

Report of: Chief Executive
To: Standards Committee
Date: 8th September 2006 **Item No:**
Title of Report : Ombudsman Investigation

Summary and Recommendations

Purpose of report: To inform the Committee of the outcome of an investigation by the Local Government Ombudsman into a complaint about Council housing management.

Key decision: No

Portfolio Holder: Councillor David Rundle

Scrutiny Responsibility: N/A

Ward(s) affected: All

Report Approved by: William Reed, Democratic Services Manager
Mike Baish, Finance and Asset Management Business Manager

Policy Framework: Corporate Governance

Recommendation(s): The Committee is asked to note and comment on the report.

Introduction

1. The Committee is responsible for monitoring the Council's handling of Ombudsman investigations.
2. On 31st May 2006, the Council received the attached report from the Ombudsman under Section 30(3) of the Local Government Act 1974 on an investigation into a complaint against the Council.

3. As the Ombudsman found the complainant has suffered injustice because of maladministration, the Council is required under Section 31(2) of the 1974 Act to consider the report.

Report Findings and Recommended Remedy

4. The Council agreed with the findings contained in the report and the recommended remedy. The complainant has been paid the sum suggested by the Ombudsman, as have the other tenants treated in a similar way to the complainant.
5. The reviews recommended by the Ombudsman will be carried out by the Council's internal auditors as part of the internal audit process before the next changes to the Rent Account in April 2007.

Name and contact details of author: Michael Newman, Corporate Secretariat Manager

Background papers: None



The Commission for
Local Administration in England

Report

on an Investigation into
Complaint No 03B13806 against
Oxford City Council

31 May 2006

The Oaks No2 Westwood Way Westwood Business Park Coventry CV4 8JB

Investigation into Complaint No 03B13806 Against Oxford City Council

Table of Contents	Page
Report Summary	1
Introduction	3
Legal and Administrative Background	3
Investigation	6
Conclusions	8
Finding	10
Appendix 1 Example showing rent calculations	12

Key to names used

Mr Roper the complainant

Report Summary

Council Housing Management

Mr Roper, a Council tenant in sheltered accommodation, complained that the Council had overcharged him for gas consumption from April 2002, and had wrongly applied its rent charging system because his home had not been modernised. He sought a refund.

From April 2001 the Council made a number of changes to the way it charged residents of sheltered accommodation both for rent and associated services in order to reflect changing government guidance.

The Ombudsman found that Mr Roper had not been overcharged for gas. The Council had not provided clear information to show this to the complainant but it was later provided during investigation. The Ombudsman also found that the Council had not properly implemented its rent charging system for Mr Roper's block of sheltered flats and as a result he had been overcharged for over a decade. The Council acknowledged there was inconsistency in its application of the rent charging system that affected other tenants that it would rectify.

Finding

Maladministration causing injustice, remedy agreed

Recommended remedy

The Ombudsman recommended and the Council agreed to pay Mr Roper £1000 for his time, trouble and frustration in pursuing his complaint, and a further sum of around £3600.00 (calculation to be finalised) representing a refund of rent plus interest. The Council has also agreed to provide appropriate refunds with interest for other tenants it has treated in a similar way to Mr Roper.

Finally the Ombudsman recommended that the Council reviews the way it implements changes in the Rent Account, and carries out an interim internal audit to ensure further financial errors affecting tenants do not persist. The Council has agreed to these recommendations also.

Introduction

1. Mr Roper, a Council tenant in sheltered housing, complains that the Council overcharged him in his rent:
 - by charging too much for the gas he used from April 2002 until October 2003, and misleading him about this;
 - by charging for a modernised flat when Mr Roper's flat was not modernised;
 - because the Council was paying too much for gas for its properties.
2. For legal reasons, the names used in this report are not the real names of the people or places concerned.¹
3. Two of the Commission's officers have examined the Council's files, interviewed officers of the Council and interviewed the complainant.
4. The complainant and the Council were invited to comment on a draft of this report, before the conclusions were written. I have taken account of their comments in preparing the final text and reaching my conclusions.

Legal and Administrative Background

5. I cannot investigate actions taken by a Council relating to contractual or commercial transactions (subject to limited exceptions).²
6. The Council has discretion in how it sets its rents: the law provides that the Council shall from time to time review rents and make such changes generally or of particular rents as circumstances require.³ The Council must give tenants at least four weeks' notice of a change in their rents. To vary the terms of the tenancy the Council must serve a preliminary notice setting out the variation and invite comments. After considering any comments the Council can serve Notice varying the terms⁴. The "Rent Account", the annual statement of rent sent to tenants, sets out what tenants must pay for the coming year.

General Rent Policy

7. The Council's rent policy is decided by Committee. A number of housing committees with different names have reached rent policy decisions over the period of this complaint. These are referred to simply as "the Committee" in this Report. In July 1991 the Director of Housing recommended to Committee that council house rents be reviewed. The Director's report recommended a method of calculating rent,

1 Local Government Act 1974, Section 30(3)

2 Local Government Act 1974 Schedule 5, Section 3(3)

3 The Housing Act 1985, Section 24(1)

4 Housing Act 1985, Section 103

"the rent pointing system", which allocated points to attributes of its properties, for example the age of the building, the number of bedrooms, the type of property and whether it was modernised. The report did not say that points for modernisation would be applied to flats. The Council introduced the rent pointing system by charging a "points-based rent" in December 1991, and this remained in place until September 2002.⁵

8. In 2000, the Government's policy for social rents adopted an approach which based a property's rent on its size, its value compared to other social properties and the earnings in the surrounding area. The new approach was to be put in place with the impact of any changes phased over a ten-year period.⁶ Detailed guidance set out the central formula by which social rents were to be set.⁷
9. Government consultation papers in 2001 and 2002 indicated to Councils how further changes should be made to support rent restructuring,⁸ and to consider limits on rent increases.⁹ The Council notified tenants as part of its annual rent notification in March 2002 that rent restructuring, phased over ten years, would be introduced in July 2002. The Council's Committee authorised phasing over ten years in June 2002. The Council's policy is to implement the restructured rent by moving a tenant's points-based rent towards the restructured "formula rent" at the rate of 10% per year.¹⁰ In September 2002 the Council implemented rent restructuring and formula rent replaced the points-based rent. Phasing began using a "base rent", which was the point-based rent applicable in April 2002.

Service charges for sheltered tenants

10. In addition to the rent for their homes, the Council also charged tenants in sheltered accommodation a service charge for additional services they received, such as warden services, and a separate sheltered alarm charge. Prior to and including 2000 the service charge included a charge for gas. The Council's policy was not to recover the full cost of gas but to increase the service charge at the same rate as the percentage increase for the rent for the home. The result of this was that the cost of gas to the Council was far greater than the amount the Council charged tenants for it.

Policy for setting the cost of services in 2001

11. In November 2000 the Council's Committee agreed that the service charge needed to increase to enable the sheltered accommodation service to become self-financing. In February 2001 the Director of Housing and Revenues reported to Committee that the Council needed to increase the communal services part of the service charge

5 Oxford City Council Rent Pointing System December 1991

6 The Way Forward for Housing December 2000 paragraphs 26 and 27

7 A Guide to Social Rent Reforms in the Local Authority Sector December 2000 paragraph 2.2

8 HRA Subsidy and Rent Restructuring consultation July 2001

9 A New Financial Framework for Local Authority Housing: Resource Accounting in the Housing Revenue Account consultation June 2002

10 Oxford City Council Executive Board 17 June 2002

and the sheltered alarm charge. The Committee agreed to the increases recommended by the Director. The Director's report did not refer to the shortfall in the recovery of the cost of gas used by tenants. Instead, it referred to the amount being collected for gas-heating maintenance and considered the amount collected was adequate.

12. The Council implemented the increases from April 2001, and changed the way it described the charges. Non-rent charges were described to tenants in their Rent Account as a "service charge" prior to April 2001. From April 2001 the "communal charge" covering 100% of warden staff costs only was introduced and the Council stopped using the term "service charge" in the Rent Account. Sheltered Alarm charges, shown separately, increased to cover the cost of providing the service. The Council stopped collecting a number of premises costs previously included in the service charge from the residents of sheltered blocks from April 2001, including the cost of gas.

Policy for setting the cost of services in 2002

13. In February 2002 the Housing Management Business Manager reported to Committee that the Council was not asking tenants in sheltered accommodation to pay for the gas they used, where the flats did not have an individual meter. The Committee authorised the recharging of the cost of gas used from April 2002. The Council phased in the charge over two years, charging 50% of the cost in the first year. When gas charges were reintroduced in April 2002 the Rent Account the Council provided to tenants listed the "communal charge" and "gas usage" under the heading "Service Charges". Although the Council used the term "service charge" again in 2002, this was not the same group of costs it comprised before April 2001, but the Council did not explain this to tenants.
14. The Council's policy is to charge for services based on the previous year's costs. If the price the Council pays for gas changes, this change takes a year to reach the tenant. So the gas charge reintroduced in April 2002 was based on 50% gas costs for April 2001 to March 2002.
15. Government consultation in 2002 indicated to Councils how it should treat service charges and that it should identify them separately.¹¹ This was reflected in the Council's policy in 2003, see below.

Policy for setting the cost of services in 2003

16. In April 2003 the Council charged the full cost of gas used in 2001-2 increased for inflation because it intended to implement charging by individual blocks later that year. (In previous years the cost of gas was pooled across sheltered properties.) From October 2003 the Council changed its method of charging to reflect the cost of gas used during May 2002 to March 2003 by blocks of flats. The Council introduced

¹¹ Rent Restructuring and Service Charges consultation July 2002

a new element to the Rent Account, "communal area charge 1", which comprised a number of premises costs that had not been charged to tenants since April 2002.

Investigation

17. Mr Roper contacted the Council with concerns about service charges in 1999. The Council wrote to Mr Roper to show that service charges then included a contribution for gas used. Mr Roper was satisfied with this.

Complaint about the service charge for gas and the information Mr Roper received about it

18. Mr Roper became aware in early 2002 of the Council's intention to make a separate charge in the Rent Account for gas used. Mr Roper believed he was already paying for gas used as part of the communal charge introduced in April 2001. He believed the Council was simply replacing the service charge with the communal charge, and that the communal charge included gas. He wrote to the Council in March 2002 pointing out its earlier letter in 1999 which said he was paying for gas. The Council responded to Mr Roper and repeated what it had said in its report to Committee in February 2002, that the cost of gas used had not been re-charged previously, but that from April 2002 the charge of £3.04 per week would cover half the cost of gas used.
19. In March 2002 Mr Roper received the Council's annual rent increase letter, which explained that from July 2002 the Council would implement the government's recommended rent restructuring.
20. In September 2002 the Council introduced a formula rent which replaced the points-based rent, see paragraph 9. So Mr Roper's Rent Account consisted of the formula rent for his home, and the service charge which comprised the communal charge and the gas usage charge of 50% of the cost of gas.
21. Mr Roper's total rent went up significantly and he believed that the Council had charged him the full cost of gas in his new formula rent as well as the separate gas usage charge. He wrote to and telephoned the Council about this in February 2003 seeking information in order to understand his Rent Account. The Council explained to Mr Roper in March 2003 that it had made an error unrelated to the gas usage charge. It refunded the amount it had overcharged him since September 2002 and reduced his rent accordingly.
22. From April 2003, Mr Roper and other sheltered tenants were assisted by a local Councillor in trying to get to the bottom of some elements of the rent to ensure there was no duplication in the Council's charging for gas. In August 2003 Mr Roper emailed the Council because he was not satisfied and sought further information.
23. On 10 December 2003 the Council wrote to Mr Roper in response to his continued complaints to say that pooled charges had continued up to April 2002. This letter indicated that Mr Roper had contributed towards the cost of gas until then.

24. Mr Roper remained dissatisfied and complained to me in December 2003. The Council acknowledged during this investigation that the February 2002 report to Committee, which was provided to Mr Roper, was wrong in saying that sheltered tenants had not paid for individual gas usage for many years. The Council now accepts that sheltered tenants had contributed to the cost of gas used up to April 2001 within the service charge.
25. My investigators examined the following elements of the Council's Housing Revenue Account referred to by Mr Roper:
- the communal charge in April 2001 and April 2002;
 - the formula rent in September 2002 and April 2003.

They found no evidence of the Council including a duplicate charge for gas in these elements of the Housing Revenue Account. Gas was charged separately from April 2002. The Council's records also show that Mr Roper was not charged for gas between April 2001 and April 2002 (although it had told him he was in December 2003).

Complaint about the price the Council paid for gas

26. In April 2003, the Council implemented the full gas usage charge previously approved by the Council in March 2002 (see paragraphs 13 and 16). Mr Roper was charged £6.26 per week for gas between April and October 2003. Mr Roper still felt he was being overcharged and challenged the Council's figures for this period. He presented petitions to the Council on 21 July and 21 November 2003, and addressed the Finance Scrutiny Committee on 15 October 2003.
27. In October 2003 the Council charged Mr Roper £5.31 per week for gas based on the gas bills for his block for the period May 2002 to March 2003. The Council renegotiated its contract for gas with effect from 1 February 2003 and obtained more advantageous terms. The Council charged tenants £5.31 per week for gas until April 2005, when the weekly cost reduced to £3.83 reflecting reduced costs. Mr Roper considers that this amount is reasonable.

Complaint about overcharging under the Rent Pointing System and restructured rent

28. Mr Roper became a Council tenant in a sheltered flat in May 1993. His block was one to which the Council applied points for "modernisation", and this was reflected in Mr Roper's rent.
29. During 2002 Mr Roper made enquiries of other tenants in sheltered blocks regarding gas charges. He says that as a result of these enquiries it appeared to him that only his block was awarded points for both its age and for modernisation. Mr Roper complained to the Council about this. Following Mr Roper's petition, on 10 December 2003 the Council told him it had relied on information about the block provided by a neighbouring authority when his sheltered block was transferred to the

Council in the 1970s. The Council said it applied the pointing system across all properties. Mr Roper remained dissatisfied and complained to me.

30. The Council says in response to my enquiries that while it can demonstrate from its surveyor's records that there has been modernisation work undertaken in sheltered blocks between 1998 and 2002, there is no firm evidence to support the Council's initial view that the modernisation element could be applied to flats under the rent pointing system that had been approved in 1991. The Council told my investigator that its enquiries showed Mr Roper's block was not the only one affected.
31. In May 2005 the Council offered to refund to Mr Roper the amount he overpaid for the modernisation element from the start of his tenancy. Mr Roper suggested a revised calculation to include interest. The Council has accepted Mr Roper's suggestion.
32. After this investigation commenced, Mr Roper complained further that he believed his rent continued to be affected by the modernisation element of the rent pointing system after rent restructuring in September 2002. He said his block was still charged more rent than a comparable block.
33. At interview the Council provided evidence to show that the base rent (see paragraph 9) for Mr Roper's block on which the phasing was applied was wrong because it included the charge for the modernisation element. The Council demonstrated that because it charged an incorrect base rent in April 2002 this affected Mr Roper's ability to benefit from the Council's phasing arrangements from September 2002. The Council has calculated a refund based on what Mr Roper should have paid if the base rent used had been correct and awarded interest. The Council says it intends to write to Mr Roper with the correct rent to be paid.

Conclusions

Complaint about the service charge for gas and the information Mr Roper received about it

34. The Council made a number of changes to its rent charging system from 2001 to 2003, to reflect changes in government policy. But in doing so there were numerous significant errors in the information given to Councillors when they were invited to adopt new charging policies. Incorrect costs were referred to in February 2001 which resulted in Councillors not being requested to recover the cost of gas used from tenants. In February 2002 Councillors were informed that tenants had not been charged for gas usage previously, when they should have been informed that tenants had not been charged for one year as a result of the previous error in reporting. Councillors were asked in June 2002 to authorise phasing the introduction of formula rent after tenants had already been notified that this would happen. Members should be given a clear, accurate report before being asked to endorse recommendations, which should then be systematically implemented. This did not happen when decisions were reached in February 2001, February 2002 and June 2002 and that was maladministration.

35. The Council had difficulty explaining adequately to Mr Roper that it had not overcharged him for gas when these changes were implemented. He was correctly advised that he was paying for gas usage in 1999 but was told in March 2002 that he had not paid for gas before. In December 2003 the Council told him he had paid for gas up to April 2002, when in fact he had only done so up to April 2001. These failures were maladministration. I am now satisfied that the Council's records demonstrate that Mr Roper has not been double charged in his rent for the cost of gas so there is no injustice to Mr Roper arising from this. But injustice does arise from the Council's inability to respond to Mr Roper's complaints with a clear explanation of what had gone on. Given the Council's muddle, Mr Roper had no way of knowing whether he had been overcharged or not.
36. The Council has introduced changes to the way the Rent Account is described to tenants, using "service charge" to describe different charges over a period of several years. The information provided to tenants should be straightforward, but I accept Mr Roper's assertion that information provided here may well have been confusing.

Complaint about the price the Council paid for gas

37. The Council charged sheltered tenant £6.26 per week for gas usage for six months between April and October 2003. The charge was properly authorised and had a reasonable basis, founded on gas costs incurred between 2001-2002 increased for inflation. I am satisfied that although the charges for six months did not follow the Council's usual policy of reflecting the previous year's cost of gas (but instead used the figures the year before that increased for inflation, the Council's actions were not unreasonable. The Council knew when it introduced the charge in April 2003 that it was a short term measure, as charges based on the consumption of each block were to be introduced in October 2003. My role is not to look at the commercial transactions between the Council and its suppliers, so I have reached no view as to the reasonableness of the price the Council paid for gas.

Complaint about overcharging under the Rent Pointing System and restructured rent

38. The Council has acknowledged that its Committee did not authorise modernisation points to be applied to the rent for flats when the rent pointing system was introduced in December 1991 until it was replaced in September 2002. To introduce a charge without proper authority is maladministration. The Council acknowledges Mr Roper has been put to time and trouble to bring this to the Council's attention, and the Council has expressed its gratitude to him for doing so. The Council admits this has affected some other tenants in flats as well as Mr Roper.
39. Mr Roper's base rent was wrong when rent restructuring commenced in September 2002 because it included the modernisation element. So he did not receive all the benefits of phasing that other tenants enjoyed. The Council has agreed to refund the amount Mr Roper has overpaid.

40. But all this took far too long to uncover, and in the meantime Mr Roper was put to inordinate time and trouble in pursuing his justified complaint with the Council and with me.

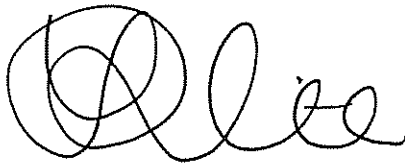
Finding

41. For the reasons given in paragraphs 34, 35 and 38 I find maladministration by the Council causing the injustice to Mr Roper described in paragraphs 35, 39 and 40.
42. For the reasons given in paragraph 37 I find no maladministration by the Council in the way it determined or authorised gas charges.
43. The Council has agreed to remedy Mr Roper's injustice by:
- refunding Mr Roper monies paid inappropriately plus interest, amounting to around £3600.00 (calculation to be finalised) from May 1993 until April 2006;
 - providing a revised Rent Account statement to him;
 - paying Mr Roper a further £1000 towards his time, trouble and frustration in pursuing his complaints;
 - ensuring that other Council tenants in flats that have been affected by charges for the modernisation element receive appropriate refunds, interest and the benefit of restructured rent phasing within a reasonable period.

It has also agreed to

- review its process for implementing financial changes, including reporting to Members and notification to tenants;
- carry out an internal audit of the components of the Rent Account;
- review the headings in the Rent Account for clarity; and
- review a sample of rents to verify the base rents are correct, the phasing consistently applied and a correct net charge is raised.

- 44 I am very grateful to the Council for accepting all my recommendations in respect of Mr Roper's complaint, but I have completed my investigation and issued this report because the complaint raised matters of public interest.



J R White
Local Government Ombudsman
The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB

31 May 2006

Appendix 1 Example showing the effects of phasing on restructured rent

Points based rent for Flat 1 A Block in April 2001
Age of flat 1960 points 10 cost per week £5.00
Modernisation points 10 cost per week £5.00
2 bedrooms points 10 cost per week £5.00
cost for a flat £35.00
Point based rent including modernisation £50.00

Point based rent without modernisation points £45.00

Restructured rent calculation arrives at formula rent

Average national property value £66,880
Value of this property £100,000
Average national weekly rent £45.60
Average national weekly earnings £316.40
Average local weekly earnings £323.80
Formula rent for Flat 1 A Block = (Value element + Earnings element) + Inflation factor
for 2001/2002 + Inflation factor for 2002/2003

Value element
= 30% * Average national weekly rent * Value of this property / Average national
property value
= 30% * £45.60 * £100,000 / £66,880 = £33.08

Earnings element
= 70% * Average national weekly rent * Average local weekly earnings / Average
national weekly earnings
= 70% * £45.60 * £323.80 / £316.40 = £32.67

Inflation factor for 2001/2002 = 4.5%
Inflation factor for 2002/2003 = 3.5%
Formula rent for Flat 1 A Block = (£33.08 + £32.67 + £2.96 + £2.40) = £71.11

Phasing without modernisation points

Base rent under points system £45.00
Difference between Formula rent and existing rent = £71.11 - £45.00 = £26.11
1/10th of difference = £2.61
New rent = £45.00 + £2.61 = £47.61

Phasing with modernisation points

Base rent under points system £50.00
Difference between Formula rent and existing rent = £71.11 - £50.00 = £21.11
1/10th of difference = £2.11
New rent = £50.00 + £2.11 = £52.11

This demonstrates the effect of phasing where the base rent (points based rent as at April 2001) differs either by error or simply historic factors.

Key
* = multiplied by / = Divided by