

## **The Ombudsman's final decision**

Summary: The Ombudsman found fault by the Council on Mr S's complaint that it delayed processing his Right to Buy application as it took 15 months from application to completion. The Council delayed progressing the application, had to rectify an earlier error with the boundary, and delayed dealing with his complaint. The agreed action remedies the injustice caused.

---

## **The complaint**

1. Mr S complains the Council delayed processing his Right to Buy application for the property he rents as it took about 15 months from application to completion; as a result, he continued to pay rent when he could have been paying a mortgage for the property and was put to time and inconvenience pursuing the Council about it.

## **The Ombudsman's role and powers**

2. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)
3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. The Ombudsman normally expects a Right to Buy complainant to use the Notice of Delay process set out in the Housing Act 1985. If that process was followed, the Ombudsman has the option of considering the complaint.

## **Right to buy guidance**

5. Under the government's Right to Buy scheme, a secure social housing tenant can buy their home, if they meet qualifying criteria, at a lower price than the full market value. This is because of a discount based on the length of time spent as a tenant. The law about Right to Buy is found in the Housing Act 1985.
6. The Right to Buy process involves:
  - A council receives an application from a tenant to buy their property (RTB1);

- 
- The council then has 4 weeks to issue a notice confirming the applicant is eligible to buy it (RTB2);
  - The council has 8 weeks to send the applicant a formal section 125 Notice (RTB4). This sets out the price to pay and the terms and conditions of sale;
  - If a council does not meet the timescales, an applicant can serve an initial Notice of Delay form (RTB6);
  - A council can counter this by serving its counter notice (RTB7); and
  - If the council fails to respond within a month, the applicant can send an 'Operative Notice of Delay' (RTB8). Once sent, a council, as landlord, may need to refund rent paid during the period of delay.

## **How I considered this complaint**

7. I considered all the information provided by Mr S and the Council's response to my enquiries, a copy of which I sent him. I sent a copy of my initial draft decision to Mr S and the Council. I considered the comments received from Mr S, his solicitor, and the Council. I sent a copy of my revised draft decision to Mr S and the Council. I considered the responses received.

## **What I found**

8. Mr S applied to buy his Council property in January 2018. He is unhappy with the length of time this took and argues the Council should return the rent he paid during the period of delay.
9. In February, the Council sent Mr S the RTB2 form. The Council sent the file off to the valuers.
10. In March, he received the offer letter from the Council which he instructed his solicitor to accept. The Council received the valuation report. It also received a signed plan of the property back from its housing team.
11. In April, Mr S chased the Council and was told it had passed his details to another local authority (the conveyancer) for it to carry out the legal work on the sale. Mr S thought sending this without consent amounted to a data breach. As a result, the Council withdrew the papers from the conveyancer. It asked Mr S to sign a release form allowing case documents to go to the conveyancer.
12. Later the same month, Mr S raised the issue of the property's boundary with his solicitor. This was because the plan the Council sent did not match the layout of their garden. The problem was the position of a fence. The plan showed the fence had enclosed land belonging to him. Mr S wanted the Council to re-position it as he wished to avoid a neighbour dispute.
13. In May, Mr S's solicitor wrote to the Council saying an area of the garden was not shown on the plan as belonging to him. A housing officer was asked to go and check the boundary. The Council received the release form from Mr S.
14. An email from the conveyancer to the Council in June noted part of the garden was unregistered. HM Land Registry keeps details of all registered land. Unregistered land means there is no central record of who owns it. Proof of ownership depends on a seller showing a 'chain of ownership' through deeds and other documents. The conveyancer asked for a copy of the conveyance covering this land. An officer visited to check the boundary fence and confirmed the original

- 
- boundary had changed. The officer discovered this was because of an error in 2012 following repairs which saw the fence put back in the wrong place.
15. In July, the fence was moved back to its original position as shown on the plan. The conveyancer chased the Council for the information requested previously. The Council replied saying they were short staffed, but a member of staff was visiting its offices the following day and could bring the document packages if they were happy to look for the document needed.
  16. In August, Mr S's solicitor asked the Council for an update. Mr S sent the Council a Notice of Delay (RTB6). Around this time, there was a personnel change at the conveyancers. The Council claimed the delay with progressing the right to buy application was due to 2 factors. One was Mr S challenging the Council sending the case papers to the conveyancer. The other was the boundary. The Council contacted Mr S explaining this and the problem with the land being unregistered.
  17. In September, the Council served a counter notice (RTB7). This claimed it had done what was required to progress the sale. Mr S's solicitor responded to a letter from the conveyancer received earlier that month which I have not seen. The solicitor pointed out there was no evidence showing exactly what land the Council owned as the copy conveyancing document had various notes on it confirming sections of land had been removed from it. His solicitor wanted the Council to provide a certificate confirming it owned this piece of land.
  18. In October, Mr S's solicitor wrote to the conveyancer pointing out there were missing marks on the plan, an error on the boundary to the front of the property which should be square with nothing sticking out from it, and a failure to refer to a shared pedestrian access to the rear garden. It enclosed an amended plan for it to consider. The Council provided an internal email which asked who would sign the certificate wanted by Mr S's solicitor. Mr S's mortgage offer expired. At the end of the month, the conveyancer asked the Council if there had been any progress.
  19. In November, Mr S's solicitor said they were waiting for the Council to clarify the boundary. The conveyancer chased the Council about what was happening. Mr S complained to the Council about the delay. In it, he noted the plans sent did not have the required marking on them. Nor had it shown the end of the garden area was covered by the plans his solicitor received. He wanted this clarifying to ensure the Council could prove it had the right to sell it to him.
  20. In December, his solicitors wrote to the conveyancer about progress. It referred to letters unanswered sent in September and October. The conveyancer wrote to the Council asking who was going to sign the certificate and asked it to, '*confirm the position as regards this file please?*'. The Council wrote to Mr S and his solicitors about the delay and asked for one person only to contact it as numerous emails were causing delays.
  21. In January 2019, Mr S sent a complaint about the Council's actions. The conveyancer contacted the Council about the letter it received from Mr S's solicitor about outstanding issues.
  22. The Council responded saying any delay could not be dealt with under the complaints process. This was because of the separate process dealing with Right to Buy delay. It said the case was complicated by parties raising different, or slightly different, queries at different times. Mr S raised queries with different members of staff in various departments. It gave the example of the solicitor wanting a certificate at the start of October 2018 and Mr S asking about adverse

---

possession a few weeks later. The plan his solicitor sent was wrong as it missed some markings and added others.

23. In February, Mr S's solicitor responded by saying the plan was, in fact, drafted by the Council's conveyancer. It asked it to make the amendments needed. The Council asked its conveyancer to amend the plan.
24. In the middle of March, the conveyancer asked the Council for the rent account figure for completion on 1 April. The Council completed the sale on 1 April.

### **Analysis**

25. Mr S issued the Council with a Notice of Delay, to which the Council responded. While the law provided him with a statutory procedure to follow in the event of delay by the Council, it did not provide him with a legal remedy. What this means is the Ombudsman has discretion to investigate complaints about delay despite the statutory procedure. In this case, I exercised discretion to investigate because of the complaint about the issue with the fence and inaccurate plans.
26. I make the following findings on this complaint:
  - a) In April 2018, Mr S raised 2 concerns with the Council. The first concern was the involvement of its conveyancers, another local authority and the second, about the boundary shown on the plan not matching that in his garden.
  - b) The Council instructing a legal department in another local authority was not a problem. Mr S eventually signed a release form agreeing to them receiving his papers a month later anyway. This could have been avoided had the Council explained earlier on in the process what was going to happen, who it intended to instruct to do the legal work, and why.
  - c) The second concern was more problematic. There clearly was a difference between where the fence was in Mr S's garden and where the Council's plan showed the boundary. Understandably, Mr S wanted this resolving as he did not wish to buy land which the neighbour might claim as his own. This could potentially lead to long and costly negotiations or legal action. It was reasonable for him to ask the Council, as owner of the land it was selling, to resolve it before the sale completed.
  - d) The housing officer who visited in May discovered the reason for the difference. When works were completed in 2012, the fence had been put back in the wrong place. This meant it did not enclose all the land the Council was now selling. I consider the Council was at fault for failing to reinstate the boundary in the correct place. This failure contributed towards the delay processing his application as it had to act to resolve the boundary issue.
  - e) In June, the Council's conveyancer identified another problem. Part of the land the Council wanted to sell was unregistered. This meant further work because the Council would have to establish a chain of ownership proving it owned it. This meant the sale of the property, which I assume was registered land, also had to include proof of ownership of the land that was not registered. Having unregistered land was not fault.
  - f) The conveyancer asked the Council for documentation for this unregistered piece of land. The following month the conveyancer chased the Council about providing it. The Council replied saying they were short staffed and would send an officer to its offices with it. The delay in responding to the documentation request was fault.

- 
- g) In August, Mr S's solicitor asked the Council for an update. Mr S sent the Council RTB6 because of the delay. The Council responded with the RTB7 the following month but, there is no evidence showing what else it did during this period to progress the application. In response to my initial draft decision, the Council said it had prepared and sent Mr S's solicitor the sale documents. It did not provide evidence in support.
- h) Mr S's solicitor queried the accuracy of the plan and wanted the Council to provide a certificate about the ownership of the piece of unregistered land.
- i) The conveyancer chased the Council at the end of October having heard nothing back about the certificate Mr S's solicitor wanted. The conveyancer again chased the Council about it in the middle of November.
- j) In early December, the conveyancer had still to receive a response to the query about the certificate. Mr S's solicitor chased the conveyancer having heard nothing to correspondence sent in September and October. The Council delayed responding to Mr S's solicitor's request about documentation. This is fault. While the Council replied to my initial draft decision by saying the certificate was not required, which his solicitor eventually accepted, it failed to provide evidence in support. Even if the Council is correct and it was not needed, it was slow to respond to the queries about it or indeed say there was no need for it. Instead, the records show the legal department asking who could sign it, for example.
- k) The completion of the sale took place about 4 months later and I have seen little evidence showing what was happening during this period. This is fault.
- l) It took the Council 15 months from receiving Mr S's initial request to buy his property to complete the sale. During this time, Mr S had to re-apply for a mortgage as the original offer expired. The Council accepted it took this long but, says this was because of, '*multiple complications*' which included the boundary, unregistered land, data protection, and communication issues with Mr S. It also claimed Mr S's solicitor was slow to respond, taking more than 3 months to do so on one occasion. This was denied by Mr S's solicitor.
- m) The Council also accepts the complaint process was lengthy. Mr S complained on 10 January 2019 and the Council sent its stage 1 response on 12 February. Its policy states it will send a response within 28 days of receiving the complaint. Its response was 5 days late. He expressed dissatisfaction with this decision on 17 February and received a stage 2 response on 17 July. Its complaints procedure states it will provide a response at stage 2 within 63 days of receipt. Its response was about 3 months late as it was due on 21 April.
- n) The Council explained it had problems with an organisational review, some officers who were involved having left, and key posts becoming vacant. These were posts in the legal team and the head of customer services. It is the head's role to co-ordinate all responses. It started a review of its complaints process and handling.
27. I accept the process became complicated. As noted, the issue with the boundary was the Council's fault. The issue of the unregistered land would have needed resolving anyway and does not amount to fault. The failure to properly explain the involvement of the local authority earlier on in the process also could have also avoided some delay.

- 
28. I accept Mr S contacted the Council directly on occasion but, some of this was due to his desire to move matters on when told by his solicitor they were still waiting on the Council for a response or documents.
29. I am satisfied the fault caused Mr S avoidable injustice. This is because it caused growing frustration with the Council, a degree of inconvenience, which included having to re-apply for a mortgage offer upon the expiry of the first, and some stress. He paid rent for longer than was necessary. In addition, he was put to the time and trouble pursuing his complaint about the Council through its complaint procedure.
30. When considering the injustice, I also took account of Mr S's own behaviour. It was a reasonable request for the Council to ask for him to direct queries through his solicitor. Mr S raised issues, such as adverse possession, directly with the Council instead of leaving matters in the hands of his solicitor.
31. Mr S claimed he incurred additional legal costs because of the delay as he had to employ the services of his solicitor longer than necessary. While he showed evidence the legal costs he eventually paid were £150 higher than quoted, I cannot say with any certainty this increase was solely due to the Council's fault. For example, there was the issue of unregistered land that needed resolving and time spent pursuing a certificate that was not ultimately necessary.

### **Agreed action**

32. I read our guidance on remedies.
33. I took account of Mr S's actions, as noted above, along with the Council's offer of £500 as a gesture of goodwill.
34. The Council will, within 4 weeks of the final decision on this complaint, carry out the following:
- a) Send Mr S a written apology for the delays both with the Right to Buy process and with its responses to his complaint;
  - b) Review its processes to identify why delays occurred on this case and how they can be prevented on future cases;
  - c) Pay Mr S the £500 offered which will remedy the frustration, inconvenience, and stress the fault caused him; and
  - d) Pay Mr S the sum of £100 for the time and trouble he spent pursuing his complaint.

### **Final decision**

35. The Ombudsman found fault on Mr S's complaint against the Council. The agreed action remedies the injustice this caused.

### **Investigator's decision on behalf of the Ombudsman**