing schemes.)

¹ The existing alert service was already also available to this group.

13. In a letter of 20 March 2008 to a complainant, the Council's legal services manager suggested that the process where each tenant was having their needs assessed by social services amounted to a wider consultation than a consultation about the decision itself. (Individual tenants were all offered a social services needs assessment and, in the weeks following the decision, Council staff attended at each unit for meetings with tenants as a group.) At interview, the Director also referred to these individual assessments and meetings as consultation with individuals. The letter to all tenants of 8 February 2008 informing them of the decision said the Council wanted to help tenants become familiar and comfortable with the decision. A letter dated 9 April 2008 from the Director to a complainant said that the group meetings were arranged to 'advise tenants of the decision ... and to impart information'. In response to my enquiries the Council confirmed that minutes had not been kept of these meetings. At interview the Director said they fed back to members issues raised and the overall outcome of assessments.

14. In the course of my enquiries, I interviewed three Councillors separately. They were interviewed in their capacity as the chairs of key meetings at which this issue was discussed: the Budget Strategy Group and the full Council meetings of 7 February and 5 March 2008. They were all asked about the questions raised about this budget proposal and the information provided. The Councillors did not all agree with the decision reached but all did agree they were aware of the impact of the decision when it was made. They understood the warden provision service would be removed and replaced by the full-time alert system. There was some acceptance that having this item as part of the budget process may have affected the discussion and one Councillor said it had been unfortunate that information had not passed from and to the Budget Strategy Group as had been hoped because some Councillors on the group had not fully understood that, although the matter was confidential, it was still possible to raise it with other Councillors. All three Councillors recalled debate around this issue at each meeting they had chaired and all confirmed that, at both the seminar in January and the full Council meeting in February, this had been the main issue of contention. The Councillors recalled the Director providing additional oral information about the new system at the Council meeting on 7 February 2008. All three Councillors confirmed they had felt they had enough information to make a decision when they voted.

(a) Conclusion

15. It has been suggested, in some Council correspondence and comment I received from Council officers at interview, that there was consultation following the decision. I comment on this post-decision process in more detail below. But I would note here that I do not consider that any process taking place after a decision has been made can legitimately be categorised as consultation. I have, therefore, considered this complaint on the basis that no consultation occurred. Was that appropriate?

16. One of the criticisms that has been put to the Council is that consultation was a legal obligation, on the basis that the Housing (Scotland) Act 2001 requires landlords to consult where changes are likely to significantly affect tenants. It is not the role of this office to interpret legislation. Ultimately, only the courts could rule on whether a particular change was likely to significantly affect tenants. However, I consider that any decisions made by Council officers and Councillors on whether consultation should be undertaken could only be soundly based if they were informed by legal advice in relation to the provisions of the 2001 Act. It appears that no such advice informed either discussion by Council officers (see paragraph 11) or the decisions by the full Council on 7 February 2008 and 5 March 2008 that no consultation was required (see paragraph 10). Therefore, I uphold this complaint to the extent that the decision that consultation was not required was not soundly based.

(a) Recommendation

17. The Ombudsman recommends that the Council review their procedures for ensuring appropriate legal advice is obtained and recorded prior to significant decisions.

(b) Conclusion

18. Concerns have been raised that the Councillors did not have adequate information before making the decision to remove warden services. The note that went before the Budget Strategy Group concentrated on the effect on the budget and the only written information from the seminar is a PowerPoint presentation. However, it is clear from the interviews with Councillors that they were aware of what was proposed and the implications. They recalled the Director providing additional oral information at the Council's meeting of 7 February and at the Council meeting of 5 March 2008 considered a motion to suspend the decision for further information. It is clear that this was a topic of concern and debate.

19. Ultimately, it is the responsibility of elected members to ensure they have adequate information to make any decision. I have noted that all three Councillors I spoke to felt they had enough information to decide whether this was a proposal they could or could not support and voted accordingly. I have also noted that, on the day of the vote, further information was sought and obtained. Therefore, I do not uphold this complaint.

(c) There was insufficient planning for the process of implementation and transition provisions

20. At the time Mr C's complaint was received and this investigation began, the process of implementation was ongoing. During the investigation, I received detailed information from both Mr C and the Council about specific aspects of this ongoing process. While I comment on these in general terms, my investigation has concentrated on whether there was sufficient planning to ensure this process was administered effectively.²

21. As part of the budget planning process, figures were prepared on the number of teams and staffing levels that would be required for the new system. The Council have said this was based on an analysis of the numbers of sheltered housing tenants currently receiving home care³ and of the current call-out information available from SAMS. They provided me with copies of both of these documents. The Council have also said that, prior to the decision, there was discussion between Social Services and Housing. Although this has not been noted, from the report prepared for the Budget Strategy Group it appears they considered the significant point raised by Housing was the right to buy issue on which legal advice was subsequently sought (see paragraph 10).

22. The letter to be sent following the decision, if positive, was also drafted in advance. This contained some information about the transition and implementation process. Tenants were informed that the change would be in effect by 1 April 2008; managers would be available at each unit if information was required; and all tenants would receive visits from social services to discuss individual needs and the alarm team who would introduce themselves.

² It will remain open for any individual who feels that a particular aspect of this process has resulted in an injustice to them as an individual, to pursue this through the Council's complaint procedure.

³ Additional support from social services through their Care at Home teams.

Meetings would also be held in each unit from Monday 18 February. On 6 February 2008, a meeting was held with all the wardens to inform them of the vote the next day. Following this meeting, also on 6 February 2008, a Social Services Manager sent two emails to the Head of Service. One of these included an initial attempt at an action plan for implementation and the second included a table with a number of housing matters. The first email said the plan was 'for information at present' and that there would be other tasks that needed to be inserted. The second email said it had been pointed out by one of the wardens that they often undertook tasks outside their job description. The manager suggested that the responsibility for the tasks which had a housing component should be resolved quickly and decisions made prior to the planned meetings from 18 February 2008.

23. Following the decision an internal social services meeting was held on 18 February 2008 and a position statement/action plan created, which consisted of required actions and identified a lead officer and a required completion date for each.⁴ Some tasks were identified as completed: the status of wardens and community alarm teams; the number of posts required for additional vacancies; the drafting of new job descriptions; and informing SAMS, tenants and staff had all been informed. The outstanding items included: informing the health team; assessing individual tenant care needs; devising new procedures for SAMS; a need to liaise with Housing about some tasks which had been undertaken by the wardens and to devise new procedures for staff or tenants to take these on; meeting with alert teams about procedures; and requirements around identifying the number of workers for new teams, number of posts required for overnight cover and the need to divide the work to ensure that one team could cover an individual locality. This document continued to be added to and updated throughout the transition and implementation process, following contact with tenants and staff. This document grew significantly over the first few months and, at the time of writing of the report, matters still remained outstanding.

24. A note dated 19 February from the Director to Councillors set out the initial steps. In concluding, she noted that concerns may be raised about issues relating to housing support as well as care. She said meetings had been arranged with Housing staff to ensure processes were agreed and this would then be shared with tenants.

⁴ This largely repeated the information in the first email sent to the Head of Service on 6 February 2008.

25. A number of tasks were identified early in the process which had been the role of the warden, which would need to be re-absorbed (see paragraph 23). There was evidence in an internal email dated 4 March 2008 that there was some concern in Housing that they would be asked to do so without additional resource being made available. A meeting was held between Social Services and Housing staff on 21 March 2008, which clarified a number of points and led to a number of actions being added to the ongoing action plan.

26. At interview, the Director said she understood that the new system was in place by end June 2008 in all sites. The meetings on implementation continued monthly. The minute of the meeting of 26 August showed that a number of issues were still outstanding; procedures were still in draft; it was said that managers who would be responsible for these did not know the full range of responsibilities they would be taking on; and matters were being pursued in relation to emergency access and fire safety and training.

27. In my interviews, I asked the Director; the three Councillors and tenants about their experience of the implementation and transition process. Views differed greatly. The Director felt that this had been well-managed and that the Council had responded well to concerns raised during the process. One of the Councillors had a very good relationship with his local unit and visited regularly. He said problems were being resolved. However, he felt that these had been picked up and dealt with rather than being identified prior to implementation. The Councillor who chaired the full Council meeting of 7 February said that he had felt at the time of the decision the implementation date of 1 April 2008 was not achievable. The Director said that, while they had wished to have the process completed by this date in line with the budget, they had known this would be difficult and were more committed to ensuring the transition was managed well.

28. The tenants I spoke to were all very unhappy with the decision and the implementation process. They said they had not met the alert teams as promised. They were unsure whether to contact Housing or Social Services staff about some issues. They had a number of outstanding concerns and issues about safety. They felt that they had had to be very active on behalf of other vulnerable tenants to highlight problems and that social services were being very reactive. This had left them feeling concerned about units where, perhaps, the tenants would be less able to highlight issues.

29. I asked the Director whether more work should have been done prior to implementation. She said this was difficult because of the effect on individual employees and also because it had not been clear until 7 February 2008 whether the proposal would be approved and could, therefore, be implemented. She advised the proposal to withdraw warden provision by extending the Alert Service had been raised as an option before but had been rejected.

(c) Conclusion

30. It can be the case when implementing any decision that unintended consequences and unforeseen issues will arise and any organisation will have to ensure that it can react to these. The issue for consideration is whether the planning for both the implementation and the transition process was sufficient. This does not mean that the Council should have foreseen all possibilities and that no problems should have occurred. The question instead is whether the planning taken was reasonable to manage the risk of this process, in what, it is fully accepted by all involved, can be a very vulnerable population.

31. As I have indicated, I have seen and reviewed substantial documentation about actions taken following the decision. It is clear both that Council staff have worked hard to resolve issues as they arose and that the success of this would not be accepted by all tenants.

32. I am aware that this was a difficult and sensitive decision. However, I am concerned at the level of planning about the implementation and transition process prior to the decision and the implementation itself. The planning prior to the decision reached by the Council focussed on costs rather than implementation. There was some analysis of risk but the level of practical difficulties that the Council had to resolve and the speed with which these were identified indicate that a fuller analysis should and could have been undertaken. I am particularly concerned at the issues which arose between Social Services and Housing which should have been resolved in discussions prior to the decision being made. The Head of Service was informed of these on 6 February 2008 and the Director was aware in the note of 19 February (see paragraphs 22 and 24) that there would be some issues relating to housing support. There was a meeting on 26 February. However, these issues were not fully explored until after the decision was made and a meeting to discuss these in detail took place on 21 March 2008. While I note the concerns about alerting staff to a potentially contentious issue prior to approval, given the

decision affected a vulnerable group I would have expected more detailed planning at an earlier stage to have taken place.

33. In summary, while I have seen evidence of Council staff reacting to matters which arose during the transition and implementation phase, I have not seen evidence of detailed consideration being given to the process of implementation and transition planning and the identification of risks prior to the notification to residents on 7 February that this would be achieved by 1 April 2008. Even if it would have been difficult to carry this out before the decision was made, a planning and risk assessment phase could have been included as the initial stage of the process. This may have delayed implementation but would have ensured this was carried out more effectively. In all the circumstances, I uphold this complaint.

(c) Recommendation

34. The Ombudsman recommends that the Council use the implementation of this decision as a case study, to ensure appropriate planning is in place for future service changes.

(d) Communication throughout was inadequate

35. The Council did not have a separate communication plan but communication was included as part of the action plan. A standard briefing note for Councillors dated 19 February 2008 set out the initial stages. This included the standard letter sent to all tenants (see paragraph 22); letters sent on 14 February to each tenant to invite them to group meetings within each unit, these would start on 18 February 2008; and individual assessments, which would also start on 18 February 2008. They also said awareness sessions would be held within each unit to inform tenants about the range of SMART⁵ equipment available to support those who had assessed need and that the alarm teams would visit to meet tenants. Managers would hold surgeries to support tenants throughout the change.

36. In my enquiries, I asked the Council for copies of standard communication and information about when the meetings occurred. According to the action plan and other documentation, the initial information meetings and assessments

⁵ Self-monitoring, analysing and reporting technology. In this context, SMART refers to aids which can alert either a monitoring agency or warn the vulnerable tenant that there is a problem.

were completed by the end of March 2008.⁶ The tenants I interviewed had some concerns about these meetings and said they were not allowed to comment on the decision but only ask for information. There also appeared to be some confusion about who was to be assessed and they believed anyone under 65 was excluded. At interview, the Director confirmed the plan was always to assess all residents. In order to achieve this in the timescale, overtime had been put in place for relevant social services staff.

37. A standard update letter was produced by the Council and dated 26 March 2008. This included information about actions which had been taken and were still outstanding. Tenants were told a small information booklet would be issued which would also include appropriate contact information. Contact details were given for further enquiries. The tenants I interviewed all said this letter had not been received until mid-April. They had not, as at June 2008, received the leaflet. The Council also prepared standard letters to be issued when each unit was changed over to the new system. This was a staggered process and continued until June 2008.

38. The Council tracked the visits by the alert teams which they had promised would occur in all units. It appeared that all units were visited before the change to the new system. The information was given to tenants in different ways: in some cases all tenants in a unit received a letter informing them of the visit; in others they were advised by the warden or by a visiting manager; and in some cases there was no formal notification and the team simply visited. All visits took place in the week before the new system went live for that unit. In some cases this was two days before. From this document it was clear that, in some units managers did attend at the unit regularly so tenants could raise concerns direct with them, as they had been informed they would be able to in the letter of 8 February 2008. However, this had not yet been put in place in all units. In some units, photographs of alert team staff had been put up. Some units had suggestion boxes. In response to an email from Mr C, the Council confirmed they had intended to set up user groups following implementation and this was in progress at the time of writing of this report. At the time of the writing of this report, no information was available about visits concerning the SMART equipment.

⁶ The Council reported that not all tenants agreed to assessments.

39. This was a controversial decision. A number of complaints were received and the Council issued a standard response but also sought to identify if individual letters required different responses. I have seen a number of the complaints made and the response letters which showed this did occur, although I am aware from my interview with tenants that not everyone felt they had received an appropriate response.

40. Other methods of communication were also used. Statements were issued to the press. A press release of 17 March 2008 suggested 1 April 2008 was still the date for full implementation. Information was given to Councillors in response to concerns raised for them to feed back to tenants.

41. In my interview with them, tenants said they felt that there was a significant difference in their experience of communication with Housing and Social Services departments. They said communication with Housing had been and remained good. They said, however, that they remained unclear who to contact, Housing or Social Services, when problems arose and were sometimes passed between them. Previously the warden would have been responsible for this contact. There was also confusion about the SMART equipment and they said they had thought this was to be demonstrated/offered to all but it now appeared this was only to be given following individual assessment. They felt it was difficult to say whether such equipment would be useful until they had had a chance to see it. In general, they had said communication was vague and contradictory. Those who had formally complained were unhappy with the response.

(d) Conclusion

42. It should be noted that the Council have been publicly commended for their generally high standards on tenant participation and communication. The Council was the first landlord to achieve accreditation by the Tenant Participation Advisory Service. It is notable that, while the tenants I spoke to were unhappy with the way the handling of the decision to withdraw warden provision had been handled, they still commented that at times contact with the Council was good.

43. In considering the complaint about communication in relation to the withdrawal of warden provision, I have again concentrated on whether the planning for the communication was reasonable. On this point, I have noted that while there was no formal plan of communication, there was clear indication

that the initial communication process had been considered at an early stage (see paragraph 22); there was also evidence that the Council handled and responded adequately to a large volume of complaints.⁷

44. However, in reviewing the communication between the Council and tenants, I do have some concern. In June, tenants remained unsure about who to contact about certain matters; they had not received the information handbook which had been promised; and it is clear that the process by which tenants were informed that alert teams were visiting was ad hoc (see paragraph 38). The Council had said in the earliest communication to all tenants that the aim of these visits was to introduce tenants to the new staff. In the event, tenants were given very short notice of these visits, they occurred very close to the implementation dates and in some cases tenants would only have been aware these were occurring if they were in when managers visited. The Council had also said managers would be available on all sites and, again, it appears there was difficulty in implementing this consistently across all units.

45. I was pleased to note that tenants were issued with an update on progress in March and while letters were issued between May and July advising of the start date it would have been helpful if there had been additional updates, given the new system was not fully implemented until mid-2008 and, even after that date, matters were still being dealt with. The press release issued in March 2008 suggested the new system would be implemented on 1 April, at a time when it was clear that would not be the case.

46. From the documentation I have seen, it does appear that the Council were trying to communicate and to respond to concerns that were raised. However, once the initial stage of informing everyone of the decision was complete, it did not appear this was reviewed in a structured manner but, again, developed in a reactive way. As I have said above, while there is always a need to respond to developments, this is a particularly vulnerable group and, while I note the effort made, greater consideration should have been given both before and during the implementation and post-implementation stages to having and maintaining a clear, consistent communication plan. In the circumstances, I uphold this complaint.

⁷ On this point it should be noted I am speaking in generality and am not commenting on the individual response to an individual complaint.

(d) *Recommendations*

47. The Ombudsman recommends that the Council:

- (i) ensure that, for future service changes, adequate and appropriate communication planning is undertaken and monitored; and
- (ii) review the information currently provided to tenants about the new system and ensure that systems are in place to allow tenants to communicate with the Council simply and effectively.

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

Explanation of abbreviations used

The Council	North Ayrshire Council
Mr C	The complainant
SAMS	South Ayrshire Monitoring Scheme
The Director	The Corporate Director of Social Services
SMART	Self-monitoring, analysing and reporting technology

