

Scottish Parliament Region: Central Scotland

Case 200904272: South Lanarkshire Council

Summary of Investigation

Category

Local government: Right to Buy

Overview

The complainant (Mr C) complained that South Lanarkshire Council (the Council) had wrongly advised him of the impact of a transfer of tenancy from his wife (Mrs C) to himself on his Right to Buy discount under the Housing (Scotland) Acts 1987 and 2001. In September 2008, Mr and Mrs C contacted the Council to discuss transfer of tenancy options. A request to assign the tenancy was approved by the Council on 30 September 2008 and the tenancy was transferred to Mr C. Mr C applied to purchase his Council house in October 2008 and, while an offer to sell was initially made under the old Right to Buy scheme, following clarification of Mr C's tenancy commencement date, he was advised that his purchase could only proceed under the modernised Right to Buy.

Specific complaint and conclusion

The complaint which has been investigated is that Mr C was wrongly advised by the Council of the impact of a transfer of tenancy from Mrs C to himself on his Right to Buy discount (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:	<i>Completion date</i>
(i) keep a written record of the advice given when processing Assignment of Tenancy applications;	14 September 2011
(ii) ensure that the review of the Tenancy Sign Up Procedure is completed as a matter of urgency;	14 September 2011
(iii) consults with Mr and Mrs C in order to offer them an opportunity to enter into a joint tenancy or to re-assign the tenancy to Mrs C. In the event that Mrs C then subsequently applies to purchase the property either alone or jointly with Mr C, the	14 September 2011

Council shall apply to the Scottish Ministers for consent to the sale on the basis of the preserved Right to Buy discount to which Mrs C was entitled; and

- (iv) in the event that the Scottish Ministers do not consent to any subsequent sale on the basis of the 70 percent preserved Right to Buy discount to which Mrs C was originally entitled, should ensure that Mr and Mrs C receive an ex-gratia payment to reflect the terms of the loss they have incurred financially being the difference between the price under Section 63 of the Housing (Scotland) Act 1987 under circumstances where a 70 percent discount would have applied under the preserved Right to Buy provisions and the price under Section 63 of the Housing (Scotland) Act 1987 under the modernised Right to Buy provisions.

7 December 2011

Main Investigation Report

Introduction

Legislative background

1. This complaint relates to a dispute over discount entitlement under the terms of the Right to Buy scheme. Most council tenants who have a secure tenancy have the right to buy their home, subject to a qualifying period. On 30 September 2002, the modernised Right to Buy came into effect alongside the Scottish Secure Tenancy. Tenants with an existing tenancy of more than two years, which started before 30 September 2002, could apply to purchase their homes.

2. Tenants living in flats entitled to discounts under the old Right to Buy scheme could accrue a discount of 44 percent of the property's value after two years, up to 70 percent after 15 years. Under the modernised Right to Buy scheme, the maximum discount applicable is 35 percent after 20 years or £15,000 whichever is lower.

3. Where there is one tenant, the tenant has the Right to Buy and the tenant's spouse has the right to be a joint purchaser. The tenant's spouse has no Right to Buy as a sole purchaser. If a sole tenant assigns or transfers his or her tenancy to his or her spouse, this creates a new tenancy for the purpose of discount calculation. The original tenant's discount entitlement is not transferred or assigned (where there is a sole tenancy).

4. Mr C contacted my office on 9 June 2010. Mr C stated that South Lanarkshire Council (the Council) had advised him that the transfer of tenancy from Mrs C to himself would have no impact on the level of discount he would receive under the Right to Buy scheme. Mrs C has lived at X Avenue since 1987 and Mr C since 1992. Prior to the assignation of the tenancy, Mrs C had been the sole tenant and had accrued the maximum discount of 70 percent of the total market value of her property should she have decided to purchase the property under the Right to Buy scheme. On 30 September 2008, Mr C was assigned the tenancy of the property at X Avenue and became the sole tenant although Mrs C remained in the property.

5. Following the assignation of the tenancy Mr C made an application in October 2008 to buy his property under the Right to Buy scheme. His application was initially processed under the old Right to Buy scheme and he

was advised that the level of discount he was entitled to was £39,200 being 70 percent of the said market value. However, the Council subsequently advised Mr C that his application should have been processed under the modernised Right to Buy scheme. As a result, the maximum discount he could receive was £15,000.

6. The complaint from Mr C which I have investigated is that Mr C was wrongly advised by the Council of the impact of a transfer of tenancy from Mrs C to himself on his Right to Buy discount.

Investigation

7. The investigation was based on correspondence supplied by Mr C and the Council's response to my complaints reviewer's enquiries. I have also considered the Council's Operational Procedure Housing Management (HM), Section 4a - Tenancy Sign Ups and the Council's Operational Procedure Housing Management (HM), Section 7b – Assignment of Tenancy. The Assignment of Tenancy procedure states at paragraph 3.4 that:

'Where a tenant wishes to assign their tenancy they should always be made aware of the consequences that may result. For example... a tenant who assigns their tenancy will normally fall under the modernised Right to Buy provisions if they subsequently apply to buy another public sector tenancy ...'

8. I have also taken into consideration The Housing (Scotland) Acts 1987 and 2001, the SEDD Circular 5/2002 and The Scottish Government Publication 'Your Right to Buy Your Home'.

9. 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.

Complaint: Mr C was wrongly advised by the Council of the impact of a transfer of tenancy from Mrs C to himself on his Right to Buy discount

10. Mr and Mrs C approached the Council in September 2008 to discuss transfer of tenancy options. The local office received a request from Mrs C to assign the tenancy of the property on 12 September 2008. Following receipt, the Housing Officer (Officer 1) contacted Mrs C to discuss her application. On 30 September 2008, Mr and Mrs C attended the local office to complete the

relevant tenancy assignment and related paperwork. The assignment was backdated to 15 September 2008.

11. On 13 October 2008, the Council acknowledged Mr C's application to purchase his Council house. Mr C had stated on the application that his tenancy had commenced on 14 December 1987 (the date that Mrs C's tenancy had commenced). Following routine checks his application was processed under the old Right to Buy scheme and, on 6 November 2008, he received a formal offer to sell based on the maximum discount of 70 percent of the total property value. This was based on the 1987 date. Mr C approached his solicitor to proceed with the purchase on the basis of the formal offer made by the Council. However, the Council subsequently identified an issue around the tenancy commencement date and, on 15 January 2009, the Council advised Mr C's solicitor that, as Mr C had only taken over the tenancy on 15 September 2008, the application should have been processed in terms of the modernised Right to Buy. The Council explained that, as a result, they would not be able to proceed on the basis of the price set out in the offer made to Mr C on 6 November 2008.

12. On 17 March 2009, the Council wrote to Mr and Mrs C advising them that, in view of the errors identified in this case, they would reimburse the legal fees Mr C had incurred in connection with his application to purchase his Council house (see paragraphs 22 and 23).

13. On 5 October 2009, the Council acknowledged Mr C's further application to purchase his Council house. A formal offer to sell was issued to Mr C on 10 November 2009. In line with the terms of the Housing (Scotland) Act 2001, the maximum discount available under the modernised Right to Buy was 35 percent of the market value or £15,000, whichever was the lower amount. This application was time barred on 27 January 2010 and did not proceed.

14. Mr C's complaint to this office was based on the conversations both he and Mrs C had with two housing officers and the incorrect advice that he claimed they were given, that their right to discount would not be affected by the transfer of the tenancy from Mrs C in September 2008.

15. Mr C stated they were wrongly advised during a telephone conversation with Officer 1 that transferring the tenancy from Mrs C to himself would not

affect their Right to Buy discount. He further claimed that at no point was the issue of a joint tenancy mentioned.

16. Mr and Mrs C subsequently had a meeting with a housing assistant (Officer 2) on 30 September 2008, at which he claimed they were given incorrect advice of the impact the transfer of the tenancy would have on their Right to Buy discount. Mr C stated that when he asked Officer 2 if the tenancy was signed over to him would their years of tenancy or discount be affected, he was advised this would have no effect. Mr C explained to my complaints reviewer that Officer 2 did not offer advice on modernised Right to Buy. He stated that when the new tenancy agreement was brought into the meeting with Officer 2 for their signature, he again asked Officer 2 if there would be any effect on their years of tenancy or discount and that Officer 2 again said no but indicated he would ask another officer.

17. Mr C indicated that Officer 2 returned to the meeting room and advised them that their years of tenancy or discount would not be affected, as long as he could prove that he had stayed at the address as part of a married couple for the required period. In making his complaint to this office, Mr C questioned whether anyone would give up 22 years of tenancy without asking how they would be affected.

18. The Council, in response to formal enquiries, stated that they would provide advice regarding the loss of tenancy rights in accordance with their Assignment of Tenancy procedure and that this could include the advice regarding the modernised Right to Buy provisions. In this case, on receipt of a request by Mrs C to assign the tenancy of the property on 12 September 2008, Officer 1 contacted Mrs C to discuss her application. The Council confirmed that, whilst Right to Buy legislation was not specifically discussed during the conversation (see paragraph 19), Officer 1 recalled advising Mrs C to consider the option of a joint tenancy. Officer 1 stated that she highlighted that assignment would result in Mrs C losing all rights to the tenancy. She recalled that Mrs C had indicated that the reason for the request was so that Mr C could obtain a mortgage to purchase the Council house. Officer 1 stated that Mrs C was advised that by applying for a joint tenancy she would retain all her tenancy rights. The Council have indicated that Mr and Mrs C decided to progress with the assignment despite the advice regarding the option of a joint tenancy.

19. My complaints reviewer asked the Council to expand on their statement '... not specifically discussed'. The Council have confirmed that they used this statement as, given the passage of time (2008), Officer 1 could not now recall whether Right to Buy was discussed. However, Officer 1 did remember that she had a general discussion with Mrs C and, as indicated above, advised Mrs C of the implications for her of giving up her tenancy.

20. The Council stated that, on 30 September 2008, Mr and Mrs C attended the local office to complete the relevant assignation and related paperwork. They confirmed that Officer 2 completed the termination of tenancy documentation with Mrs C and assignation/new tenant paperwork with Mr C. The Council provided me with a copy of the relevant paperwork, including the Tenancy Sign Up Checklist. The Council indicated that Officer 2 had confirmed that the process was followed in terms of providing information held within the tenancy agreement and schedule, including guidance on the modernised Right to Buy. The Council stated the usual advice provided on the modernised Right to Buy should refer to qualifying occupancy period and the limits on discounts for tenants who have taken up their tenancy after 30 September 2002. Officer 2 also confirmed that a copy of the Scottish Secure Tenancy Agreement Schedule (the Schedule) was given to Mr C prior to the start of the meeting.

21. The Council accepted that Officer 2 failed to complete fully the standard checklist which recorded the information discussed, including the Right to Buy. However, the Council confirmed that Officer 2 had stated that no questions or concerns regarding Right to Buy were raised at the meeting and no one was called upon during the interview to give their advice. Officer 2 stated that he had regarded the meeting as straightforward, given that the assignation request had been received and approved in line with the Council's Estate Management policy prior to his involvement.

22. The Council have explained that the case was subsequently reviewed and it was found that the records, in relation to the new tenant paperwork (sign up checklist), were not as robust as expected. While the Council indicated that they had no reason to believe inaccurate information was provided to Mr and Mrs C, it was considered that more comprehensive information should have been recorded to evidence that the information provided was accurate and that internal systems had been fully updated. In addition, the IT process for ending Mrs C's tenancy and beginning the new tenancy had not been fully completed although the assignation was properly recorded. The IT system had not been

fully updated and Mrs C's original date of entry of 14 December 1987 had not been altered.

23. In view of the errors identified above (see paragraph 22), the Council offered to pay the legal fees incurred by Mr C in connection with his original application submitted in October 2008 to buy his property as full and final settlement of the matter.

24. The Council advised Mr C that they had no discretion to decide which Right to Buy rules applied. Legislation determined this on the facts of the case as set out in the Housing (Scotland) Act 1987 and 2001, and S1 2002/318. The Council, therefore, could not ignore that the transfer of tenancy had occurred. As Mr C's tenancy commenced after 30 September 2002, the application to buy required to proceed under the modernised Right to Buy rules.

25. My complaints reviewer asked the Council to provide copies of their file notes confirming the advice Officer 1 gave to Mrs C when discussing the Assignment of Tenancy application. The Council explained that it was not always standard practice for such telephone conversations to be recorded and that there was no file note confirming the advice given. I am aware that Mr and Mrs C's recollection of the telephone conversation with Officer 1 differs from the Council's account of that conversation. In particular, while Mr C maintained that the option of a joint tenancy was not discussed, the Council maintained that the option of entering a joint tenancy was discussed. However, I have not been able to establish the facts of what was said during this conversation or the advice that was given.

26. I am also aware that Mr C's recollection of the meeting with Officer 2 on 30 September 2008 differed from the Council's account. While Mr C maintained that Officer 2 did not refer to modernised Right to Buy and that he was given incorrect advice in response to his questions about the implications of Mrs C transferring her tenancy, the Council maintained that no specific questions were raised and that advice on modernised Right to Buy was given. However, the Council have been unable to provide documentary evidence to confirm that advice on modernised Right to Buy was given.

27. Having viewed the completed checklist at the section 'Advised re Modernised Right to Buy', it is marked 'N/A'. As indicated above, the Council accepted that the paperwork did not reflect that the correct process was

followed. They have explained that this was discussed with Officer 2 at the point of Mr C's initial enquiry and that, at that time, he had confirmed that the process was followed.

28. The Council have explained that the schedule was provided in advance of the sign up and that local office checks had confirmed compliance with the sign up process in terms of covering the schedule. My complaints reviewer asked the Council for more information on the office checks which had been carried out. The Council explained that, at service development sessions held in January 2010, mock sign up sessions had been carried out and the feedback of the sessions confirmed that officers were going through the full schedule. The local office checks were, however, carried out after the assignation of the tenancy to Mr C.

29. The Council have confirmed that, in response to this case, immediate remedial action was taken to ensure that staff were fully briefed on the relevant Estate Management Procedures, including associated recording procedures. In addition, the Tenancy Sign Up Procedure was being reviewed in light of this case, to ensure that the procedure was robust in relation to the advice provided on the modernised Right to Buy. The Council's Legal Service was contributing to this review. Once the review was completed, a formal training programme on the Tenancy Sign Up Procedure would follow. This training would cover the process to be followed and the advice to be provided for tenancy sign ups for new tenants and, in cases of tenants assigning their tenancies succession and mutual exchanges.

30. As indicated above, I am unable to confirm the advice that Mr and Mrs C were given verbally by Council staff. The Council have indicated that Mr C was provided with a tenant's information pack, which includes a leaflet with specific reference to the provisions of the modernised Right to Buy. However, this would have been provided after Mr C had made his decision to take over the tenancy from Mrs C. The Council have also indicated that information on modernised Right to Buy was sent to all tenants in August 2007 and that this would have included Mrs C.

31. In addition, my complaints reviewer was provided with a copy of an earlier application completed by Mrs C to purchase her Council house, which was received by the Council on 10 April 2007. This application listed Mr C as a tenant and, as such, was signed by him. Included with this application was

advice on modernised Right to Buy in relation to discount, which detailed that, in relation to tenancies created on or after 30 September 2002, a cap would be set. Reference was also made to the Scottish Executive booklet, 'Your Right to Buy Your Home'. This application did not proceed.

32. In responding to the draft of the report, the Council have explained that it was possible to return Mr and Mrs C to the position which they were in prior to the assignation of the tenancy. At that point, they would have three alternatives, namely:

- to leave the tenancy in Mrs C's sole name;
- to add Mr C as a party to the tenancy and create a joint tenancy; or
- to proceed with the assignation of the tenancy to Mr C, thereby creating a new tenancy.

Conclusion

33. The Council have confirmed that they were aware that the reason for Mrs C assigning the tenancy to Mr C was for the purpose of Mr C obtaining a mortgage to purchase their Council house. By assigning the tenancy, a new tenancy would be created and Mrs C's discount entitlement would not be transferred to Mr C. In these circumstances, I would have expected the Council to have provided advice on Right to Buy legislation. There is no documentary evidence to show that Mrs C was made aware of the implications of assigning the tenancy.

34. There is clearly a difference of view between Mr C and the Council about the advice given during the meeting held on 30 September 2008. I cannot confirm the information that Mr C said he was given verbally by staff when enquiring as to how his Right to Buy discount would be affected by the transfer. However, the Council have provided no record that their procedures were followed fully in Mr C's case. The checklist provided by the Council is marked 'N/A' at the section dealing with modernised Right to Buy. In these circumstances, I am not persuaded that modernised Right to Buy was discussed at the meeting.

35. I am satisfied that information on modernised Right to Buy was previously provided to Mr and Mrs C in 2007, when Mrs C approached the Council about purchasing her Council house. However, in terms of the Council's procedures, this information should have been provided at the sign-up interview prior to Mr C accepting the tenancy in 2008. The Council have failed to satisfy me that

Mr C was provided with all of the required modernised Right to Buy information prior to accepting the tenancy.

36. I am aware that Mr C believes he was wrongly advised by the Council on the impact of a transfer of tenancy in relation to Right to Buy discount. By wrongly advised I mean that Mr C was not supplied with all the relevant information on Modernised Right to Buy. My investigation has been unable to establish the information given verbally to Mr and Mrs C. However, I consider the failure to evidence that advice on the Modernised Right to Buy was provided to Mr C is a serious omission. Because of this omission, it is my view that Mr C was wrongly advised. I note that the Council have taken and are taking remedial action in response to this case, however, taking into account all of the circumstances, I uphold this complaint.

37. I make the following recommendations and, in implementing them, I would expect the Council to take cognisance of my office's Redress Policy and Guidance. This states:

'The general principle is that, wherever possible and practicable, someone detrimentally affected when something has gone wrong should be returned to the position they would have been in if the failure had not occurred.'

Recommendations

	<i>Completion date</i>
38. I recommend that the Council:	
(i) keep a written record of the advice given when processing Assignment of Tenancy applications;	14 September 2011
(ii) ensure that the review of the Tenancy Sign Up Procedure is completed as a matter of urgency;	14 September 2011
(iii) consults with Mr and Mrs C in order to offer them an opportunity to enter into a joint tenancy or to re-assign the tenancy to Mrs C. In the event that Mrs C then subsequently applies to purchase the property either alone or jointly with Mr C, the Council shall apply to the Scottish Ministers for consent to the sale on the basis of the preserved Right to Buy discount to which Mrs C was entitled; and	14 September 2011

(iv) in the event that the Scottish Ministers do not consent to any subsequent sale on the basis of the 70 percent preserved Right to Buy discount to which Mrs C was originally entitled, should ensure that Mr and Mrs C receive an ex-gratia payment to reflect the terms of the loss they have incurred financially being the difference between the price under Section 63 of the Housing (Scotland) Act 1987 under circumstances where a 70 percent discount would have applied under the preserved Right to Buy provisions and the price under Section 63 of the Housing (Scotland) Act 1987 under the modernised Right to Buy provisions.

7 December 2011

39. The Ombudsman asks that the Council notify him when the recommendations have been implemented.

Explanation of abbreviations used

Mr C	The complainant
Mrs C	The complainant's wife
The Council	South Lanarkshire Council
Officer 1	Housing Officer
Officer 2	Housing Assistant
The Schedule	Scottish Secure Tenancy Agreement Schedule

List of legislation and policies considered

Housing (Scotland) Act 1987

Housing (Scotland) Act 2001

SEDD Circular 5/2002

Scottish Government Publication 'Your Right to Buy Your Home'

Operational Procedure Housing Management (HM) Estate Management –
Section 4a - Tenancy Sign Ups

Operational Procedure Housing Management (HM) Estate Management –
Section 7a - Assignment of Tenancy