

## Scottish Parliament Region: Highlands and Islands

### Case 200500797: Argyll and Bute Council

#### Introduction

1. On 21 June 2005 the Ombudsman received a complaint from Mr C and his partner Mr D that Argyll and Bute Council (the Council) had failed to award them medical points when considering their housing application.
2. Subsequently Mr C and Mr D raised concerns that the Council had failed to consider them homeless under the terms of the Scottish Executive Code of Guidance on Homelessness due to their 'fear of external violence'.
3. The complaints from Mr C and Mr D which I have investigated concerned:
  - (a) whether Mr C and Mr D should have been awarded medical points towards their housing application;
  - (b) whether the Council should have awarded Mr C and Mr D homelessness status as they stated that they lived with the fear of violence from members of Mr D's family.

In addition, during the course of my investigation the following complaint was raised:

- (c) the Council acted in a discriminatory fashion in their communication with Mr C and Mr D.
4. Following the investigation of all aspects of this complaint I came to the following conclusions:
  - (a) not upheld, see paragraphs 6 to 10;
  - (b) not upheld, see paragraphs 11 to 26;
  - (c) not upheld, see paragraphs 27 to 30.

### **Investigation and findings of fact**

5. The investigation of this complaint involved obtaining and reading all the relevant documentation, legislative background, complaint files and procedures in particular the Council's Housing Allocations policy. I made a written enquiry of the Council and discussed the case with them a number of times by telephone. I have set out for the heads of Mr C and Mr D's complaint which I have identified, my findings of fact and conclusions. Mr C, Mr D and the Council have been given the opportunity to comment on a draft of this report.

#### **(a) Failure of the Council to award medical points**

6. The Council operates a points based housing allocation system. The original complaint raised by Mr C and Mr D related to the Council's failure to award them medical points on their initial application or subsequent appeal, in respect of their on-going medical problems. Both Mr C and Mr D have mental health problems and currently live in supported accommodation in Glasgow.

7. On 25 October 2004 Mr C and Mr D completed a Housing Application Form which they forwarded to the Council. In addition to this document they completed a self assessment medical form.

8. The Council's Housing Allocations policy details the criteria for awarding additional medical points to applicants. On receipt of the application, self assessment medical form and any other supporting documentation, an application will be considered by the Council's Independent Medical Adviser (the adviser). The adviser determined that Mr C and Mr D were already adequately housed and supported and, therefore, did not qualify for additional points for medical reasons.

9. Mr C and Mr D had their names placed on the Housing List without additional medical points. Due to the high demand for houses in the areas they have requested and the type they requested, it is unlikely that they will be allocated a home in the near future. The Council have suggested that they may wish to broaden their area of search and increase the variety of homes which they are willing to consider to enable a speedier allocation. I do not believe this has been acceptable to Mr and Mrs D.

10. I have found no evidence that the Council have not followed the correct procedure when considering this application on medical grounds. Therefore I do not uphold this aspect of the complaint.

**(b) Failure of the Council to consider Mr C and Mr D as homeless because of their living in fear of violence.**

11. When Mr C and Mr D completed the original Housing Application Form in October 2004, they indicated on the form, by altering and then ticking a box, that they had suffered from homophobic harassment. No other mention was made at that stage of concerns on this issue. Space was provided on the Form for further details of any relevant factors pertaining to the application, but no further information was provided.

12. In May 2005 the Council received a number of letters supporting Mr C and Mr D's application. These provided information concerning a history of bullying and intimidation by members of Mr D's family. It was also mentioned that this history of intimidation had led to additional mental health problems and an increased state of anxiety for Mr D.

13. On receipt of this correspondence, the Council referred the matter back to the advisor to establish whether this affected Mr C and Mr D's application. After reviewing the correspondence and discussing the history with Mr C and Mr D's general practitioner, the Adviser was of the opinion that this information did not alter his previous decision.

14. On 2 June 2005 the Council wrote to Mr C and Mr D to advise that they had reviewed the application and were still of the belief that there was no medical reason for them to be re-housed in the Council area.

15. On 26 August 2005 representations were made to the Council's Homeless Persons Officer by Shelter. They suggested that Mr C and Mr D should be considered homeless in terms of the Housing (Scotland) Act 2001 as amended, as they did not have accommodation which was reasonable for them to continue to occupy.

16. The Senior Housing Aid worker from Shelter considered that it was not

reasonable for Mr C and Mr D to continue to reside at their address due to their 'expressed fears of external violence'.

17. In particular, it was argued that the Scottish Executive Code of Guidance on Homelessness (5.13) provided examples where the 'unreasonable to occupy' test should apply in terms of homelessness. Specifically, the guidance states that local authorities should react sympathetically to applications from people who are in fear of external violence.

18. When defining abuse, the guidelines state (4.38) that 'staff should interpret abuse widely to include any form of violence, harassment, threatening conduct and any other behaviour giving rise or likely to give rise to physical or mental injury, fear, alarm or distress and not just domestic, racial or sexual abuse.'

19. From my review of the available information I believe that the Council have given reasonable consideration to this matter. Based on the information they have obtained concerning the current housing arrangements and historic problems of intimidation and harassment, they considered that Mr C and Mr D are appropriately housed at present and should not be considered homeless. Their consideration is evidenced by correspondence obtained from the complaints file held by the Council. The issue was first considered by the Medical Officer in May 2005 when the supporting letters were received.

20. Within the correspondence obtained by this office is a memo from the Assistant Area Housing Manager to the Head of Housing Services, detailing the reasons why he/she did not consider that Mr C and Mr D were homeless under the terms of the legislation. The memo acknowledged that, in the past, Mr D had been financially exploited, emotionally abused and physically assaulted. It also stated, however, that he/she did not believe that there was evidence to suggest that there was any current violence or actual threat of violence at their present address.

21. The Chief Executive provided an explanation of why the Council did not consider Mr C and Mr D homeless in writing to them on 14 September 2005. Further clarification was provided in a letter to Mr C and Mr D from the Area Housing Officer on 28 October 2005, who confirmed that this view was taken after discussion with their social workers and support workers.

22. There is no evidence to suggest that the Council have acted unreasonably in their consideration of the housing application. As a result of my investigation I do not believe that the Council are in breach of their responsibilities in terms of the statutory framework and associated Scottish Executive guidelines. I do not uphold this aspect of the complaint.

*Letters of support*

23. I consider it likely, however, that the Council did not give full consideration to the contents of the letters of support received by them in May 2005. Whilst this application clearly had medical implications, it should not solely be the responsibility of the adviser to consider other potentially non-medical issues such as 'living in fear of violence and intimidation'.

24. When these letters were received, they were referred to the adviser. There is no documentary evidence to indicate that, at this time, these matters were examined by any other officer in the context of the statutory responsibilities of the Council. The adviser is not likely to be in a position to be able to assess the Council's responsibilities under the relevant housing or homelessness legislation. It would be good practice to have these matters reviewed by a Housing Officer who should clearly document their consideration.

25. There is clear documentary evidence that the Council gave appropriate consideration to Mr C and Mr D's fear of potential violence at a later stage. It is not, however, clear that officers considered the point in May 2005 when it was first raised in the letters of support for the application from Mr C and Mr D's Housing Support Manager, Social Work Department, Senior Project Worker and General Practitioner.

26. As a result of the above, I believe the Council should consider highlighting to staff their responsibilities in terms of considering applications from individuals claiming to be living in fear of violence, and additionally review their procedures to ensure that when these issues are examined, the reasons for any decision are clearly documented.

**(c) The Council acted in a discriminatory fashion in their communication with Mr C and Mr D**

27. The Council operates an 'Equality Policy for Service Users' to deal with allegations of discrimination by Council staff members. Any allegations against Council officers are dealt with and investigated in line with the Council's Complaints Procedure.

28. Both the Director of Community Services and the Chief Executive have investigated these allegations and both consider them to be unfounded. The Director of Community Services advised Mr C and Mr D of the results of his investigation on 8 August 2005.

29. The allegations of discrimination in part relate to two letters issued by the Council. In one acknowledgment issued by the Head of Housing the letter was addressed to Mr C and Ms D. In another, sent by the Assistant Area Housing Manager one word in their address was incorrectly typed. The Council have investigated these errors, explained that they believe them to be unfortunate typographical errors, and apologised. Whilst I agree that these errors were indeed unfortunate, I consider the apology already given by the Council to be appropriate.

30. During the course of my investigation I have found no evidence to suggest that the Council have acted in a discriminatory way at any stage in their dealings with Mr C and Mr D. As a result I do not uphold this aspect of the complaint.

27 June 2006

**Explanation of abbreviations used**

Mr C	The complainant
Mr D	The complainant's partner
The Council	Argyll and Bute Council
The advisor	The Independent Medical Advisor