

## Scottish Parliament Region: Central Scotland

### Case 200700122: North Lanarkshire Council

#### Summary of Investigation

##### **Category**

Local government: Housing; aids and adaptations to council tenancy

##### **Overview**

The complainant (Mrs C) raised a number of concerns regarding her housing circumstances, particularly with regard to her request to North Lanarkshire Council (the Council) for re-housing from her previous home, their handling of her request for a mutual exchange, and their refusal to provide appropriate aid and adaptations in her current flat and to take measures with regard to the presence of asbestos.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that the Council:

- (a) did not properly respond to Mrs C's request for re-housing because of threats to her son (*not upheld*);
- (b) unreasonably requested that Mrs C sign an undertaking not to request adaptations in her current flat (*partially upheld*);
- (c) infringed Mrs C's human rights and her rights as a disabled person by failing to install adaptations following her move (*partially upheld*); and
- (d) unreasonably failed to repair or remove damaged asbestos panels in Mrs C's bathroom (*not upheld*).

##### **Redress and recommendation**

The Ombudsman recommended that the Council apologise to Mrs C for the inconvenience caused to her by failing to have proper regard to her assessed needs.

The Council have accepted the recommendation and will act on it accordingly.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mrs C) moved to her former home, a five apartment semi-detached house in March 1984 shortly before the birth of her fifth child. Following her estrangement from her husband, the tenancy was transferred to her name on 8 March 1995. On 13 January 2004, Mrs C applied for re-housing for her and for a son of 23 years who remained at home. Mrs C detailed her disabilities as including Chronic Fatigue Syndrome (Fibromyalgia) and chronic asthma. She stated that she found it difficult to walk up and downstairs. She requested a smaller, three apartment lower four in a block flat in a specific area (Area X). North Lanarkshire Council (the Council) noted that Mrs C was under-occupying her then current home and gave her application an effective date of 21 January 2004. In June 2005 Mrs C made a request for various aids and alterations to assist her in coping with her disabilities. A works order to install a wet floor shower was issued in October 2005 but the shower was not installed until 2 March 2006.

2. In the summer of 2005 Mrs C's son made a separate application for re-housing. Mrs C herself made various changes to her request for re-housing, supplied a doctor's letter of 1 December 2005, and also informed the Council that her son's life had been threatened. When no offer of re-housing was made by the Council, Mrs C and the tenant of a multi-storey flat requested permission to mutually exchange. This request was initially refused but subsequently granted on the understanding that Mrs C would not request adaptations to the flat. After moving in, Mrs C noted the presence of damaged asbestos panels in her bathroom which she requested the Council attend to. Mrs C also requested the Council to install aids and adaptations to the flat. When the Council refused to carry these out, Mrs C complained to the Ombudsman.

3. The complaints from Mrs C which I have investigated are that the Council:

- (a) did not properly respond to Mrs C's request for re-housing because of threats to her son;
- (b) unreasonably requested that Mrs C sign an undertaking not to request adaptations in her current flat;
- (c) infringed Mrs C's human rights and her rights as a disabled person by failing to install adaptations following her move; and
- (d) unreasonably failed to repair or remove damaged asbestos panels in Mrs C's bathroom.

## **Investigation**

4. The investigation is based on information provided by Mrs C and the Council. 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.

### **(a) The Council did not properly respond to Mrs C's request for re-housing because of threats to her son**

5. The Council provided me with a copy of the papers in Mrs C's housing files. Mrs C's application for re-housing was signed by her on 13 January 2004. Mrs C was regarded as under-occupying her five apartment house and she and her 23-year-old son who she included in her application were assessed as qualifying for three apartment accommodation. Mrs C indicated that her 19-year-old daughter then resident would not be moving with her. While Mrs C mentioned her disabilities she did not at the time supply a doctor's letter. Mrs C initially requested re-housing only in Area X.

6. On 17 June 2005, Mrs C's son submitted a separate application for re-housing. Mrs C emailed the former Area Housing Manager stating that she and her daughter would be seeking re-housing and that she wanted to be considered for a multi-storey flat in one of two tower blocks (Tower Block A and B). On 26 June 2005 Mrs C changed her request to another tower block (Tower Block C) and in a further email of 15 August 2005 confirmed that her son was looking for a two apartment flat in the same area. On 17 August 2005 Mrs C asked that three streets in Area X and a particular street in another area be added to her areas of choice and that she wanted a downstairs four in a block flat. On 20 August 2005 Mrs C emailed the Council stating that she wanted out of Area X stating that 'she needed to keep her son safe'. Having reflected on the matter, Mrs C asked that the three streets in Area X be re-included in her preferences and that she be considered for a three apartment downstairs four in a block. Mrs C was aware at that time (24 August 2005) that she was then currently seventh on the relevant housing transfer list. An email from Mrs C's son of 13 September 2005 indicates that in light of his separate application he was seeking to be re-housed in Area X. On 15 September 2005 Mrs C emailed the Senior Housing Officer (Officer 1) asking that her application be changed again to include her son but to remove her daughter. Mrs C was informed by reply that she could not remove her daughter and add her son as he had by then an application for housing in his own right.

7. In a further email of 4 November 2005 Mrs C asked Officer 1 to assist her in getting out of Area X. She stated that her son, who lived with her, was having trouble with members of a particular family and their friends. A threat to murder him had been reported to the police and also to Mrs C's solicitor (the Solicitor). On 8 November 2005 Mrs C, knowing that there were some flats empty there, asked that she be considered for only one particular tower block (Tower Block D). Following a telephone conversation with Officer 1 on 6 February 2006, Mrs C confirmed by email of 14 February 2006 that she only wished to be considered for Tower Block D.

8. Meanwhile, on 1 December 2005 Mrs C's general practitioner (the GP) sent a letter to Officer 1 stating that because of Mrs C's disability and walking impairment she would be best placed in flatted accommodation with a lift system. The GP reported that Mrs C was very keen to get away from the area where she lived because she was getting hassle from another family and was frightened at times to leave the house because of the abuse. The Council stated that they received this letter on 5 December 2005. Around the same time colleagues in the Anti Social Task Force and Community Police Team informed Officer 1 that Mrs C's son was involved in some trouble with local youths and that it might be beneficial for Mrs C and her son to be given a chance to move out of the area. However, it did not prove possible to make an early offer to Mrs C because she had restricted her choice of housing to a flat in Tower Block D.

9. The Council subsequently carried out a review of their house waiting lists. Mrs C returned her review form on 17 April 2006 indicating that in addition to the area of Tower Block D, she wished also to be considered for other tower blocks in the town in which she lived.

*(a) Conclusion*

10. I see no evidence that Mrs C's application for re-housing was other than properly considered. In the documents supplied the first reference to the safety of Mrs C's son was in an email of 20 August 2005, at a time Mrs C's son was pursuing a separate application to be re-housed. With regard to her own application, by restricting her preference to seeking re-housing in one tower block (Tower Block D), Mrs C's own choice reduced the likelihood of an early offer. I do not uphold this complaint.

**(b) The Council unreasonably requested that Mrs C sign an undertaking not to request adaptations in her current flat**

11. Mrs C made various requests for a number of adaptations including an external ramp, chair lift and a wet floor shower in her previous home. Mrs C was assessed in May 2005. In October 2005, a works order for a wet floor shower was issued but the work was programmed by the Council's contractor for the installation to take place at the end of February 2006. The Council stated that the work was ordered because it was unclear when a suitable transfer offer would be made to Mrs C. The works were completed on 2 March 2006 at a cost of £3884.32.

12. In March 2006 Mrs C learned that the tenant of a three apartment multi-storey flat wished to move to a larger house with his partner and their children. Mrs C contacted him and submitted an application on 30 March 2006 for a mutual exchange. Notes on the application state that Mrs C's house had been adapted to suit her needs and that if the exchange took place then there would no longer be a person with such needs occupying the house. A decision to refuse the request was issued in a letter from the Service Manager of 19 April 2006 because Mrs C's house had been adapted to suit the needs of the current tenant (see Annex 2). Mrs C was informed that she could appeal that decision to the Area Housing Officer (Officer 2). Mrs C's daughter wrote on her behalf to Officer 2 on 25 April 2006.

13. In her letter of 25 April 2006, Mrs C's daughter emphasised that Mrs C's current house was not suitable for her needs and that aids and adaptations she had requested in 2005, namely a ramp at the front and rear, the installation of a chair lift, and a user friendly kitchen, had not been carried out by the Council and that in addition, alterations to the bathroom awaited completion. She sought an appointment with Officer 2, to be attended by Mrs C and the tenants of the multi-storey flat with whom she wished to exchange.

14. The tenant with whom Mrs C wished to exchange also wrote to Officer 2 on 25 April 2006 seeking an appointment.

15. Officer 2 spoke with Mrs C by telephone and confirmed that discussion in a letter of 12 May 2006. In exercise of his discretion he agreed, following re-consideration, that the mutual exchange could proceed on the basis that 'no additional repairs or adaptations works will be carried out as a consequence of the mutual exchange going ahead although any future repair work ... will be

considered as part of our normal maintenance procedures as and when received'. The Council informed me that Officer 2 felt that to allow adaptation of the flat after Mrs C moved would not have been a prudent use of public funds and could have left the Council open to criticism in terms of financial management. The requisite forms were completed on 17 and 19 May 2006 respectively and Mrs C's tenancy agreement for her present multi-storey flat commenced on 22 May 2006. Mrs C was not required to sign an undertaking not to request adaptations or repairs.

16. On 13 June 2006, shortly after moving in, Mrs C telephoned Officer 2 regarding the installation of a walk-in shower in her flat and her discovery that there were nail holes in asbestos panels in her bathroom. Mrs C emailed a councillor (the Councillor) later that day. Additionally Mrs C wrote to the Social Work Department at this time seeking a fresh assessment of her needs. The Solicitor also wrote on her behalf on 16 June 2006 to Officer 2 about Mrs C's need for a wet floor shower in her flat. He also maintained that a dangerous situation existed because the flat was affected by asbestos.

17. In July 2006, Mrs C was assessed for a wet floor shower and lever taps by a Social Work Occupational Therapist. She was awarded a score of 16 points out of 35 points for removing the existing bath and installing a wet floor shower and 24 points out of 35 points for installing lever taps. This was confirmed to Mrs C in a letter of 22 August 2006.

18. On 31 August 2006, the Solicitor wrote again to Officer 2 claiming that Mrs C's health had deteriorated and that the need for installation of a wet floor shower was evidenced by the Occupational Therapist's assessment of 22 August 2006. (A referral was subsequently made by Social Work to Housing on 27 December 2006.)

19. The Assistant Service Manager responded on 29 September 2006, stating that the number of points awarded for the wet floor shower was the same as Mrs C had had in her previous house. There was, therefore, no evidence of her condition deteriorating. He stated that Mrs C had previously been advised that she would not be considered for a shower in her new tenancy. Following a further letter of 2 October 2006 from the Solicitor, Officer 2 stated that the Council accepted that Mrs C required a wet floor shower area and the Council had fitted one to her previous house but that it was Mrs C's decision to leave

that house in full knowledge that her new flat was not adapted and that it would not be adapted in the future.

20. On 14 December 2006, the Solicitor wrote again expressing concern that no remedial works whatsoever had been carried out on Mrs C's flat. He claimed that the property was now suffering water penetration and that Mrs C had had seven separate visits by housing inspectors. The Solicitor stated that he intended to raise court proceedings within 14 days but that Mrs C would probably also contact her elected representatives.

21. By reply of 27 December 2006, Officer 2 confirmed that the position of Housing and Property Services remained unchanged on the question of adaptations. The Council were aware of the problem of water penetration. Officer 2 said that major refurbishment work, scheduled to start in January 2007 and last nine months, would see the tower block fully re-clad and a new pitched roof erected.

22. Mrs C contacted the Councillor again and emailed her constituency Member of the Scottish Parliament (the MSP) on 6 February 2007 regarding the installation of a wet floor shower. The MSP wrote to the Chief Executive, who passed the matter to the Director of Social Work (the Director) to look into and respond.

23. In February 2007, the Solicitor wrote on a personal basis to Officer 2 and Mrs C contacted the local Citizens Advice Bureau. Her case was referred to a Disability Legal Adviser and a CAB Adviser wrote to Officer 2 on Mrs C's behalf on 23 March 2007.

24. On 20 March 2007, the Director replied to the MSP. He confirmed the history and informed the MSP that he had contacted Officer 2 who verified the adaptation of Mrs C's previous home and the subsequent discussions on the exchange she had requested. Officer 2 had informed the Director that further adaptations at Mrs C's new address would be an inappropriate use of public funds, given his earlier discussions with Mrs C and his advice regarding the mutual exchange. The Director confirmed that Social Work would hold further discussions with Housing in relation to Mrs C's assessed needs 'in order to reach an appropriate consensus on how to resolve the difficulties'.

25. Mrs C's complaint was received on 16 April 2007 and a decision to investigate taken on 2 July 2007. In their response on this point of complaint of 30 July 2007, the Council maintained that Mrs C had not been required to sign an undertaking not to request adaptations to her present flat.

26. The Council informed me that their position in the matter had been further reviewed in discussion between Officer 2 and the Area Manager, Social Work Services. Following subsequent discussion with the Council's Legal Services Division, a decision was keen to allow adaptation work to be carried out to Mrs C's bathroom. Officer 2 had discussed this with Mrs C and arrangements were put in place to initiate the process.

*(b) Conclusion*

27. Mrs C was clearly aware in requesting the mutual exchange, only weeks after a wet floor shower had been installed in her former home, that the multi-storey flat she wished to move into was not adapted and was not suitable for her bathing needs. There is no evidence, however, that Mrs C was required to sign an undertaking. The Council's letter of 12 May 2006 clearly stated that no additional repairs or alterations would be undertaken as a consequence of the mutual exchange going ahead. This uncompromising condition imposed on the mutual exchange was unreasonable yet the Council adhered to it until after a complaint was made by Mrs C to the Ombudsman.

28. Had the Council not re-assessed their stance subsequent to Mrs C's complaint to this office, I would have wholly upheld her complaint on grounds that Mrs C's current needs should have been the paramount consideration and that the Council should not have fettered their ability to respond appropriately to those assessed needs. Given their review of the situation, I uphold the complaint but only in part. I have no knowledge of when, acting on the assessment of 22 August 2006 (paragraph 17), Mrs C might reasonably have expected adaptations to be installed. If that process was delayed then, at the very least, Mrs C is due an apology for the inconvenience she sustained.

*(b) Recommendation*

29. The Ombudsman recommends that the Council apologise to Mrs C for the inconvenience caused to her by failing to have proper regard to her assessed needs.



**(c) The Council infringed Mrs C's human rights and her rights as a disabled person by failing to install adaptations following her move**

30. Mrs C in her email to the Councillor of 13 June 2006 stated that as her disabled needs were not being met and as she could not get in and out of the bath to bathe herself, she was suffering discrimination of her rights as a disabled person and as a human being. This claim was repeated in Mrs C's form of complaint but has not been taken through the Council's complaints procedures.

31. It is not for me to determine whether rights have been breached in a particular case. Nor can I rule on whether the provisions of the Disability Discrimination Acts have been breached. Those are ultimately matters for the courts. Because of this I cannot make a finding on whether Mrs C's rights were infringed. My function is to consider whether maladministration or service failure has caused hardship or injustice. For a provider of public services to fail to take proper account of its own duties and service users' rights under disability discrimination (or other) legislation would be maladministration. It is in that context that I have considered whether the Council has taken reasonable care to ensure it complied with its responsibilities under the law.

32. I have already commented (paragraphs 27 and 28) on the unreasonable condition the Council initially imposed in permitting Mrs C to mutually exchange in May 2006. After Mrs C was re-assessed in July 2006 the Council initially refused to adapt her new flat because of the condition on the mutual exchange. There is no indication that in reaching these decisions the Council gave any consideration as to whether it was complying with the current provisions of the Disability Discrimination Acts. They should have done so in these circumstances.

33. The Council eventually agreed in June 2007, following advice from Legal Services, to adapt the bathroom in Mrs C's flat to meet her assessed needs. They informed me that work to install the wet floor shower area was completed in October 2007

*(c) Conclusion*

34. The condition initially imposed was unreasonable. There is no evidence that the Council at any stage considered whether in imposing this condition they may have been failing in their responsibilities to Mrs C. They only changed their position after repeated representations were made on Mrs C's behalf. In all the

circumstances I partially uphold the complaint to the extent that there was failure by the Council to take reasonable care to ensure compliance with their responsibilities after Mrs C moved into her present flat.

**(d) The Council unreasonably failed to repair or remove damaged asbestos panels in Mrs C's bathroom**

35. Mrs C first raised the presence of asbestos in her flat in a telephone conversation with Officer 2 on 13 June 2006. Mrs C followed this up by emailing the Councillor later that day. The Solicitor also raised the issue in his initial letter of 16 June 2006 to Officer 2. On 23 June 2006, the Assistant Services Manager replied confirming that the flat had asbestos panels between the kitchen and the bathroom but that these were enclosed and only required to be removed in the event, say, of a bathroom suite being replaced. The Solicitor was informed that at the time of the exchange request being agreed, Mrs C had been advised that no adaptation or repair work would be carried out in her new home.

36. In responding to my enquiry on this point of complaint, the Council denied a claim made in the Solicitor's letter of 16 June 2006 that Mrs C's flat was being affected by asbestos and that this was a particularly dangerous situation. The Council regarded these statements as inaccurate. They stated that asbestos panels are situated in many multi-storey flats such as that occupied by Mrs C. Removal of the panels, which are completely enclosed, is only required when work is being carried out in the areas surrounding the panels. If they are not disturbed or damaged then they do not create a dangerous situation. The Council further stated that no other repair work had been refused. Since Mrs C's entry in May 2006, work to renew an internal door, fit new wash hand basin taps, and repair kitchen units and windows has been completed.

37. In commenting on the draft report, the Council informed me that repair and replacement of partially damaged panels containing asbestos was implemented when the wet floor shower area was installed in October 2007.

*(d) Conclusion*

38. It is for the Council as Mrs C's landlord, rather than the Ombudsman's office, to assess the degree of risk presented by the presence of asbestos in Mrs C's flat. Photographic evidence supplied by Mrs C, however, supports her view that panels in her bathroom were disturbed earlier by nails being inserted in the walls. I have no other evidence to suggest that there was a risk to Mrs C.

I am satisfied by the Council's assurance and happy to note that the problem was attended to when the wet floor area was installed in October 2007. I do not uphold this complaint.

39. The Council have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Council notify her when the recommendation has been implemented.

**Explanation of abbreviations used**

Mrs C	The complainant
Area X	The area where Mrs C formerly resided
The Council	North Lanarkshire Council
Tower Blocks A, B, C and D	Multi-storey flat blocks identified by Mrs C in her areas of choice
Officer 1	Senior Housing Officer
The Solicitor	Mrs C's solicitor
The GP	Mrs C's general practitioner
Officer 2	Area Housing Manager
The Councillor	Mrs C's local councillor
The MSP	Mrs C's constituency Member of the Scottish Parliament
The Director	The Director of Social Work

### **North Lanarkshire Council's Policy on Mutual Exchanges**

Under the provisions of the Housing (Scotland) Act 2001 which came into effect on 30 September 2002, Scottish Secure Tenancies were created. A tenant subject to a Scottish Secure Tenancy is granted the opportunity to mutually exchange with another tenant with the written consent of each landlord concerned. A landlord may only refuse consent if there are reasonable grounds for doing so. A failure to issue a decision within a month results in a deemed permission. A refusal of consent may be appealed to the sheriff court. The Council's policy on Mutual Exchanges lists six examples which are declared to amount to 'reasonable grounds' for refusal. These are:

- (i) A Notice has been served to recover possession of the tenancy in terms of paragraphs 1-7 of Schedule 2 of the Housing (Scotland) Act 2001.
- (ii) An Order for Recovery of Possession has been made against the tenant.
- (iii) The house was provided by the Council in connection with the tenant's employment with the Council.
- (iv) The house is designed or adapted for occupation by a person whose special needs require accommodation and if the exchange took place, there would no longer be a person with such special needs occupying the house.
- (v) The accommodation in the other house is substantially larger than that required or is not suitable to the needs of the tenant and his/her family.
- (vi) Statutory overcrowding would result.

In the guidance notes for tenants attached to the application form for mutual exchange tenants are alerted to the effect of the mutual exchange on their right to buy, and that the acceptance of a mutual exchange will result in any current housing application being cancelled. They are also specifically informed that where a mutual exchange is approved both parties must accept the house to which they are moving in its current condition. They are reminded that the Area Service Manager has discretion to refuse any proposed mutual exchange.