

Housing

Ombudsman Service

REPORT

COMPLAINT 202002475

LiveWest Homes Limited

20 April 2021

Our approach

The Housing Ombudsman's approach to investigating and determining complaints is to decide what is fair in all the circumstances of the case. This is set out in the Housing Act 1996 and the Housing Ombudsman Scheme (the Scheme). The Ombudsman considers the evidence and looks to see if there has been any 'maladministration', for example whether the landlord has failed to keep to the law, followed proper procedure, followed good practice or behaved in a reasonable and competent manner.

Both the resident and the landlord have submitted information to the Ombudsman and this has been carefully considered. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.

The complaint

1. The complaint is about the landlord's response to the resident's request to purchase her property:

Background and summary of events

Background

2. The property is a one bedroom ground floor flat and the resident has been an assured tenant of the landlord at the property since 2011.
3. The tenancy started as a starter tenancy and after 12 months, became an assured non-shorthold tenancy. The original tenancy agreement was signed with a different housing association to the current landlord as a merger took place in March 2018 that saw the landlord take on the property within its property portfolio.
4. The tenancy agreement signed with the previous landlord states under "Your Rights" that the landlord will consult the resident before making any change in the management of her home that is likely to have a significant effect on her.
5. The agreement also states that she may have the right to acquire (RTA) the property. There is no mention within the tenancy agreement of the Voluntary Homebuy Scheme (the purchase scheme) that forms the substantive part of the resident's complaint within the tenancy agreement.
6. The complaints policy in place at the time of the complaint provided for a 2 stage complaints process, with a 5 working day target timescale at stage 1 and a 7 working day response timescale at stage 2.

7. The compensation policy of the landlord gives guidance on how compensation is to be awarded based on an impact assessment of the complaint. The complaint can be graded as Low level impact with payments ranging from £25 one off payment to £25 per week for duration of the impact, Moderate level impact with payments up to £200 maximum plus partial rent refund if applicable and High level impact with payments up to £500 maximum plus partial rent refund if applicable.
8. A copy of the Social Homebuy Policy, which outlines the purchase scheme, of the previous landlord dated July 2017, provides that it is a non-statutory scheme that is only offered to eligible applicants when funding is available. The qualifying criteria for the purchase scheme confirms that not all properties owned by the previous landlord would have been eligible and that where it is discovered subsequent to an application being approved that a property is ineligible for reasons which were not previously apparent, the landlord would have the right to reject such an application.
9. The resident has provided information to the Ombudsman that confirms that she has autism and consequently has difficulty at times to fully understand information presented to her.

Summary of events

10. In March 2018, the resident made an application to the previous landlord to buy her home under the purchase scheme but then decided, in June 2018, not to proceed any further due to the cost involved.
11. In early 2020, the resident was in a better position financially and contacted the landlord still hoping to purchase her home under the purchase scheme. The landlord decided not to offer the scheme stating that it was a voluntary scheme that could be withdrawn at any time. In addition to the decision not to offer the scheme, they also explained that the resident's property would not be offered for sale because there was a strong business reason for retaining it. The resident was unhappy with the landlord's decision and asked for a review of the decision.
12. On 19 February 2020, the landlord wrote to the resident to inform her that it had upheld the decision not to offer the purchase scheme as this was offered by the previous landlord and could be withdrawn voluntarily at any stage.
13. The resident called the landlord on 1 April 2020 to make a complaint regarding its decision and the next day sent an email with a provisional invoice for removal costs that she would need to pay if she had to move elsewhere due to the landlord's decision not to offer her home for sale. She requested that the

landlord pay this provisional invoice by way of compensation for her having to buy somewhere else.

14. On 8 April 2020, the landlord responded to the resident's stage one complaint stating that there was no statutory basis on which the purchase scheme was to be offered. It also stated that information about the purchase scheme made it clear that it could be withdrawn at any time and without prior notice.
15. On 9 April 2020, the resident contacted the landlord to ask if it had agreed to cover the costs for her moving from her flat. The landlord responded that it would not be covering the costs as her complaint had not been upheld.
16. The resident wrote again on the 30 May 2020, regarding the options she might have to purchase her property under the Right to Buy and Right to Acquire schemes. She also said that she believed there were discrepancies in the landlord's process (i.e. the decision to refuse consideration under the purchase scheme). Her email was forwarded to the landlord's Sales Team to consider.
17. On 2 June 2020, the landlord responded to the resident's enquiry stating that she did not qualify for either the Right to Buy or Right to Acquire schemes. It also stated that unfortunately, it wasn't possible to purchase her flat through any other scheme. It explained that her property was one that it wished to retain.
18. On 7 July 2020, the resident wrote to the landlord to state that she was requesting confirmation that its decision was final.
19. On 8 July 2020, the landlord responded that it had decided not to offer the property for sale under the purchase scheme after conducting an internal review. Its decision was not a change to its statutory obligations and that information about the purchase scheme clearly set out that it could be withdrawn at any time without prior notice. They had also considered whether to sell the property outside of the scheme and had communicated its decision to the resident and other residents that enquired under the scheme on a case by case basis. They informed the resident that she was entitled to continue to rent her home under the terms of her tenancy agreement and could apply for shared ownership on any open market properties. It further stated that its decision was taken with proper due diligence.
20. On 24 July 2020, the resident contacted the landlord to state that she was unhappy with the outcome of her complaint and would like it to be escalated.
21. The landlord, upon reviewing the resident's complaint felt that its signposting about what stage the complaints process had reached was not clear from its responses. It decided to refer the case to an independent manager with no prior involvement for review. The landlord wrote to the resident on the 6 August 2020

to let her know that a stage 2 complaint had been raised and was in the process of being referred to a senior manager.

22. On 2 September 2020, the landlord sent out its final response to the resident stating that her complaint was not upheld for the reasons previously explained. It also said that it was clear that a consultation with residents about withdrawing the scheme would not have changed its decision. The landlord recognised however that there were delays within its complaints system and offered the resident a £50 goodwill gesture as an apology. She was informed that if she was not happy with the decision, she could refer her complaint to the Housing Ombudsman.
23. On 29 September 2020, the resident sent an email to the investor relations department of the landlord, stating that following a stage 2 complaint, she understood that the decision to withdraw the purchase scheme had been made without consulting tenants. She said that in her tenancy agreement it is stated that tenants would be consulted about changes that significantly affect them.
24. In the landlord's response, they attached a copy of the stage 2 response and informed the resident that her complaint had gone through their complaint handling process and the response provided an overview of their reasoning including confirmation that the purchase scheme was not a contractual right under her tenancy agreement. She was informed that this drew the matter to a close and encouraged the resident to escalate her complaint to the Housing Ombudsman if she remained dissatisfied.
25. The complaint was duly made by the resident on the 28 October 2020 to this Service where she confirmed that she remained dissatisfied with the landlord's response to her request to buy her home under the purchase scheme. The case then progressed to formal investigation.
26. Additional information provided to the Ombudsman as part of this investigation included:
 - An email dated 13 June 2019 confirming that the property was built in 1982, meaning that it would not be eligible for purchase under RTA, which would require the build date to be 1997 or later;
 - An email dated 17 June 2019 in which the landlord confirmed to the resident that she would not be entitled to shared ownership of the property as this scheme was applicable to new build homes only.

Assessment and findings

27. The Ombudsman has a limited role with respect to investigation of any sales or sales application process relating to a member landlord. The Ombudsman does not have the authority to require a landlord to sell a property within its portfolio

and will not investigate the legal process under which a sale might progress. The Ombudsman will, however, consider how a landlord has responded to a complaint about a sales process/application and in so doing, will also consider whether the landlord has followed relevant policies and procedures.

28. In this case, it is apparent that the change in landlord that occurred between the resident's two applications to purchase the property had a significant impact upon the resident. Having decided not to progress with her earlier application, the resident would reasonably have expected the purchase scheme to remain in place when she made a subsequent application. Her sense of frustration was apparent and again understandable when the landlord informed her that it would not be offering the same option as the purchase scheme had been withdrawn.
29. Whilst it is evident that the withdrawal of the purchase scheme resulted in a significant detriment to the resident, it is not apparent that this detriment related to any service failure on the part of the landlord. The information available in relation to the purchase scheme clarifies that this was a voluntary scheme that could be withdrawn at any time, was operated by a different organisation to the one to whom the resident complained (albeit due to a change in landlord over which she would have had no control) and a scheme that involved strict eligibility criteria. Having taken over ownership of the property following the merger, the landlord was under no obligation to continue with such a non-statutory scheme and it was therefore appropriate that it decided not to offer the property for purchase to the resident through this scheme. As such, it was also appropriate that the landlord refused the resident's request to cover provisional moving costs. There was no evidence that any such move might be required as a result of any failure on the landlord's part.
30. It was reasonable that the landlord considered the resident's other options for purchasing the property, including RTA and shared ownership. Having clarified to the resident that the property did not qualify for any other scheme, it was appropriate that the landlord concluded that her only option would be to purchase the property at its full market value. Again, the resident's sense of frustration at this response was understandable as she will have commenced the purchase application process with the expectation that she might receive some financial support in her attempts to take ownership of the home she had resided in, and paid rent, for nearly ten years.
31. The resident was dissatisfied that no consultation took place regarding the withdrawal of the purchase scheme and she cited a section of the tenancy agreement that confirms that the landlord will consult over significant changes. What might be considered 'significant' in this respect will vary from person to another. The resident would clearly view the withdrawal of the purchase

scheme to have been of significance to her and for the reasons outlined above, such a view would be understandable.

32. The landlord responded to this aspect of the complaint by confirming that the tenancy agreement did not include a right to make an application under the purchase scheme, that it had the right to withdraw without consultation and that any such consultation would have been unlikely to change its decision. Whilst there was an element of heavy handedness about the landlord's position here, given the resident's circumstances, there is no evidence that the landlord was incorrect in this assumption. The landlord has also confirmed that consultation took place in respect of the merger between it and the previous landlord. As such, an opportunity was available to residents to enquire about any concerns at that stage.
33. The landlord acknowledged that it did not handle the complaint appropriately, delaying its responses and offering a lack of clarity about where the resident stood within its process. The landlord's offer of compensation (£50) is considered reasonable and proportionate to these service failures, taking into consideration the landlord's compensation policy and the Ombudsman's understanding of similar cases across the social housing sector.

Determination (decision)

34. In accordance with paragraph 54 of the Housing Ombudsman Scheme (the scheme), there was no maladministration with respect to the landlord's response to the resident's reports about her application to purchase the property.

Reasons

35. The landlord confirmed that it was under no obligation to consider the resident's purchase application under the purchase scheme as this voluntary scheme had been operated by the resident's previous landlord and it had the right to withdraw it at any time. The landlord acknowledged that it had not carried out explicit consultation about the withdrawal of this scheme, however, there is no evidence that such a consultation process would have led to a different result. The landlord considered and clarified the resident's other purchase options and offered reasonable and proportionate compensation for service failures it had identified with its complaints handling.