

SPSO

Scottish
Public
Services
Ombudsman

THE SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002

Investigation Report

UNDER SECTION 15(1)(a)

SPSO

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Scottish Parliament Region: Lothian

Case 200503508: Trust Housing Association Ltd

Summary of Investigation

Category

Housing Associations: Complaint handling

Overview

The complainant (Mrs C) was concerned that she was no longer receiving regular visits from a local representative and that Trust Housing Association (the Association) had introduced a protocol to regulate her contact with them.

Specific complaints and conclusions

The complaints which have been investigated are that the Association:

- (a) had unfairly introduced a protocol to regulate Mrs C's contact with them and, as a result, she no longer receives visits from a local representative and has difficulty booking guest rooms (*not upheld*); and
- (b) had not handled Mrs C's complaints about this appropriately (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Association provide Mrs C with a copy of their new complaints procedure and any changes to the Persistent and Vexatious Complaints policy made as a result of their current review.

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

Main Investigation Report

Introduction

1. The Ombudsman received a complaint from a woman referred to in this report as Mrs C. Mrs C is a tenant of Trust Housing Association (the Association) and she received a letter dated 21 March 2006 from the Chief Executive informing her that in future any complaints from her would be dealt with under their 'Persistent and Vexatious Complaints policy'. The letter included a copy of their policy and a personal protocol which would regulate Mrs C's contact with them. Mrs C complained to the Ombudsman that a visiting service had been withdrawn and she now had to make her complaints in writing which she found difficult because of problems with her hand. As it appeared Mrs C had not yet completed the Association's complaints procedure but that she might have difficulty with this because of the problem with her hands, I wrote to the Association on 19 April 2006 detailing Mrs C's concerns.

2. On 11 July 2006 the Association wrote to Mrs C to say that they had carried out their quarterly review of the protocol. It said they had amended this to take into account her difficulty with writing.

3. Mrs C continued to complain to the Ombudsman and the Chief Executive advised me on 19 July 2006 that Mrs C's complaints would not be referred to the third stage of their complaints procedure. He agreed to confirm in writing with Mrs C the matters which the Association considered had been dealt with and were now closed and did so on 27 July 2006. As Mrs C had then completed the Association's complaints procedure, I proceeded to investigate her complaints.

4. The complaints from Mrs C which I have investigated are that the Association:

- (a) had unfairly introduced a protocol to regulate Mrs C's contact with them and, as a result, she no longer receives visits from a local representative and has difficulty booking guest rooms; and
- (b) had not handled Mrs C's complaints about this appropriately.

Investigation

5. In investigating Mrs C's complaints, I have reviewed all relevant documentation acquired from Mrs C and the Association. 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 Association were given an opportunity to comment on a draft of this report. Abbreviations used in this report are set out in Annex 1.

Background

6. When Mrs C moved to her new tenancy (with the same Association) in early 2003, the Association decided that, because of the amount of contact she had had with them previously, they would not include Mrs C in the regular visits by the local representative¹ and instead Mrs C's contact would be direct through a housing officer. Mrs C had previously complained to the Ombudsman in 2003 (relating to her former tenancy) and in 2004 and 2005 she continued to complain about the Association. These complaints were not pursued by the Ombudsman's office, one of the main reasons for this being that Mrs C had not completed the complaints procedure of the Association.

7. On 20 April 2005 the Association wrote to Mrs C to ask for a meeting. The letter said they had reviewed their contact with her over the last few months and that they wished to meet to clarify outstanding issues, agree further action and agree how to manage access arrangements for any further repair work required to her home. The letter said that if she did not do so they would have to consider formal implementation of the Association's Vexatious and Persistent Complaints policy. On 14 July 2005 the Ombudsman received a letter from the Association that said the matter had been resolved and a 'without prejudice' settlement agreed. One condition of this settlement was that all previous and outstanding complaints relating to both her previous and current tenancies with the Association were at an end.

8. On 19 and 26 July 2005 the Ombudsman received photocopied complaints from Mrs C. It was confirmed in a letter to her of 1 August 2005 that she should complete the Association's procedures and we would not consider matters dealt with before the settlement. Mrs C submitted complaints to the Ombudsman again in August 2005 and was again directed to contact the Association.

¹ The local representative is employed by the Association to undertake visits to tenants on a regular basis.

(a) The Association have introduced a protocol to regulate Mrs C's contact with them and, as a result, she no longer receives visits from a local representative and has difficulty booking guest rooms

9. In early March 2006 the Ombudsman again received complaints from Mrs C. She raised a number of concerns including her belief that she was not being allowed to book guest rooms. Mrs C received a letter from the Chief Executive dated 21 March 2006 informing her that in future any complaints would be dealt with under their 'Persistent and Vexatious Complaints policy'. The letter included a copy of their policy and a personal protocol (paragraph 11) which would regulate Mrs C's contact with them. The policy defines the behaviours which could lead to a complainant being defined a persistent and vexatious complainant.² This includes repeated and obsessive contact. The policy said that use will be made of a personal protocol and that this will be reported to the appropriate Association Sub-Committee.

10. In response to my questions the Association provided a copy of notes of a meeting held to discuss the implementation of the policy in Mrs C's case on 9 March 2006. At that meeting the previous decision not to include Mrs C in visits by the local representative were discussed as Mrs C had complained about this. It was decided that visits by the local representative would undermine the protocol and would not be introduced. A report was submitted to the Customer Services Sub-Committee notifying them that this policy was being used for the first time on 1 April 2006 and would be reviewed on 1 July 2006.

11. The protocol, which had an implementation date of 1 April 2006, identifies a responsible manager and a complaint co-ordinator (the co-ordinator). It states that all complaints must be recorded and passed to the co-ordinator or in her absence the responsible manager. The co-ordinator is given the responsibility for organising any response and must do so within three weeks. Other colleagues are to co-operate with her and do so within the deadlines the co-ordinator sets. A control sheet is to be kept to log complaints and this will be signed off monthly. The covering letter that accompanied the protocol highlighted the details of officers that Mrs C should contact within the Association and that any contact should be in writing. The letter makes clear that in the event of an emergency Mrs C could contact their emergency repairs service by telephone at any time and that she would be able to use facilities at

² The policy was dated as introduced in May 2004.

an Association development nearby (the Development) but this should be controlled by the co-ordinator.

12. The co-ordinator wrote to Mrs C on 21 April, 25 April and 21 June 2006 to say that if she wished to book guest rooms at the Development she should make the request in writing and the co-ordinator would arrange a suitable time and date. The Association confirmed to me that this was unusual as they did not normally allow tenants who were not part of the Development to book rooms. A letter of 15 May 2006 to Mrs C said the room had been booked for Mrs C for the only two days that were available because of a recent death in the Development and guest rooms were being used. Mrs C advised the Association she did not wish to use the room on these dates.

13. A review of the protocol was carried out on 22 June 2006 and an amended version was issued to Mrs C on 11 July 2006. The accompanying letter said that as a result of medical evidence which said she found it hard to write, Mrs C should telephone the co-ordinator or in her absence the responsible manager. The protocol was also amended to read that following a telephone conversation the co-ordinator should write to Mrs C within one week summarising the complaint received. For staffing reasons, the co-ordinator and responsible manager were changed.

(a) Conclusion

14. From my own contact with Mrs C it is clear that she genuinely feels she has not complained frequently and has only done so when she considers she has had genuine concerns. I also accept that she feels that the protocol was unfairly introduced and it was wrong of the Association to decide not to include her in local representative visits from the start of her new tenancy. However, from the evidence and the complaints the Ombudsman has received, it is clear that Mrs C complains regularly, that she often repeats her concerns and does not readily accept attempts to resolve them. While regulating their contact with Mrs C, the Association have attempted to ensure that they continue to provide a service to her and, while she has not received local representative visits, she has always had a named contact. I would commend them for this. There is also no evidence that the use of a named contact has restricted access to the nearby Development and the Association's attempts to make facilities there available to her (paragraph 12) have been reasonable.

15. Although there was no mechanism in place to formally introduce a policy limiting contact in 2003, the Association have since introduced such a policy and, in considering introducing a protocol for Mrs C, they revisited their decision to restrict contact and put in place procedures ensuring that this will be reviewed regularly. It should be noted that they have already undertaken such a review and altered the protocol to take into account the difficulties Mrs C has with writing. I, therefore, do not uphold this complaint.

(b) The Association had not handled Mrs C's complaints about this appropriately

16. In my letter to the Association of 19 April 2006, I said the core of Mrs C's current complaints appeared to link to the protocol and the lack of the visitor. I said it was not clear which complaints had been raised with the Association but that Mrs C had asked that her complaints be formally dealt with at the second stage of their procedure, a complaint to the Board. I also said if they considered any complaints had already been dealt with at appeal stage, the third and final stage of the Association's complaint procedure, they should confirm this with Mrs C.

17. Following another complaint from Mrs C that she had had no response to her complaints, I spoke to her co-ordinator on 14 June 2006. She confirmed that she had responded to Mrs C's letters and that Mrs C had raised a number of complaints and issues. She was to meet with Mrs C and a neighbour on 19 June 2006.

18. In June and July 2006 I received complaints in writing and by telephone from Mrs C. I spoke to her new complaints co-ordinator on 18 July and the Chief Executive on 19 July 2006. The Association confirmed that Mrs C's complaints would not be referred to the third stage of their complaints procedure. They agreed to confirm in writing with Mrs C the matters which they considered had been dealt with and were now closed and did so on 27 July 2006. Mrs C continued to complain to the Ombudsman by telephone and in writing in July, August and September 2006. On 13 September 2006 I wrote to confirm I would be investigating the matters set out in paragraph 4.

19. In response to my questions the Chief Executive said that there had been no other occasion when they had refused to take a complaint to stage 3. This had only occurred in the case of Mrs C's complaints and they did so because of the existence of her personal protocol. He said that my enquiry had highlighted

a lack of connection between their general complaints policy and the Persistent and Vexatious Complaints policy. The vexatious policy referred to the complaints policy but there was no corresponding reference and neither dealt with the implications of the implementation of one policy on the other. The Association were in the process of finalising a new complaints procedure and he said they would ensure that this was dealt with as part of that process. The Chief Executive concluded:

'I genuinely believe that the practical effect of the protocol is to allow [Mrs C] far better access in many ways to the organisation than ordinary customers might receive.'

(b) Conclusion

20. Although I would agree with the Chief Executive of the Association that the protocol provides Mrs C with better access to the organisation than she may have under the complaints procedure, he is also correct to say there is a lack of cross-reference between the two policies. There should be a mechanism in place to allow tenants who have a personal protocol to appeal against the introduction of the protocol and, while it is reasonable if tenants have a protocol in place to restrict their access to the complaints procedure, this should be clarified to tenants when they receive a protocol and be dealt with in the Persistent and Vexatious Complaints policy itself. I, therefore, uphold the complaint. However, I commend the Association for highlighting to me their own concerns about the lack of cross-referencing between the policies and their intention to resolve this.

(b) Recommendation

21. The Ombudsman recommends the Association provide her with a copy of their new complaints procedure and any changes to the Persistent and Vexatious Complaints policy made as a result of their current review.

22. 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.³

27 March 2007

³ In response to the draft and prior to the publication of this report the Association provided the Ombudsman's office with details of their new complaints procedure and changes made to their vexatious complaints procedure.

Annex 1

Explanation of abbreviations used

Mrs C	The complainant
The Association	Trust Housing Association
The co-ordinator	The member of the Association staff appointed as complaints co-ordinator in Mrs C's protocol
The Development	A housing development owned by the Association and situated in a town near Mrs C's home

