

EAST AYRSHIRE COUNCIL

CORPORATE GOVERNANCE COMMITTEE - 31 MARCH 2004

SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002 - REPORT BY THE SCOTTISH PUBLIC SERVICES OMBUDSMAN ON AN INVESTIGATION INTO A COMPLAINT AGAINST EAST AYRSHIRE COUNCIL - REF: E.COMM130

Report by Depute Chief Executive/Director of Corporate Resources

1. PURPOSE OF REPORT

- 1.1 To advise the Committee of the outcome of an investigation by the Scottish Public Services Ombudsman into a complaint against East Ayrshire Council in respect of a housing matter.

2. BACKGROUND

- 2.1 Under the Scottish Public Services Ombudsman Act 2002, the Scottish Public Services Ombudsman can investigate matters where there is a claim that a member of the public has sustained injustice or hardship in consequence of the maladministration, service failure or other action by a Local Authority.
- 2.2 On receipt of a complaint the Ombudsman seeks comments and information on the complaint from the Local Authority in question, to assist in the Ombudsman's enquiries. The Ombudsman having received such information can decide to carry out a formal investigation, as was the case with the complaint in question.
- 2.3 **The Council has received a copy of the Ombudsman's final report and a copy has been placed in the Members' Information Point. Copies of the report are available to Members on request.**

3. STATUTORY PROVISION FOR THE PUBLIC INSPECTION OF REPORT

- 3.1 In accordance with statutory provisions, a copy of the report is sent by the Ombudsman to the complainant, the First Minister and a copy laid before the Scottish Parliament.
- 3.2 The Council are required to make arrangements for the public inspection of the report for a period of at least three weeks and to publicise these arrangements.
- 3.3 Copies of the report were made available for public inspection during normal office hours within the Council Headquarters, London Road, Kilmarnock and at the Local Offices in Cumnock, Dalmellington, Stewarton and Darvel for three weeks commencing from Friday 26 March 2004. A public notice to this effect was placed in the Kilmarnock Standard and Ayrshire Post dated Friday 26 March 2004.

4. DETAILS OF COMPLAINT AND THE OMBUDSMAN'S FINDINGS AND CONCLUSIONS

4.1 This Section refers to the six heads of the complaint as identified by the Ombudsman and the Ombudsman's findings thereon. This Section also provides the Ombudsman's conclusions in respect of the complaint.

4.2 The Complaint

4.2.1 The complaint received from a tenant (referred to as Mr L in the Ombudsman's report) of an East Ayrshire Council house in Kilmarnock related to that tenant being aggrieved about the Council's actions as Housing Authority, in intimating to him that they intended to raise proceedings to recover possession of his home on grounds of his prolonged absence without the Council's prior permission. In particular, the tenant complained that:

The following paragraphs (a) to (f) are extracts from the Ombudsman's report.

- “(a) Officers refused to accept his explanation that he had not breached his conditions of tenancy and had informed the Council (through Financial Services) that he would be absent from his home for an extended period while on contractual work in Jersey and that he would effectively be threatened with unemployment if he returned before the contract ended;
- (b) the Officer's own record of a meeting with him on 26 June 2002 stated that he was told that if he did not return from Jersey, then a court order for recovery of possession would be obtained;
- (c) although he was in fact in Kilmarnock at the time, the Council acted heavy-handedly the very next day (27 June) in serving a notice of proceedings for recovery effective for a six month period commencing on 8 August 2002;
- (d) the grounds for the notice issued were inappropriate to his circumstances, in particular, he had no current rent arrears and no spouse;
- (e) the Council was inconsistent in stating that he had been told he need not return from Jersey yet the Area Manager stated in his letter to his Solicitor of 30 August 2002 that his occupation of his tenancy would be monitored and the Notice Of Proceedings would not be withdrawn; and
- (f) although he was visited by a Housing Officer on 7 August, following his permanent return from Jersey, she had not by the end of 2002 made personal contact with him again.”

The tenant claimed injustice in that he lost financially in losing his secure employment in Jersey. The tenant had maintained that he had been unable

to find permanent employment since returning but had been doing jobbing work with agencies. The tenant had also been concerned that the existence of the Notice of Proceedings on his housing file would have a prejudicial effect on any future application by him to purchase his home.

4.3 The Ombudsman's Findings

The following paragraphs 42 to 46 are extracts from the Ombudsman's report.

- “42. I am satisfied that Mr L's problems have largely emanated from his failure to comply with his tenancy agreement. He did not seek and was not given prior permission to be absent for an extended period in order to pursue employment opportunities in Jersey. His contact with the Finance Department was retrospective and did not amount to the required permission.
43. The Council were alerted to Mr L's absence when out of genuine concern for his downstairs neighbour his mother reported that the communal path needed repair. Officer B, in response to the repair request, raised legitimate questions, had doubts as to the answers she received and learned from Mrs L that her son was in Jersey and had been for some time. Officer B discovered he did not have landlord's permission for his absence, which by then (13 June 2002) had already extended for eight months. I have been advised that the Council has no formal guidelines in relation to extended absences.
44. The Council no doubt consider they acted in proper exercise of their discretion. While I am satisfied that in the main they did, I consider that they are open to criticism in some respects. My main criticism is that where the Council assert that prior approval for extended periods of absence is required, they should have a clear and explicit policy with specific detailed sanctions for non-compliance.
45. Taking each of the six heads of complaint in turn, I consider:-
- (a) The Council were not obliged to accept Mr L's explanation. They took formal action after hearing his version of events at the meeting on 26 June 2002.
 - (b) Mr L did not require to return from Jersey on 20 June to attend the meeting on 26 June 2002 in person. He could have instructed agents (his parents or a solicitor) to make his points on his behalf.
 - (c) The Council did not require to issue the Notice of Intention on 27 June 2002 but in exercise of their discretion chose to do so. The issue of that notice was not in itself of major consequence. It was, however, a necessary step for the Council to take if ultimately they required to recover possession of the tenancy.

Had they not issued it and had Mr L not returned by the end of September 2002 as he had indicated, then necessary action would effectively have been delayed by three months.

- (d) An explanation has been issued as to why the Notice refers to both a spouse and to rent arrears and I can find no injustice flowing from maladministration in that regard.
 - (e) While Mr L did not need to return from Jersey temporarily to attend the meeting on 26 June, I am convinced that had he not left Jersey and resumed 'normal occupation' of his tenancy by the date the Notice of Intention took effect, then court action would have ensued. To argue that Mr L could have seen out the term of the contract and returned later (because almost certainly court action would not have been immediate) was, in my view, clearly advice which should have come more appropriately from Mr L's legal adviser, not from the Director. I have to regard the communication of that advice as maladministration. Mr L for his part did not follow that advice and conformed with the Notice.
 - (f) For the six month period from 6 August 2002, Mr L was effectively on probation. While Mr L might consider there was intrusion into his privacy, the Council were entitled to take reasonable steps to establish that occupation of the flat by Mr L had resumed.
46. While Mr L feels aggrieved, in light of my initial remarks, his grievance flows from the consequences of his failure to note the wording of his conditions of tenancy rather than from shortcoming or maladministration by the Council. In these circumstances it is proper that his file should note that a Notice of Intention was served on him on 27 June 2002 but other than delay his application to purchase, the Notice itself did not lead to consequent court action, has now expired, and I understand had no bearing on Mr L's application to purchase his home."

4.4 Ombudsman's Conclusions

4.4.1 The Ombudsman in her conclusions is pleased to note that the Finance Department have now altered the application form for 50% Council Tax discount (which now informs tenants of the need to seek advice and/or approval from their landlord, in respect of prolonged absences from their homes to ensure, that tenants do not breach the terms of their Tenancy Agreements. The forms also advises East Ayrshire Council tenants that they can obtain advice from their local Housing Office). In addition, the Ombudsman is also pleased to note that the wording of the new Scottish Secure Tenancy Agreement is more explicit.

4.4.2 In her final conclusion the Ombudsman trusts that the Council will now give their attention to the development of policy and procedural guidelines to

tenants on requests for extended period of absence and has also suggested that the Director should apologise to Mr L for the inappropriateness of his advice.

5. CONCLUSION

- 5.1** In view of the Scottish Public Services Ombudsman's findings that the complaint is partly justified, East Ayrshire Council are required to consider the report and notify the Ombudsman of the action they propose to take to remedy the injustice.
- 5.2** Provision exists in the 2002 Act for the Ombudsman to make a special report on any case where she considers that the complainant has suffered an injustice or hardship which has not been, or will not be remedied. The Ombudsman must lay any special report before the Scottish Parliament. The 2002 Act also provides powers to the Ombudsman to publicise cases of unremedied injustice or hardship and to draw them to the attention of the Scottish Parliament. Such action is for the Ombudsman to decide depending on the response of the Council but the provisions are considered to be of sufficient rigour to encourage compliance with Ombudsman's recommendations.
- 5.3** The recommendations detailed below provide for the Council's response to remedy the injustice.

6. LEGAL/POLICY/FINANCIAL IMPLICATIONS

- 6.1** No direct implications in respect of this report, however, any policy/financial/legal implications will be covered in subsequent reports to relevant Committees in regard to any future action that requires to be taken by the Council.

7. RECOMMENDATIONS

- 7.1** It is recommended:-

- (i) that the findings and conclusions of the Scottish Public Services Ombudsman as detailed in her report of 4 March 2003, details of which are covered under paragraphs 4.3 and 4.4 above be accepted;
- (ii) that it be remitted to the Director of Neighbourhood Services to prepare for consideration of the Housing Committee a clear and explicit policy with procedural guidelines to tenants on request for extended periods of absence and that such policy and procedural guidelines provide specific detailed sanctions for non-compliance;
- (iii) that the Scottish Public Services Ombudsman be advised of the Council's action; and
- (iv) otherwise, note the report.

Fiona Lees
Depute Chief Executive/Director of Corporate Resources

BW/SM
11 March 2004

LIST OF BACKGROUND PAPERS

1. Scottish Public Services Ombudsman Report dated 4 March 2004 - Case Ref 020374/E.COMM130

Any person wishing to inspect the background papers or wishing further information on this report please contact Bill Walkinshaw, Administration Manager on Tel No (01563) 576135.

Implementation Officer: Bill Walkinshaw, Administration Manager