

Scottish Parliament Region: North East Scotland

Case 200604038: Aberdeen City Council

Summary of Investigation

Category

Local government: Right to Buy

Overview

The complainant (Mrs C) complained on behalf of her daughter (Miss A). She said that Aberdeen City Council (the Council) allocated Miss A a flat in 2002 that they had failed to designate as amenity housing due to an administrative failure. In February 2006, Miss A applied to the Council to buy the property. The Council wrote to Miss A on 10 August 2006 to advise that her application had been refused. They said that the flat had facilities that were substantially different from those of a normal property. They stated that it had been designed and adapted for occupation by a person of pensionable age, whose special needs require accommodation of the kind provided by the flat.

Specific complaint and conclusion

The complaint which has been investigated is that Miss A has not been able to purchase her Council flat under the right to buy scheme, because of an administrative failure by the Council (*upheld*).

Redress and recommendations

The Ombudsman considers a proposal made by the Council to Miss A to be a reasonable response and is satisfied as far as is possible that the Council have now taken steps to address the complaint. The Ombudsman also welcomes the Council's assurance that they will take a similar approach in response to other complaints of this nature. In light of this, the Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 16 April 2007, the Ombudsman received a complaint from the complainant (Mrs C) on behalf of her daughter (Miss A). Mrs C said that Miss A had been mistakenly allocated an amenity flat in 2002 due to Aberdeen City Council (the Council)'s maladministration. Miss A made an application to buy the flat under the right to buy scheme in February 2006. Although a modernised right to buy scheme was introduced in September 2002, under the transitional arrangements, tenants who lived in a property prior to the introduction of this scheme retained their right to buy the property under the old scheme (see Annex 2). The discount awarded to tenants under the modernised scheme is substantially lower than the discount awarded under the old scheme.

2. On 8 March 2006, the Council applied to the Scottish Executive¹ (the Executive) for refusal to sell the property, as it had been designated as amenity housing in 2003. The Executive granted the application in August 2006 and the Council wrote to Miss A on 10 August 2006 to advise that her application to buy the property had been refused. The Council subsequently advised Miss A that she could apply to transfer to another property. They said that any application to buy the new property would be dealt with under the modernised right to buy scheme, which was not as generous as the old scheme in terms of discount.

3. The complaint from Mrs C which I have investigated is that Miss A has not been able to purchase her Council flat under the right to buy scheme, because of an administrative failure by the Council.

Investigation

4. The investigation of the complaint involved obtaining and reading all the relevant documentation including correspondence between Miss A, her MSP and the Council. I have also examined the correspondence between the Council and the Executive. On 27 June 2007, I sent a written enquiry to the Council. I received their response on 23 July 2007.

¹ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

5. 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 Council were given an opportunity to comment on a draft of this report.

Complaint: Miss A has not been able to purchase her Council flat under the right to buy scheme, because of an administrative failure by the Council

6. The flats in which Miss A lives were built in 1987. The predecessor Council designated the flats as mainstream housing instead of amenity housing in error. They have been unable to provide further details about this due to the passage of time. Miss A's flat was let to her as a mainstream Council property on 29 April 2002. On 9 September 2003, the flats were re-designated as amenity housing. Three of the flats were sold under the old right to buy scheme during the period September 1994 to December 2003 (the application to buy the property sold in December 2003 was submitted in April 2002, before the flat was designated as amenity housing).

7. Miss A applied to buy her flat under the right to buy scheme on 22 February 2006. On 8 March 2006, the Council applied to the Executive for authority to serve a notice of refusal to sell the flat under Section 69 of the Housing (Scotland) Act 1987 (see Annex 2). On 7 August 2006, the Executive issued a letter stating that the Scottish Ministers had given authority to serve a notice of refusal on Miss A's application to buy the property. The Council wrote to Miss A on 10 August 2006. They said that her application to buy the flat had been refused and gave the reasons for this.

8. Miss A wrote to the Council's Chief Executive on 24 August 2006. She said that she had not been advised that the property was amenity housing when it was allocated to her and would not have accepted it if she had known this. She said that she always intended to buy the property and that three other identical properties had previously been sold. The Chief Executive responded on 19 September 2006. He said that the properties had been designed and built as amenity flats, but had not been designated as such due to an administrative error. He said that this was perhaps the reason that three flats had previously been sold. He also said that the Council would be happy to discuss the options available should she wish to explore the possibility of transferring to alternative accommodation.

9. The Council wrote to Miss A's MSP on 8 January 2007 and said that if Miss A transferred to another Council property, any application to buy the property would be dealt with under the modernised right to buy scheme. The discount that Miss A is entitled to under the modernised right to buy scheme is substantially less than what she would have been entitled to under the old scheme. The MSP was advised that Miss A could then submit a claim against the Council's insurers if she considered that she had suffered a financial loss.

10. Tenants with a right to buy under the old scheme can retain this right in certain circumstances where the landlord has sought to recover the possession of the tenancy and provided suitable alternative accommodation. Miss A's MSP wrote to the Council on 22 January 2007 to ask if they were willing to recover possession of the flat and provide another property in order that Miss A could retain her right to buy a new property under the old right to buy scheme. The Council wrote to the MSP again on 15 February 2007 and said that they would not be taking action to recover possession of Miss A's tenancy.

11. In response to my enquiries about the matter, the Council advised me that for the last few years they have been compiling a register of their amenity houses and flats. This is largely based upon surveys carried out following the submission of Council house purchase applications. Prior to this, the Council had no record of the addresses of their amenity housing and consequently, internal house surveys were carried out for every Council house purchase application.

12. An application for a notice of refusal must be submitted to the Executive within one month of the Council receiving the house purchase application. Due to the number of applications received by the Council, the surveys were often completed outwith the one month deadline for the notice of refusal. They said that it was likely that this was why they did not apply to the Executive for consent to issue a notice of refusal on the three properties that were sold.

13. The Council have also told us that they updated their computer system to record every property in Miss A's street as amenity housing on 9 September 2003. The Council stated that all applications to buy properties in the street submitted since September 2003 have been refused. The properties are now only allocated to applicants who qualify for amenity housing and they are advised that they will not be able to buy the property.

Conclusion

14. The facts of the case are not in dispute and I accept that the Council are entitled to apply to the Executive for authority to serve a notice of refusal on an application for a property that they consider to be part of their amenity housing stock. However, there has been clear maladministration in Miss A's case in that the Council initially failed to designate her flat as amenity housing and then allocated her a property that, if the designation had been made as originally intended, Miss A should clearly not have been given. Furthermore, the Council previously sold properties in Miss A's street that they should have retained as part of their amenity housing stock. I, therefore, uphold the complaint.

Recommendation

15. Miss A has suffered an injustice in that she is now in a position where she cannot exercise her right to buy her current flat. Any voluntary transfer of tenancy would result in her right to buy being governed by the new right to buy scheme rather than by the old scheme. In Miss A's case that would mean that she would be entitled to a 20% discount rather than a 50% discount. This has not happened through any fault of her own, but because the Council let her a flat that should have been designated as amenity housing. The injustice has been aggravated by the fact that other tenants have been able to exercise their right to buy other similarly adapted houses in the same street.

16. The proper remedy for this is that Miss A is put in a position where she would suffer no disadvantage because of the situation I have described and that no one else suffers a similar injustice. However, I am aware that achieving this is not entirely straightforward. I have, therefore, discussed with the Council how a remedy might be achieved.

17. The Council have made a proposal to Miss A in response to this and have given an assurance that they will take a similar approach in response to other complaints of this nature. The Ombudsman considers the proposal to be a reasonable response and is satisfied as far as is possible that the Council have now taken steps to address the complaint. However, Miss A retains the right to bring the matter back to the Ombudsman if she is unhappy with the Council's progress.

18. The Ombudsman also welcomes the Council's assurance that they will take a similar approach in response to other complaints of this nature. In light of this, the Ombudsman makes no recommendations.

19 December 2007

Explanation of abbreviations used

Mrs C	The complainant
Miss A	The aggrieved
The Council	Aberdeen City Council
The Executive	The Scottish Executive
RTB	Right to Buy
RSL	Registered Social Landlord

List of legislation and policies considered

Scottish Executive guidance on the modernised right to buy – Housing (Scotland) Act 2001 (Paragraphs 112 and 113):

112. An effect of the Introduction of the Scottish Secure Tenancy Order 2002 will be to ensure that tenants with a right to buy their house before the introduction of the Scottish secure tenancy will continue, after their tenancy is converted to a Scottish secure tenancy, to be able to exercise that right on the pre-2001 Act terms and conditions, rather than the terms and conditions which apply to the 'modernised' RTB. These will be secure tenants of local authorities, RSLs and water authorities and some assured tenants of RSLs who have a preserved RTB. These tenants will, therefore, continue to be able to exercise the RTB after a 2-year qualifying period and be eligible, depending on the length of residence, to a maximum discount of up to 60% in the case of houses and 70% in the case of flats. If the tenant has not completed the initial qualifying period at the point at which the Scottish secure tenancy is introduced, he or she will still be able to exercise the RTB on pre-2001 Act terms and conditions, rather than those associated with the modernised RTB.

113. Subject to the exceptions described in paragraphs 114 and 116 below [paragraphs not included in report], this protection will only be available for tenants in tenancies which are converted from secure or assured tenancies to Scottish secure tenancies. In general, tenants of new tenancies created after the introduction of the Scottish secure tenancy, including new tenancies created as a result of transfers or exchanges by existing tenants, will only be able to exercise the RTB on 'modernised' terms and conditions (i.e. they will be subject to a 5-year qualifying period and be eligible for a maximum discount of 35% subject to a cap of £15,000). Tenants who would otherwise continue to be eligible for the RTB on pre-2001 Act terms and conditions who are contemplating a transfer or exchange should be advised of the possible implications of this, so that they can consider their position.

Housing (Scotland) Act 1987 (c.26) (Section 69):

Secretary of State's power to authorise refusal to sell certain houses provided for persons of pensionable age:

(1) This section applies to a house which has facilities which are substantially different from those of an ordinary house and which has been designed or adapted for occupation by a person of pensionable age whose special needs require accommodation of the kind provided by the house.

(2) Where an application to purchase a house is served on a landlord and it appears to the landlord that—

(a) the house is one to which this section applies; and

(b) the tenant would, apart from this section, have a right under section 61 to purchase the house,

the landlord may, within one month after service of the application to purchase, instead of serving an offer to sell on the tenant, make an application to the Secretary of State under this section.

(3) An application under subsection (2) shall specify the facilities and features of design or adaptation which in the view of the landlord cause the house to be a house to which this section applies.

(4) Where the Secretary of State has received an application under this section and it appears to him that the house concerned is one to which this section applies, he shall authorise the landlord to serve on the tenant a notice of refusal under this section, which shall be served as soon as is practicable after the authority is given and in any event within one month thereafter.

(5) A notice of refusal served under subsection (4) shall specify the facilities and features specified for the purposes of subsection (3) and that the Secretary of State's authority for service of the said notice has been given.

(6) Where the Secretary of State refuses an application made under subsection (2), the landlord shall serve on the tenant an offer to sell under section 63(2)—

(a) within the period mentioned in that section; or

(b) where the unexpired portion of that period is less than one month or there is not an unexpired portion of that period, within one month of the Secretary of State's refusal.