

Leicester
City Council

**WARDS AFFECTED
ALL WARDS (CORPORATE ISSUES)**

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

CABINET MEETING

2 JULY 2001

**FINDING OF MALADMINISTRATION BY THE LOCAL GOVERNMENT OMBUDSMAN
(OMBUDSMAN REPORT 00/B/04564)**

Joint Report of the Town Clerk , Housing and Arts & Leisure Departments

1 PURPOSE OF REPORT

- 1.1 The Local Government Ombudsman has issued a report following an investigation of a complaint about the Council's delay in completing the Right to Buy process. A finding of maladministration causing injustice was found by the Ombudsman. Recommendations by the Ombudsman to remedy this have been made.
- 1.2 The names of people used within the report are not the real names for reasons of confidentiality.

2 RECOMMENDATIONS

Members of the Cabinet are asked to approve the Ombudsman's recommendations in the following way:

- a) Pay Mr & Mrs Norman £4,290.47, the rent they paid between 1 June 1998 and 13 March 2000 together with their additional solicitor's fees of £312.88 and mortgage holding fee of £300.00; and
- b) Pay Mr & Mrs Norman a further £250 for their time and trouble in pursuing their complaint.

3 FINANCIAL AND LEGAL IMPLICATIONS

- 3.1 The payment will be split between Arts & Leisure, Housing and Town Clerk's & Corporate Resources Department's and will be met from existing budgets.
- 3.2 Once a tenants right to buy application is received the local authority have to comply with certain steps under the Housing Act. If a tenant thinks that the authority are unreasonably delaying matters it can trigger a process whereby rent during the delay is repaid. This process involves the serving of two notices, not less than one month apart.

The tenants in this case did not comply with this requirement as to the service of their notices.

4 REPORT

- 4.1 Mr & Mrs Norman applied for the Right to Buy their council house owned by the Arts & Leisure Department. The Right to Buy process was administered by the Housing Department.
- 4.2 Housing Department sought consent from Arts & Leisure for a licence for vehicular access from the property to the road. Various suggestions were put forward and rejected. The sale was completed without vehicular access being agreed.
- 4.3 Where a tenant believes they are experiencing delays in buying their property they have the right to serve an Initial Notice of Delay. The Notice gives the Council a minimum period of not less than one month in which it can serve a Counter Notice. If a Counter Notice is not served by the Council the tenant can serve an Operative Notice of Delay. This allows rent paid during the period of delay to be deducted from the purchase price.
- 4.4 Mr & Mrs Norman served an Initial Notice of Delay on the Council on 6 April 1998 which was received on 9 April 1998 but not acknowledged. Mr & Mrs Norman then sent an Operative Notice of Delay and it was received by the Council on 8 May.
- 4.5 On 22 March 2000 Mr & Mrs Norman made a claim from the Council for rent paid from 6 May 1998 to 13 March 2000.

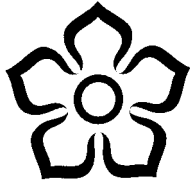
5 BACKGROUND PAPERS

- 5.1 Local Government Ombudsman Report on Investigation 00/B/04564.

6 REPORT AUTHOR/OFFICER TO CONTACT

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Joint Report of the Town Clerk, Housing and Arts & Leisure Departments

SUPPORTING INFORMATION

1. BACKGROUND HISTORY

- 1.1 Mr & Mrs Norman completed a second RTB1 form on 28 May 1997 after their first form was mislaid by the Council. The form claimed the Right to Buy their home, which was owned by the Arts & Leisure Department. The Housing Departments Right to Buy section agreed to administer the sale on behalf of Arts & Leisure.
- 1.2 Chartered surveyors instructed by the Council to value Mr & Mrs Norman's property assume that a right to vehicular access would be provided upon the sale of the property. Copies of the Ordinance Survey map showed that Mr & Mrs Norman would have ownership of one of the four boundaries adjoining their home.
- 1.3 An Offer Notice was served on 3 September 1997. Details of the valuation, sale price, valuers plan and draft transfer documents were included with the Offer Notice stating the purchase price as £38,400 (market value £60,000 less discount of £21,600).
- 1.4 The Norman's solicitor confirmed on 31 January 98 that Mr & Mrs Norman wished to proceed with the sale and requested that the transfer document showed vehicular access as marked on the plan provided by Mr & Mrs Norman.
- 1.5 On 26 February Legal Services requested instructions for Housing to prepare a licence for vehicular access. Consent was then sought from Arts & Leisure for the proposed licence.
- 1.6 In June 1998 Legal Services referred the vehicular and pedestrian access to Arts & Leisure as new plans now showed that Mr & Mrs Norman would not own any of the boundaries. Mr & Mrs Norman were asked to identify the access they used and return the plan which was then referred to Arts & Leisure.

- 1.7 Further proposals about vehicular access were discussed but not concluded. The Council served Notice to Complete on 10 November 1998 but were unable to proceed without instructions from Arts & Leisure concerning access.
- 1.8 Mr & Mrs Norman's solicitor were sent plans on 10 February 1999 indicating proposed access. The proposed parking area formed part of the open space and once the disposal requirements of Section 123 of the Local Government Act 1972 had been complied with, the proposed parking area would be valued and offered for sale to Mr & Mrs Norman separately.
- 1.9 Mr & Mrs Norman put forward an alternative proposal for access arrangements and queried whether planning permission would be required.
- 1.10 A meeting was held on 26 February 1999 following a complaint from Mr & Mrs Norman's son about delays with the sale of the property. At the meeting Mr & Mrs Norman said they were unhappy with the Council's proposal for access. A full report on the current problems was sought from Legal Services and Arts & Leisure.
- 1.11 The Housing Department wrote to Mr & Mrs Norman on 8 March stating that their alternative access proposal was still being considered by Arts & Leisure.
- 1.12 Mr & Mrs Norman's son telephoned on 9 March to say that his parents wanted to complete the sale as soon as possible and were prepared for the question of access to be resolved at a later date. This was an option open to them at anytime during the process.
- 1.13 Arts & Leisure instructed Legal Services that the Norman's proposed access was not acceptable. This was based on advice from Highway & Development Control. The Norman's solicitor was advised of this by letter on 26 March and that the sale would proceed with the original access proposal.
- 1.14 Mr & Mrs Norman complained to the Local Government Ombudsman and were told that Right to Buy issues should be addressed through the Initial and Operative Notices of Delay procedure. They were also advised of the default powers of the DETR under Section 164 of the Housing Act 1985, to take the case over from the Council where they were satisfied that there had been unreasonable delay.
- 1.15 Arts & Leisure wrote to Mr & Mrs Norman to advise them that once their solicitor had responded to their letter of 26 March 1999 the sale could proceed.
- 1.16 Mr & Mrs Norman wrote to the DETR on 21 April asking them to use their powers of intervention under Section 164 of the Housing Act 1985 because they did not agree with the Council's proposals for car access.
- 1.17 On 14 May 1999 the Council served a Final Notice to complete on Mr & Mrs Norman as they hadn't had a response from their letter of 26 March. Mr & Mrs Norman's solicitor wrote on 18 May asking the Council to withdraw the Notice as they understood that the DETR had taken over the sale of the property.

- 1.18 On 13 December Mr & Mrs Norman's solicitor forwarded to Legal Services a copy letter from the DETR dated 13 October 1999 stating *'we are not inclined to recommend that the Secretary of State should use his powers under Section 164. In all circumstances of this case we regard the County Court as the better forum'*. They also said *'we think proposals for access to the front of the house seem perfectly sensible'*. The solicitor asked that the sale proceeds 'as the matter stands' and that the access issue be dealt with separately by Mr & Mrs Norman.
- 1.19 Clarification was sought on how Mr & Mrs Norman wanted to proceed regarding vehicular access.
- 1.20 On 23 February 2000 transfer documents and plans were sent to Mr & Mrs Norman's solicitor. Reference to 'all means of access and egress' was deleted from the transfer document and the plan was amended to show the purchaser and not the Council as responsible for maintenance of the boundary.
- 1.21 Mr & Mrs Norman wrote on 22 March 2000 saying they had not received a reply to their Initial Notice nor Operative Notice of Delay served on 6 May 1998. They submitted a claim for rent they had paid from 6 May 1998 to 13 March 2000 (the completion date). The amount being claimed from the Council was:

Rent Paid 6 May 1998 to 13 March 2000	£ 4,290.47
Mortgage holding fee	£ 300.00
Additional solicitors fees	£ 312.88

- 1.22 Mr & Mrs Norman wrote to Legal Services again on 15 May as they had not received a reply to their Claim for Rent. They made their second complaint to the Ombudsman on 22 June 2000.
- 1.23 Legal Services responded to Mr & Mrs Norman's claim on 16 August stating that a copy of the recorded delivery slip indicated that the Initial Notice of Delay was served on the Council on 16 April 1998 and their claim was invalid because the Operative Notice of Delay had been served before the Initial Notice of Delay had expired. Their claim for rent could not therefore be accepted.
- 1.24 Mr & Mrs Norman then made efforts to prove that their Initial Notice of Delay was sent on 6 April and not the 16 April. Legal Services response to both Mr & Mrs Norman and the Local Government Ombudsman is that the statutory period of one month had not elapsed before the Operative Notice of Delay was served.

2 OMBUDSMAN FINDINGS AND RECOMMENDATIONS

- 2.1 The Operative Notice of Delay was not properly served by Mr & Mrs Norman. The Initial Notice of Delay has to run a full calendar month before the Operative Notice can be served. The Operative Notice of Delay was served on 6 May 1998, two days before the due date. This error was uncovered by Legal Services in August 2000 after the Normans' completed their purchase and made a claim for a rebate of rent.
- 2.2 The Ombudsman concluded that scrupulous adherence to the letter of the law would lead to considerable unfairness and injustice for Mr & Mrs Norman.

- 2.3 The Council had not acknowledged either Initial Notice of Delay nor the Operative Notice of Delay. Had the correct administrative procedures operated then Legal Services should have noticed that the timescale between each notice had not been adhered to and informed Mr & Mrs Norman that the Operative Notice was invalid. Had this been done Mr & Mrs Norman would have had the opportunity to serve a valid Operative Notice of Delay and claim almost two years' excess rent from that time until the completion. Failure to acknowledge receipt was maladministration.
- 2.4 The Ombudsman does not consider that Mr & Mrs Norman significantly contributed to the delay in completing the purchase of their home after the Operative Notice of Delay was issued.
- 2.5 The Ombudsman accepts that this was a particularly difficult Right to Buy involving different departments each with separate interests to safeguard. However, departments should have liaised more closely to address the matter of vehicular access to the Normans' home swiftly, bearing in mind security implications for the Council. This was also maladministration.
- 2.6 The Ombudsman recommends that the Council:
- (a) Pay Mr & Mrs Norman an amount equivalent to the rent they paid between 1 June 1998 and 13 March 2000 together with their additional solicitor's fees and mortgage holding fee; and
 - (b) Pay Mr & Mrs Norman a further £250 for their time and trouble in pursuing their complaint.
- 2.7 The Council Officers reviewing the findings believed that the conclusions drawn by the Ombudsman did not reasonably flow in the case, in particular it is disputed there is any duty to point out claimants mistakes in the service of contentious notices, especially in this case when the Normans would have been advised by their solicitor who did not raise the matter of the rent on completion. The Ombudsman, it is felt, has not accounted for his conclusions properly (for example, the mortgage holding fee was incurred before the Normans decided to proceed with their purchase in January 1998.) All in all this is a particularly hard decision to accept notwithstanding that officers are of the view that some compensatory payment should be made, albeit based on the actual losses/detriment the Normans incurred through the Council's delay not on a penalty basis.
- 2.8 However in terms of the time and cost involved in not accepting the Ombudsman's conclusions and the resulting contention with the Ombudsman office on balance and without accepting the worthiness of the claim or the decision it is recommended that the Council complies with the Ombudsman's recommendation.

3 THE COUNCIL'S RESPONSE

- 3.1 This was an unusual case and the need for better liaison between departments is accepted.

3.2 It is proposed that as a result of the report the following actions be taken:

- (a) All Notices of Delay received by department's (including Legal Services) be passed to Housing who will acknowledge them immediately. Housing will then monitor the period from the Initial Notice to the Operative Notice of Delay and ensure that the Notice timescale is adhered to. Housing will also ensure that counter notices are served where appropriate;
- (b) Where Housing identify any departmental and/or cross departmental issues relating to the Right to Buy process they will immediately co-ordinate a case conference with the officers involved to identify and discuss the issues;
- (c) Housing will liaise with Legal Services throughout the 'Right to Buy' process.
- (d) When the complaint first arrives, in some cases it may be worth having a round table discussion about the potential for local settlement, being realistic about the probable outcome of the investigation. If we indicated a proposal to the Ombudsman which was reasonable, we would be in a strong position, even if the complainant rejected it at that stage.
- (e) When we receive a draft report which seems to be heading for a finding of maladministration, we could indicate to the Ombudsman with our comments on the draft what we considered was reasonable to put the complainant into the position he or she should have been in and our reasons. This would help to shape the investigator's thinking and reduce the chance of a perverse conclusion.

4 EQUAL OPPORTUNITIES

4.1 It is anticipated that the proposed management recommendations will ensure a corporate approach to the specific needs of applicants especially those from vulnerable groups of society.

5. OTHER IMPLICATIONS

OTHER IMPLICATIONS	YES/NO	Paragraph References within report
Equal Opportunities	YES	Para 4 – Corporate approach to specific needs of applicants.
Policy	NO	
Sustainable and Environmental	NO	
Crime and Disorder	NO	
Human Rights Act	NO	