

Scottish Parliament Region: South of Scotland

Case 200601742: Clydesdale Housing Association Ltd

Category

Housing association: complaint handling

Overview

The complainants (Mr and Mrs C) were unhappy with the way in which Clydesdale Housing Association (the Association) dealt with their complaints concerning allegations of anti-social behaviour by their neighbours.

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) the rejection of Mr and Mrs C's request to advance to the next stage of the Association's Complaints and Appeal process following a complaint in July 2006 (*not upheld*); and
- (b) the manner in which the Association investigated a complaint from Mr and Mrs C in September 2006 (*not upheld*).

Redress and recommendation

The Ombudsman recommends that the Association consider taking steps to try to encourage Mr and Mrs C and their neighbours (Mr and Mrs B) to participate in mediation.

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

Main Investigation Report

Introduction

1. In September 2006, the Ombudsman received a complaint from the complainants (Mr and Mrs C) about Clydesdale Housing Association (the Association)'s handling of various complaints they had made concerning allegations of anti-social behaviour by their neighbours (Family B).

2. The complaints from Mr and Mrs C which I have investigated are:

- (a) the rejection of Mr and Mrs C's request to advance to the next stage of the Association's Complaints and Appeal process following a complaint in July 2006; and
- (b) the manner in which the Association investigated a complaint from Mr and Mrs C in September 2006.

Investigation

3. The investigation of this complaint involved reading all the documentation supplied by Mr and Mrs C and the Association. I have set out my findings of fact and conclusions for Mr and Mrs C's complaint. An explanation of abbreviations used in this report is at Annex 1 of the report.

4. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C and the Association were given an opportunity to comment on a draft of this report.

Background

5. Mr and Mrs C and Family B live in a high demand new build development comprising 24 semi-detached family homes. Family B started their tenancy in May 2000 and Mr and Mrs C's tenancy began in April 2004. In early May 2004, the Association approved a request by the local council to install a stair lift in Mr and Mrs C's home.

Mr and Mrs C's account

6. Mr and Mrs C said they have 'suffered a barrage of abuse and torment' by Family B since July 2005. They said the children of Family B persistently bounced their ball off their windows and their car. Mr C said that when he spoke to Mr and Mrs B about this he was subjected to abuse. Thereafter he said a 'hate campaign' was waged against them by Family B, who also

encouraged the children of other neighbouring families to cause trouble and nuisance.

7. Mr and Mrs C said they are unable to move from their home, for which they waited four years, as the property has been specially adapted with a stair lift for Mrs C who has a disability.

8. When Mr and Mrs C complained to the Association they said they were told the evidence they submitted in support of their various complaints was 'never good enough' thus making it impossible to put an end to their ongoing problems. They consider they have followed procedures and guidelines and the advice given by the Association. They feel they are being denied the right to complain and the peaceful enjoyment of their home. They feel they have been let down by the Association and that the whole situation has caused them distress.

The Association's account

9. The Association said no complaints were received regarding Family B until July 2005. Then Mr and Mrs C submitted a number of complaints concerning the school age children of Family B and other children from neighbouring houses. The complaints were that the children, while playing ball games, hit Mr and Mrs C's front door and car with the ball and that the ball had entered their front garden. They also complained that the children verbally abused them when Mr C asked them to move away. The Association obtained a police report relating to one such specific incident on 26 July 2005. However, the report stated that no crime had been committed.

10. The investigations of Mr and Mrs C's complaints resulted in them advising neighbouring parents that children playing in the street should refrain from doing so outside Mr and Mrs C's home.

11. In August 2005, following a letter of complaint from Family B and residents of five other households, there was an investigation by the Association concerning incidents involving Mr and Mrs C and local children. Arising from this, Mr and Mrs C were advised by the Association to 'distance themselves' from the children and to refrain from shouting and swearing at the children in order to avoid further complaints.

12. Thereafter, complaints and counter complaints were made by both Mr and Mrs C and Family B about each other. Mediation was attempted in November 2005. However, both parties concluded that this was not appropriate under the circumstances and agreed to keep themselves to themselves for the future.

13. In the Association's view, each incident that has occurred between Mr and Mrs C and Family B has either lacked corroboration on the part of the person complaining or has involved both parties admitting to unacceptable behaviour which constitutes a breach of the tenancy conditions. In their view, the lack of corroboration and the tendency for each household to 'react' to incidents has rendered the Association unable to identify or feel confident at attempting more punitive action against a single party.

(a) The rejection of Mr and Mrs C's request to advance to the next stage of the Association's Complaints and Appeal process following a complaint in July 2006

14. A complaint form was signed by Mr C on 9 July 2006. It is date marked as being received by the Association on 10 July 2006. Mr and Mrs C also sent a detailed letter dated 9 July 2006 setting out their concerns about anti-social behaviour in their street, in particular by Family B, and the Association's handling of the concerns raised by them.

15. The Association responded on 13 July 2006. The response was issued via Mr and Mrs C's solicitor, following an instruction from Mr and Mrs C to issue all communications and correspondence to their solicitor. This response clearly stated that Mr and Mrs C should write to the Association's Chief Executive within the next ten working days should they wish to advance to the next stage of the Association's Complaints and Appeal process.

16. This timescale is in accordance with the Association's approach to Complaints and Appeals which is contained in their Tenant Handbook, and which each tenant received in June 2006 by hand delivery. Further, following a written request from Mr and Mrs C's solicitor dated 26 June 2006, a copy was sent to their solicitor on 4 July 2006.

17. The Association said they do not apply the ten working day period for responses rigidly. However, they would expect there to be exceptional

circumstances for them to consider an appeal significantly outwith the ten working day period.

18. Mr and Mrs C or their representatives were in contact with the Association on a number of occasions between 13 July 2006 and 1 November 2006. The diary of contact between Mr and Mrs C and the Association, a copy of which was supplied to me, confirms this. I noted that in July 2006, September 2006, and October 2006, Mr C attended the Association's offices to pay rent and collect documents. On 6 September 2006, Mr C visited the Association's offices to report a new complaint concerning an incident between Mrs C and Mrs B, which occurred on 5 September 2006 (see part (b) below). Mr C also later telephoned the Association's offices on the same day to provide contact details for a witness (Mr D). Correspondence was also sent by Mr and Mrs C's solicitors to the Association in September 2006. I note that on 12 September 2006 Mrs C submitted a written request for documents under the Data Protection Act 1984 to the Association. This letter was hand delivered to the Associations' offices by Mr C. Further, minutes of the Association meetings record that Mr C attended meetings, at which Association staff were present, during this period. There is no mention in any of the documents I have seen of a request from Mr and Mrs C or their solicitor, before the letter of 27 October 2006, to move to the next stage of the Association's Complaints and Appeal process.

19. On 1 November 2006, the Association received a letter from Mr and Mrs C's solicitor requesting an appeal hearing with the Association's Management Committee. This was effectively 64 working days late. Based on this significant delay in requesting an appeal, the Association considered it reasonable to reject Mr and Mrs C's request unless there were exceptional circumstances preventing them from submitting the request within the time limit allocated.

20. The reason given by Mr and Mrs C's solicitor for the delay was that there had been a delay in receiving their clients' instructions as Mrs C had recently given birth, (the Association understood this to have happened sometime in mid-September 2006). The Association did not consider there were exceptional circumstances which prevented them requesting an appeal hearing.

(a) Conclusion

21. Mr and Mrs C and their solicitors were aware of Association's complaints procedures. They had ample time and opportunity to appeal the Association's decision of 13 July 2006, and were in a position to do so long before their solicitor wrote to the Association on 27 October 2006. I consider the Association's decision to refuse Mr and Mrs C's request for an appeal hearing was entirely reasonable in the circumstances. I do not uphold this complaint.

(a) *Recommendation*

22. The Ombudsman has no recommendation to make.

(b) The manner in which the Association investigated a complaint from Mr and Mrs C in September 2006

23. On 6 September 2006 Mr C attended at the Association's offices to report an incident involving Mrs C and Mrs B the previous afternoon. Mr C complained that Mrs B had shouted abuse at Mrs C and acted in a threatening manner towards her. Mr C requested a meeting with the Association's housing manager (the Housing Manager).

24. In their complaint to this office, Mr and Mrs C complained that the Association failed to acknowledge the seriousness of the matter, were prejudiced, dismissed the evidence of an independent witness and acted without being in possession of all the facts from this witness.

25. According to the Association, earlier the same morning, at about 09:15, Mrs B telephoned a housing officer (Officer 1) to report the incident with Mrs C. Mrs B said that Mrs C had shouted and sworn at her and challenged her to a fight. This incident had happened in the presence of a neighbour (Ms N). Mrs B said that she had contacted the police.

26. The Housing Manager met with Mr C on 6 September 2006. A housing officer was present at the meeting to take notes and witness the discussion. A copy of the notes of the meeting has been supplied to me. Mr C expressed his frustrations that nothing was being done to resolve the dispute with Family B. Mr C said that the police had attended the incident and informed Mrs C and Mrs B that they both could end up being charged with a breach of the peace. The Housing Manager told Mr C that there had been a lack of corroborating evidence in support of his allegations against Family B.

27. That same morning, Officer 1 took a statement from Ms N at her home. Ms N stated that she could not be positive on who started the argument between Mrs B and Mrs C but that both women were involved in a heated exchange.

28. A further file note supplied to me by the Association records that later the same day; Mr C telephoned Officer 1 and gave her contact details for a witness, Mr D, a courier who had been making a delivery to a nearby house at the time of the incident involving Mrs C and Mrs B. According to the note, two attempts were made to contact Mr D on the telephone that same evening. There was no reply but on each occasion a message was left requesting him to contact the office.

29. On 11 September 2006, the Association issued a letter to Mr and Mrs B explaining what they had done to try to corroborate their complaint (as described above). This letter said that the Association was of the view that both parties had breached their tenancy agreements. It referred to the ongoing history of complaints and counter complaints involving the two families. The letter said that both Mr and Mrs C and family B were being formally warned that any further uncorroborated complaints from either party could lead to the Association taking action against to transfer both families' tenancies.

30. On 13 September 2006 Mr D called into the Association's offices where he was interviewed by Officer 1 and the Housing Manager. Mr D recounted what he had witnessed taking place between Mrs C and Mrs B on 5 September 2006. On 14 September 2006 Mr D returned to the Association's offices to sign a witness statement. The Association have provided me with a copy of this statement in which he confirmed that he had witnessed an abusive verbal exchange between Mrs C and Mrs B while in the course of attempting to deliver a parcel to a neighbouring house. The incident, which in his opinion had been started by Mrs B, lasted a few minutes. He also said that when she was 'heavy mouthed', Mrs C 'lost it' and challenged Mrs B to 'come on'.

31. I have given careful consideration to the Association's handling of this matter. I note that Mr C was seen by the Housing Manager when he called into the Association's offices on 6 September 2006 to complain about Mrs B's conduct. Another member of staff attended the meeting and took notes. The same day, Officer 1 attended at the home of Ms N and took a statement from her and also made two attempts to contact Mr D on the telephone. In my view,

the Association, as evidenced by their actions, did take Mr and Mrs C's complaint seriously and acted without delay in investigating the matter.

32. I have also considered whether the Association were premature in issuing the conduct warning letters on 11 September 2006, since, at the time, they had not spoken to Mr D. The Association did make attempts to contact him on 6 September 2006, and messages were left on each occasion requesting him to contact their office. Both Mrs B and Mrs C accepted that they had been involved in the incident. Ms N had also confirmed that both Mrs B and Mrs C had been involved in the heated exchange. On the basis of this evidence, I do not regard that the Association's actions could be said to be prejudiced or unreasonable when they issued the conduct warning letters to both parties. Further, when Mr D did eventually contact the Association he stated that both Mrs B and Mrs C had taken part in the argument.

33. I note that there is a letter of complaint concerning the incident from Mrs C's father dated 17 September 2006 and date stamped as being received by the Association on 18 September 2006. However, as he is the father of Mrs C, I do not consider he could be considered to be an independent witness. Further, the Association treated this as a separate complaint.

34. I appreciate this is a distressing situation for all parties, which has been ongoing for a considerable period of time. I also recognise that Mr and Mrs C's home has been specially adapted to accommodate Mrs C's physical needs and that moving to another property is, therefore, not a practical option for them. I accept that mediation was previously attempted in November 2005 and was rejected. However, if the parties are to continue to reside next door to one another it seems to me that mediation should again be considered in an effort to try and resolve this difficult situation.

(b) Conclusion

35. In view of my findings above, I do not uphold this complaint.

(b) Recommendation

36. The Ombudsman recommends that the Association consider taking steps to try to encourage Mr and Mrs C and Mr and Mrs B to participate in mediation.

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

Explanation of abbreviations used

Mr and Mrs C	The complainants
The Association	Clydesdale Housing Association
Family B	Mr and Mrs B and their children
Mr and Mrs B	The neighbours of Mr and Mrs C
Mr D	A witness to the incident between Mrs C and Mrs B on 5 September 2006
Officer 1	A housing officer with the Association who interviewed the witness, Ms N
Ms N	A neighbour of Mr and Mrs C and Family B
The Housing Manager	The Association's housing manager