

## Scottish Parliament Region: Mid Scotland and Fife

### Case 200701685: Fife Housing Association Ltd

#### Summary of Investigation

##### **Category**

Housing association: repairs and maintenance

##### **Overview**

The complainants (Mr and Mrs C) are tenants of Fife Housing Association Ltd (the Association). They raised a number of concerns regarding the Association's actions in respect to an extension built by their neighbour (Mrs N) in 2004.

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

The complaints which have been investigated are that the Association:

- (a) failed at the outset to discuss with Mr and Mrs C the implications of the application for planning consent made by Mrs N (*not upheld*);
- (b) failed to take appropriate action when Mr and Mrs C reported to them that the extension encroached into Mr and Mrs C's tenancy (*partially upheld*);
- (c) changed their view, to Mr and Mrs C's detriment, to allow access to Mrs N's builder to carry out underpinning work which could and should have been done from Mrs N's own property (*not upheld*);
- (d) failed to ensure that undertakings they gave to Mr and Mrs C to permit access to Mrs N's builder were adhered to (*not upheld*); and
- (e) failed to take up with Fife Council as building authority, Mr and Mrs C's continuing concerns about the safety of an extension wall (*not upheld*).

##### **Redress and recommendations**

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. The complainants (Mr and Mrs C) reside in a mid terraced house at 4 X Street. They are tenants of Fife Housing Association Ltd (the Association). Their neighbour at 2 X Street (Mrs N) is an owner occupier. Mrs N submitted an application to Fife Council (the Council) for planning permission for the erection of a conservatory extension in December 2003. Mr and Mrs C were not notified. Mr and Mrs C had concerns about the standard of construction of Mrs N's extension and corresponded with both the Council and the Association.

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

- (a) failed at the outset to discuss with Mr and Mrs C the implications of the application for planning consent made by Mrs N;
- (b) failed to take appropriate action when Mr and Mrs C reported to them that the extension encroached into Mr and Mrs C's tenancy;
- (c) changed their view, to Mr and Mrs C's detriment, to allow access to Mrs N's builder (the Builder) to carry out underpinning work which could and should have been done from Mrs N's own property;
- (d) failed to ensure that undertakings they gave to Mr and Mrs C to permit access to the Builder were adhered to; and
- (e) failed to take up with the Council as building authority, Mr and Mrs C's continuing concerns about the safety of an extension wall.

### **Investigation**

3. The investigation is based on correspondence supplied by Mr and Mrs C and the Association's and the Council's responses to my enquiries. 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.

4. Prior to intimating my decision to investigate Mr and Mrs C's complaint, I informed them that the method of construction and safety of Mrs N's wall are matters for the Council and that it was not open to the Ombudsman's office to instruct an independent structural report. I undertook, however, to make contact with the Council to establish their current position.

5. Through her agent, Mrs N submitted an application to the Council for planning permission for the erection of a rear conservatory extension. The planning application was validated by the Council on 26 December 2003. Mr and Mrs C were not notified by the applicant, her agent or the Association of the proposals which included construction of a wall abutting the mutual boundary. The application was considered and determined by officers of the Council's Planning Service under delegated powers. Conditional planning consent was issued on 23 January 2004.

6. The wall, about 3.35 metres high and 3.05 metres long was erected abutting the rear boundary, adjacent to Mr and Mrs C's dining room window in March 2004. It was built over a pipe conducting rainwater from the rear roof of both properties. Mr and Mrs C maintain that the wall encroaches over the boundary by 10 centimetres.

7. Mr C said he approached the Association at the time the wall was being built but that they took no action. He visited the local office of the Council and on 6 April 2004 wrote to the Council's Planning Manager. Mr C had concerns about the safety of the wall which he believed was constructed without proper foundations. He learned from the Council's Building Control Service that a building warrant was required. On 2 July 2004, the Builder made a retrospective application for building warrant.

8. Following Mr C's earlier approach, Mr and Mrs C wrote to a Technical Officer at the Association (Officer 1) on 24 October 2004, stating that there was a 'bulge' or ledge in the wall 10 centimetres above ground level on their side and that the Builder had confirmed to them that the extension lacked proper foundation.

9. On 10 January 2005, a Principal Building Inspector at the Council wrote to Mrs N asking her to provide structural engineer's details with particular regard to the method employed for underpinning the boundary wall from her property. A second letter was sent on 2 March 2005 giving Mrs N six weeks to comply or the Council would consider invoking powers then available to them under Section 10 of the Building (Scotland) Acts 1959 and 1970 to have the unauthorised conservatory removed.

10. Mr and Mrs C instructed solicitors who wrote on their behalf to the Council's Building Control Service on 17 May 2005. A Council Building

Standards Surveyor replied on 25 May 2005 confirming that, after speaking with Mrs N and the Builder, outstanding matters would be attended to from within the grounds of 2 X Street. The Council Building Surveyor had requested confirmation of a date for the commencement of the remedial work from Mrs N.

11. Mr and Mrs C submitted a complaint to the Ombudsman against the Council in early 2005. After making enquiry of the Council, a decision that this office would not pursue that complaint was issued in a letter of 18 May 2005.

12. On 26 June 2005, Mr and Mrs C wrote to the Association's Director of Housing Services (the Director) seeking assistance in resolving the issue of the wall. They claimed that the wall was unsafe in that it lacked sufficient foundations to underpin it, that it had a bulge, that it encroached over the boundary between the properties, and that it was larger than the approved drawings for planning consent. Mr and Mrs C also expressed concern about the potential for dampness from a mutual rear downpipe now enclosed within the extension.

13. The Director responded to Mr and Mrs C on 29 June 2005. She stated that the Association's powers were limited, but that they were keen to work with Mr and Mrs C to allow the Builder access to work on the removal and replacement of a new boundary. She copied this reply to the Council's Principal Building Control Officer.

14. Around 21 July 2005, the Builder arrived at Mr and Mrs C's door with a letter to Mrs N's solicitors of 26 May 2005 from the Association's Maintenance Manager (Officer 2), which authorised the Builder to take access to attend to remedial works at 2 X Street from Mr and Mrs C's tenancy at 4 X Street.

15. On 22 July 2005, Mrs C wrote to the Chief Executive of the Association (the Chief Executive) complaining that the Association should have done more and taken her neighbour to court. She considered that she was due compensation for the stress from the totally unacceptable situation, also that the Association should offer her alternative accommodation in a good area to free her as a disabled person from threats and hassle.

16. The Director replied on 3 August 2005 informing Mr and Mrs C that Officer 2 had contacted the Builder to arrange a site visit. While the Association did not have any property presently available to meet Mr and Mrs C's needs, the

Director provided her with a transfer application form, which on submission, the Association's allocation team would consider.

17. Mr and Mrs C felt that a site visit should more appropriately have happened in March 2004 and that the more recent proposal should have been discussed with them by Officer 2 in May 2005. They wrote further to the Director on 5 August 2005. They maintained that the wall was never intended to be a boundary wall. They also intimated that, having reflected on the matter, they did not wish to move to alternative accommodation.

18. A site meeting, originally proposed for 1 September 2005, was postponed to 8 September 2005. On 6 September 2005, Mr and Mrs C wrote to the Chairperson (the Chairperson) of the Association's Board of Management (the Board). They stated that they were disgusted at the hassle they had suffered from their neighbours and at the lack of loyalty shown to them from their landlords. They sought compensation. This letter was acknowledged by the Chief Executive on 13 September 2005.

19. A site meeting was held on 8 September 2005 attended by Mr and Mrs C, Officer 2 and a colleague (Officer 3) from the Association, by the Council's Building Standards Surveyor, and by a friend of Mr and Mrs C. Mr and Mrs C were angered at Officer 2's attitude and behaviour at the meeting and claimed that he raised his voice and pointed his finger at Mr C and had called them 'troublemakers' and 'a nuisance'.

20. Following the initial site meeting, the Chairperson, Officer 1 and Officer 2 visited Mr and Mrs C on 15 September 2005 when the Builder and Mr and Mrs C's friend were also present. In a letter of 21 September 2005 to Mr and Mrs C, the Chairperson confirmed that the work to complete the extension should be completed as quickly as possible to a satisfactory standard. The firewall would be underpinned, the concrete protruding from the base of the wall would be dressed flush, the top of the wall sloped and lowered by the appropriate level of courses to tie in with the roof of the extension and ensure the capping would properly overlap the wall face. Further, the wall would be roughcast by a named builder different to the Builder and would be programmed to immediately follow remediation of the wall. The roughcast would be in harmony with the existing roughcast on Mr and Mrs C's home. Finally, the existing party fence would be repaired and it would be ensured that it

adequately retained the soil where there were unequal garden levels. Mr and Mrs C's garden would be made good on completion of the works.

21. Mr and Mrs C replied stating that their agreement to access being taken through their garden was conditional on them first obtaining advice from their solicitor. Mr and Mrs C subsequently discussed the matter with their solicitor who informed them that they would require to accede to the Association's request for access.

22. Mr and Mrs C expressed themselves disgusted and wrote again to the Director on 22 September 2005 seeking forms to submit a complaint to the Ombudsman. They also wrote on the same date to the Chairperson, repeating allegations about Officer 2's conduct at the meeting and about his seeming over friendliness with Mrs N, demonstrated by his weekly visits next door. Mr and Mrs C stated that they would be 'putting in for compensation'. They strongly objected to having their garden dug up for foundations that should have been done at the outset in Mrs N's garden.

23. The Chairperson replied to this letter on 27 September 2005 stating that agreement had been reached. He referred to the conditions of Mr and Mrs C's lease with the Association, and asked them to provide by 5 October 2005 a date for the continuation of the works. Mr and Mrs C expressed their continued dissatisfaction in a further letter of 4 October 2005 to the Chairperson.

24. Mrs C submitted a formal complaint to the Association about the conduct of Officer 2. That complaint was acknowledged on 7 October 2005 by the Association's Administration/Personnel Manager (Officer 4).

25. On 11 October 2005, the Director informed Mr and Mrs C that arrangements had been made with the Builder to start the underpinning work on 21 November 2005. That work was planned to take three days. Mrs C emphasised her continued unhappiness in a letter of 19 October 2005. The Director replied on 24 October 2005 stating that the Association, as landlords, would ensure that any mess was cleared up. Mr and Mrs C's garden would be made good at the end of the works, which would be inspected on completion. The Director stated that the Association's actions were designed to get back to a situation where Mr and Mrs C could again enjoy the occupation of their home.

26. Mr and Mrs C first submitted a complaint to the Ombudsman against the Association in a letter of 30 October 2005. At that time, the remedial works had not started. The works commenced on 23 November 2005. The roughcasting was done in February 2006.

27. An initial reply to the complaint against Officer 2 was sent by Officer 4 on 3 November 2005. Officer 4 denied that Officer 2 had been aggressive, abusive or threatening, but accepted that voices had been raised at the meeting and that Officer 2 had lifted a hand in a gesture when frustrated that he was not getting a say. Officer 4 considered that Officer 2 had done his best in a situation where Mr and Mrs C were understandably tense through protracted building problems outside their control. The letter expressed the Association's regret that it was not possible to conclude the problem to Mr and Mrs C's entire satisfaction and Officer 4 apologised for any additional upset which the Association's actions to conclude matters might inadvertently have caused. Officer 4 stated that the Association wished to provide early closure to a prolonged situation putting at risk the health of its tenants and the condition of its property. Officer 4 said he was prepared to accede to Mrs C's request that Officer 2 should not contact them or visit them in connection with the matter. Subsequent contact in the first instance has been with Officer 1.

28. Mrs C wrote to the Ombudsman in an undated letter received on 14 November 2005 stating that she was unhappy with Officer 4's reply of 3 November 2005. She anticipated that the works soon to be carried out from their side would be messy and stressful. My then colleague, after speaking with Mrs C, replied on 17 November 2005. She indicated that an investigation of a complaint against Officer 2 was unlikely to be conclusive or that we could elicit a personal apology from him. Following further correspondence with another colleague, Mr and Mrs C confirmed on 28 March 2006 that they would pursue their grievance further with the Association and, if not satisfied, revert to the Ombudsman's office.

29. By that time, the underpinning work had been completed, the parapet area had been dropped and a new coping fitted. The wall had been roughcast on 13 February 2006. Photographs taken by Mr and Mrs C show that it is not of uniform hue. Stains were left on slabs in Mr and Mrs C's garden from concrete spillage during the roughcasting. Mr and Mrs C informed me that Mrs N had built up the ground level of their rear garden beyond the extension and that stains from concrete spill were left on their slabs.

30. On 8 April 2006, Mr and Mrs C complained further to Officer 4 about Officer 2's conduct and about the remedial works. They were aggrieved that no minute had been taken of the meeting of 15 September 2005 (although the Chairperson had asked Officer 2 to compile one). They pointed out that their garden had not been reinstated the way it was. They listed nine outstanding matters: 1) cement on slabs which needed removed or replaced; 2) chip off cement fence block to lower height below edging; 3) replace red chips; 4) repair/replace broken edging; 5) prevent water and earth running over from neighbour's garden; 6) brackets to be put on other side of the wall for Mr and Mrs C's safety; 7) rectify the lack of fixing of the wall to the earth below; 8) remainder of the fence to be shifted back into Mrs N's garden and maintained; and 9) other work requested by the Council to be done. They expressed themselves unhappy that the remedial work had not been monitored. A copy of this letter was sent to the Ombudsman on 9 April 2006.

31. Officer 4 acknowledged receipt on 12 April 2006 of the letter of 8 April 2006 and noted that Mr and Mrs C had chosen not to complain further about Officer 2 in terms of the Association's procedures. Officer 4 confirmed that the Director would provide a response to the list of outstanding items.

32. A response dated 25 April 2006, with an apology that it was two days late, was sent by Officer 4. He confirmed that there had been no onus on the Association to take a minute of the meeting of 15 September 2005. Officer 4 understood that the underpinning was complete but remained subject to the Council Building Control inspection. He stated that he had been assured that the roughcasting had been addressed satisfactorily and enhanced Mr and Mrs C's property with the fascia brick/bonding applied to match their existing brickwork. The parapet area had been lowered to the qualification specified by the Council Building Control and the coping stone applied with the correct overhangs. With regard to the nine points at paragraph 30, Officer 4 replied: 1) the Association would not clean items that were not in their ownership; 2) work to repair a chip off the concrete fence block was outstanding as Mr and Mrs C had not allowed their neighbour access to complete; 3) due to the minimal amount of gravel involved, the Association did not consider it was worth purchasing a bag of gravel for the few ounces required; 4) repair/replacing broken edging was not the Association's responsibility; 5) the flow of water and earth from Mrs N's garden was not in the Association's view abnormal or excessive and was a natural occurrence in times of large rainfall; 6) whether

brackets were required on the other side of the firewall was a matter for the Council Building Control to determine; 7) the underpinning addressed Mr and Mrs C's concern that the wall was not fixed to the cement beneath; 8) shifting the rest of the fence back was a matter for Mr and Mrs C to take up with their solicitor; and 9) other work required by the Council was a matter between the Council and the neighbours who are not Association tenants. Officer 4 indicated that the complaint about Officer 2 had been 'fully investigated' and it was not the Association's intention to take the matter further. He considered that the Association had dealt with Mr and Mrs C's situation fairly, dedicated hours/resources to finding a suitable and harmonious resolution, and that Mr and Mrs C should direct their remaining concerns to the appropriate officers of the Council.

33. On 23 May 2006, Mr and Mrs C's new solicitor wrote to Officer 4 seeking a meeting in an aim to resolve outstanding matters. Officer 4 replied that he had no objection in principle but would need to be convinced that it would serve a useful purpose. In his view, outstanding matters should be pursued with the Council's Building Control Service.

34. Following a telephone conversation with my colleague on 10 July 2006, Mr and Mrs C detailed their dissatisfaction about a number of matters. After checking the Association's complaints procedures, she wrote to Mr and Mrs C on 9 August 2006 informing them that it was premature for this office to become involved. She closed our file and informed the Chief Executive of her decision.

35. In November 2006, Mr and Mrs C visited a third solicitor. The solicitor drafted a background note and list of Mr and Mrs C's grievances. These were faxed to the Association on 14 November 2006. On receipt, a briefing note was also prepared by Association officers and the issues were then considered by the Board. On 28 November 2006, the Chairperson wrote to Mr and Mrs C. He stated that the Board considered that Association staff had acted appropriately and that the complaint was misdirected. In his view, the fault lay with the owner of the adjoining property or her agents and that any claim for compensation should be directed there. Concern had been expressed by the Board at the length of time the matters had been ongoing. The Board expressed the hope, however, that the Council's Building Control Service would act to conclude the building work speedily and Mr and Mrs C were informed that the Association would write to the Council to that effect.

36. On 14 June 2007, Mr and Mrs C wrote to Officer 2. They stated that the wall seemed to be bulging more and that a crack had also appeared. They had approached their neighbours to clean the slabs but without success. They had been informed by a tradesman whom they had approached that the slabs could not be cleaned and that replacement would cost £400 to £500. Mr and Mrs C received no reply.

37. Mr and Mrs C wrote again to the Ombudsman's office on 18 September 2007 repeating their general dissatisfaction with events. They expressed concern about the wall. They understood that building warrant consideration remained 'pending'. They stated that it would cost them £500 for a structural assessment of their neighbour's wall. They maintained that the wall encroached on to their tenancy by 5 centimetres and was 10 centimetres from the position in plans submitted to the Council. They believe that they were 'blackmailed' by the Association into allowing access so that Mrs N could complete the works, that they had to endure the mess, and that they had not been compensated for the disruption and for concrete spillage damage to their slabs. They felt it unreasonable for the Association to ping pong them back to the Council.

**(a) The Association failed at the outset to discuss with Mr and Mrs C the implications of the application for planning consent made by Mrs N**

38. Mr C stated that as occupiers of the property next door, he and his wife were not notified by Mrs N or her agent of the application for planning consent. They assumed that the Association had been notified either in relation to the application for planning consent or as feu superiors in respect of Mrs N's property. If that were the case, the Association should have contacted them before the work started to discuss the implications.

39. The Association informed me that they neither received a neighbour notification regarding the planning application for 2 X Street nor a request for feu superior's consent. The Association did not, therefore, have an opportunity to discuss the works at Mrs N's house with Mr and Mrs C before the works commenced.

*(a) Conclusion*

40. On the basis that notification was the responsibility of Mrs N or her agent and that Mr and Mrs C have no evidence to confirm that the Association were notified or alerted in advance of the works, I must conclude that the Association

did not have the opportunity to discuss the proposed works with Mr and Mrs C. That being the case, I do not uphold this complaint.

**(b) The Association failed to take appropriate action when Mr and Mrs C reported to them that the extension encroached into Mr and Mrs C's tenancy**

41. Mr and Mrs C informed me that the wall which the Builder erected encroaches into their tenancy by 5 centimetres and that its actual position is 10 centimetres different from the approved plans. Mr and Mrs C felt the Association should have asserted their rights as owners for the wall to be taken down and rebuilt on land in Mrs N's ownership.

42. The Association informed me that in the course of the works at 2 X Street, a fence was removed from the existing boundary and this was replaced by a wall on the same boundary. The Association informed me that if notice had been given to them before the wall was built they would have taken measurements and could then have compared these after the wall was built to determine its relative position. The Association did not sell the house at 2 X Street to Mrs N and did not, therefore, retain a copy of the feu plan. They had plans of the area with boundaries but these were not of a scale where matters of a few centimetres could be determined. The Association did not consider that there has been any encroachment onto their property.

43. Before concluding my investigation, I obtained a copy of the title deeds of 2 X Street from the Registers of Scotland. The plan attached to the title is of 1:1250. There is no description of the property with measurements. Clause 6 of the burdens states that '... no additional buildings ... shall be erected on any feu without the prior consent in writing of the superiors; and in the event of it becoming necessary to rebuild any buildings on any feu, the feuar concerned shall be bound to submit detailed plans and specifications of the proposed new building or buildings to the superiors and no building operations shall commence until the same shall have been approved in writing by the superiors.'

44. The feudal system in Scotland came to an end on 28 November 2004 with the Abolition of Feudal Tenure etc (Scotland) Act 2000 and the Title Conditions (Scotland) Act 2003. In effect, this means that from that date, feu superior's consent is now no longer required.

*(b) Conclusion*

45. It is not for me to determine whether the extension at 2 X Street encroaches onto the property at 4 X Street, owned by the Association and tenanted by Mr and Mrs C. It does appear to me, however, that enquiries could have been instigated by the Association to check out Mrs N's titles at the outset in March 2004 and to have considered their then position as feu superior. From my own research I believe that it would have been difficult for them to establish from the feu plan whether there was encroachment and to have taken the action Mr and Mrs C requested. They could, and should, however, have considered their position as feu superior and reminded Mrs N of the burden in her title (paragraph 43) to have obtained the Association's prior consent. I partially uphold this complaint to the extent that the Association's initial response did not properly demonstrate to Mr and Mrs C that they had fully considered the actions available to them, in their role as feu superior. Since the legislation has now changed, the Ombudsman has no recommendation to make in the matter.

**(c) The Association changed their view, to Mr and Mrs C's detriment, to allow access to the Builder to carry out underpinning work which could and should have been done from Mrs N's own property**

46. Mr and Mrs C considered the wall of the extension built by their neighbour to have been built without adequate foundations and fixture to the rear wall of the house. They understood that the Council would have taken action to have the wall removed. They were not approached by the Association in the spring of 2005, prior to Officer 2's letter of 26 May 2005 to Mrs N's solicitors to agree access to the Builder. They understood from the Council that any necessary work could be done from Mrs N's property. They were, therefore, aggrieved that the Builder arrived at their home around 21 July 2005 to undertake the remedial works at 2 X Street from their rear garden at 4 X Street.

47. The Association stated that their decision as owners to allow access to the Builder had been taken as a consequence of an approach from the Council's Development Service to allow access to regularise the rear extension. At that time, the Council regarded the wall and its foundations to be of poor quality but not to be sufficiently dangerous condition to require immediate removal. The Association considered that providing access to the Builder to complete the required works was the only way to progress matters to a conclusion.

*(c) Conclusion*

48. The problems which arose from the building of the rear extension at 2 X Street originated from the actions of Mrs N and the Builder rather than the Association or the Council. A considerate developer would have discussed his or her plans with an affected neighbour before starting and should also have implemented their statutory responsibility to notify both the owner and the occupier of neighbouring property. In this instance, both Mr and Mrs C as occupiers and the Association as owners, say they were not notified. Had Mrs N made prior contact with the Association before starting works, it is possible that after consulting with their tenants, the Association would have granted conditional consent to execute part of the works from Mr and Mrs C's side of the boundary. That apparent discourtesy of Mrs N and the Builder and the consequent difficulties which arose do not imply that the Association should thereafter have denied the Builder access to carry out remedial works. However, there were clearly faults in communication between the Association and Mr and Mrs C, notably with regard to the Builder arriving at Mr and Mrs C's door on 21 July 2005 with a letter of authorisation from Officer 2 to take access to commence works (paragraph 13). That action probably led to the altercation at the subsequent meeting on 8 September 2005.

49. Whether the Association had powers to grant access is a matter in the tenancy agreement between Mr and Mrs C and the Association. Mr and Mrs C had sought the service of a solicitor and would have been guided by the solicitor's advice. I consider that Mr and Mrs C should not have expected the Association to refuse access on the basis of Mrs N's previous discourtesy. By allowing access subject to conditions, the Association were quite clearly seeking to bring early closure to a difficult situation not of their making. On balance, I do not uphold the complaint.

**(d) The Association failed to ensure that undertakings they gave to Mr and Mrs C to permit access to the Builder were adhered to**

50. Mr and Mrs C felt that they were unnecessarily inconvenienced during the remedial works, and they are not satisfied that matters that they detailed in April 2006 (paragraph 30) have been attended to.

51. The Association responded that Officer 1 had visited regularly when the remedial works were being undertaken to inspect the work and to ensure that Mr and Mrs C were not unnecessarily inconvenienced. The Association stated that Officer 1 had numerous telephone conversations with the Builder and that

he relayed information to Mr and Mrs C. Officer 4 responded to the nine points on 25 April 2006 (paragraph 32).

*(d) Conclusion*

52. Prior to concluding my investigation I visited Mr and Mrs C to check the position. I consider from that inspection that the assurances given have ostensibly been complied with. While the roughcasting of Mrs N's extension wall is of a different hue from the roughcast to the rear of their home, it is my view of an acceptable standard. There were a number of minor points such as cement spills on the concrete slabs. These did not require any major outlay to remedy. I do not uphold the complaint.

**(e) The Association failed to take up with the Council as building authority, Mr and Mrs C's continuing concerns about the safety of an extension wall**

53. Mr and Mrs C were aware that the Council, who had threatened formal action in early 2005, had not issued a certificate of completion in respect of the building warrant for the extension. They considered the Association as their landlord should have followed the matter up with the Council.

54. The Association informed me that, despite the remedial works completed in early 2006, a certificate of completion had not been issued to Mr and Mrs C. The Association had no control or power to enforce Mrs N or the Council to bring the matter to a conclusion. They had written to the Council on 5 December 2006 following the meeting of the Board (paragraph 35) to enquire of the position.

55. I made my own enquiry of the Council. They confirmed that the rear extension had been erected without a building warrant being obtained. Following the commencement of relevant parts of the Building (Scotland) Act 2003 on 3 May 2005 an outstanding issue in relation to unauthorised building work undertaken without a warrant may be regularised by an application for a 'Qualified Statement', which requires submission of a fee and plans. Further works may be required. If, after the works are inspected, the Council regard these as satisfactory, the Qualified Statement is issued stating that no further action is intended by the Council. The Council informed me that an enforcement notice had been served because of a concern about a lack of adequate foundations. The Council said that this had been resolved. A question had been raised about tying in the new structure to the existing wall. It

had been agreed that brackets be used. As far as the Council's Building and Safety Service were aware this had not been done. Until that work is done, the Council are unable to issue a Qualified Statement that the conservatory has been completed satisfactorily. They informed me that they had last written to the owners on 9 June 2006 but had had no subsequent contact.

*(e) Conclusion*

56. The issue of regularising the building works at 2 X Street is a matter between Mrs N and the Council. The Association wrote to the Council as they informed Mr and Mrs C they would. I do not uphold the complaint.

**Explanation of abbreviations used**

Mr C and Mrs C	The complainants
4 X Street	Mr and Mrs C's home
The Association	Fife Housing Association Ltd
2 X Street	Mrs N's home
Mrs N	Mr and Mrs C's neighbour at 2 X Street
The Council	Fife Council
The Builder	Mrs N's builder
Officer 1	An Association Technical Officer
The Director	The Association' s Director of Housing Services
Officer 2	The Association's Maintenance Manager
The Chief Executive	The Chief Executive of the Association
The Chairperson	The Chairperson of the Association
The Board	The Association's Board of Management
Officer 3	An Association officer
Officer 4	The Association's Administration/Personnel Manager