

Report

on an Investigation into
Complaint No 02/B/00755 against
London Borough of Southwark

15 January 2003

Investigation into Complaint No 02/B/00755

Against London Borough of Southwark

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Key to names used

Mr A	-	the complainant
Mrs A	-	the complainant=s mother
Officer B	-	the Neighbourhood Manager
Officer C	-	a Neighbourhood Officer
Officer D	-	a Neighbourhood Officer
Officer E	-	the Principal Complaints Officer

Report Summary

Council Housing Management Other

Mr A is a Council tenant. In 1999 his mother, Mrs A, came to live with him. He complains that the Council has failed to agree to his request that it should create a joint tenancy between him and his mother.

The Ombudsman found that until 2001 the Council misinformed Mr A of its policy on the creation of joint tenancies and used reasons to refuse Mr A's request that bore no relation to its policy. In October 2001 it refused Mr A's request because Mrs A might then be able to claim Housing Benefit on her portion of the rent. The Ombudsman found that this was an irrelevant consideration. A change in Mr A's circumstances could mean that he would be eligible for Housing Benefit in his own right. In addition, Mr A could assign the tenancy to his mother at any time, and she would be able to claim Housing Benefit to cover the entire rent.

In October 2001 Mr A drew to the Council's attention details of his mother's medical condition and offered to provide evidence. The Ombudsman criticised the Council for failing to take this into account when dealing with his request.

Finding

Maladministration causing injustice.

Recommended remedy

To remedy that 'injustice' I recommend that the Council:

- a) pays Mr A £500;
- b) determines within its existing policy the application for Mr A and Mrs A to become joint tenants, ignoring all irrelevant considerations;
- c) if the application is granted, makes Mrs A an ex gratia payment equivalent to the amount of Housing Benefit she would have received had she applied for Benefit as a joint tenant, the Benefit period to run from 1 April 2000;
- d) reviews its policies and procedures in respect of joint tenancies to ensure that the maladministration I have identified does not, as far as possible, recur.

Introduction

1. Mr A complains that the Council has unreasonably refused to allow Mrs A, his mother, to become a joint tenant of his Council property with him. He says that as a result he has to support Mrs A financially.
2. For legal reasons, the names used in this report are not the real names of the people concerned.¹
3. In drafting this report I have relied on the documents supplied by Mr A and the Council. It has not therefore been necessary to interview Mr A or officers involved in this complaint.

Legal and Administrative Background

4. A tenant is entitled to succeed to a tenancy if he or she is a member of the tenant's family and has lived with the tenant throughout the 12 months ending with the tenant's death.²
5. A tenant is permitted to assign his or her tenancy to someone who would be qualified to succeed to the tenancy if the tenant dies immediately before assignment.³ The Council's tenancy agreement (Clause 15(1)) states: "On the death of a tenant, the tenancy will be transferred if there is a person who is entitled to succeed and the deceased tenant did not himself/herself succeed to the tenancy on the death of a successor or as a result of an assignment by a successor. This means that a tenancy can be succeeded to twice."
6. The Council's policy on the creation of joint tenancies is as follows:

Requests for joint tenancies should only be agreed where:

 - i) the party to be added to the tenancy agreement would qualify to succeed on the death of the tenant and has been living with the tenant at their current address for at least 12 months, and
 - ii) there are no rent arrears or other breach of tenancy.

The Council says that its legal advice is that, where these conditions apply, it has

1 Local Government Act 1974, section 30(3)

2 Housing Act 1985, section 87

3 Ibid, section 91 (3)(c)

discretion to grant or refuse a joint tenancy.

7. Where a council is satisfied that the claimant's liability to pay rent was created to take advantage of the Housing Benefit scheme, the claimant is not entitled to Housing Benefit.⁴ Where liability to make payments of Housing Benefit appears to the council to have been created to take advantage of Housing Benefit the council must be able to show a good reason for believing that this is the case when refusing Housing Benefit.⁵
8. The courts have held (*R v Solihull Metropolitan Borough Council Housing Benefit Review Board ex parte Simpson*, 26 HLR 370 QB), that while the ability to attract Housing Benefit could never realistically be the sole purpose of a tenancy, equally, and importantly, anyone eligible for Housing Benefit must have entered into an agreement to pay rent which he could not afford. It was held that an arrangement whereby persons, who would in any event be eligible for Housing Benefit, were provided with accommodation by a parent or relation who was then to receive rent generated from Housing Benefit was not of itself an arrangement created to take advantage of the Housing Benefit scheme. A council must demonstrate that taking advantage of Housing Benefit, rather than the satisfaction of a reasonable housing need, must be the primary or dominant purpose behind the creation of a rent liability for it to fall foul of the Housing Benefit Regulations.⁶

Investigation

9. Mr A entered into the tenancy of his property in 1994, jointly with his sister. His sister moved out in 1999, and Mr A succeeded to the tenancy. His mother, Mrs A, moved in as a lodger. She had previously been living independently and claiming Housing Benefit to cover her rent.
10. Mrs A wrote to the Neighbourhood Housing Office (NHO) almost immediately to request that the Council grant her a joint tenancy with Mr A. On 20 May 1999 an officer wrote back to refuse, saying that her occupation was agreed as a lodger.
11. Mr A has provided a receipt issued on 23 November 1999, when Mrs A applied for Housing Benefit. It shows that she provided a bank statement showing proof that she was paying a share of the rent for Mr A's tenancy by standing order.
12. On 27 March 2000 Mr A wrote to the NHO to ask why the Council would not grant him a joint tenancy. Officer C, a neighbourhood housing officer, replied on

4 **Housing Benefit Regulation 7(1)(B)**

5 **Circular HB/CTB 30/95, paragraph 18**

6 **Ibid**

31 March 2000, refusing the request. He said that Mrs A had been recorded as an authorised occupant living at Mr A=s address. Mr A wrote to ask for a reason. Officer C replied on 5 May 2000 that it was not the Council=s policy to create joint tenancies between parents and children. Its policy on succession as outlined in the tenancy agreement conferred the transfer of property between family members for no more than two generations.

13. Mr and Mrs A wrote to Officer E, the Council=s principal complaints officer on 22 June 2001 to ask for a copy of the Council=s policy in relation to joint tenancies. Officer E sent them a copy on 4 July 2001. The section that relates to this complaint is quoted in paragraph 6 of this report.
14. On 13 July 2001 Mrs A wrote to Officer E to ask him to explain how the Council=s policy precluded her from being granted a joint tenancy with her son. She complained that the policy stated that a joint tenancy should be allowed if the party to be added to the agreement would qualify to succeed on the death of the tenant. She also asked whether the Council had any anti-poverty strategies.
15. This letter was passed to Officer D, a neighbourhood officer at the NHO, to reply. She replied on 3 August 2001 that under the Council=s policy, joint tenancies are not created between parents and children although siblings can have a joint tenancy if a joint application is submitted. She added that Mrs A would have the right to succeed to the tenancy in the event of Mr A=s death. She did not answer the question about anti-poverty strategies.
16. Mrs A wrote to Officer E again on 7 September 2001 to express her dissatisfaction with this reply. She said that she had spoken to Officer B, the Neighbourhood Manager, who, in her view, had questioned whether she was attempting to perpetrate fraud against the Council by obtaining a joint tenancy in order to become eligible for Housing Benefit. She pointed out that the Council=s policy made no mention of parents and children and gave no reason to explain why a joint tenancy could not be granted between them. She asked the Council to provide a copy of the policy which stated that this was the case and outline the reasons why. Officer E treated this letter as a formal complaint.
17. Officer B replied to this letter on 5 October 2001. He said that Mrs A was registered as a lodger, but that Mr A was entitled to change her status to that of an authorised occupant. This would entitle Mrs A to succeed to or be assigned the tenancy. Officer B=s letter quoted the relevant part of the Council=s policy on joint tenancies (see paragraph 6). He then referred to contrived liabilities as defined by Housing Benefit Regulations. He denied that he had accused Mrs A of

attempting to perpetrate fraud, saying that he had spoken in general terms. He explained that the creation of a joint tenancy could be construed as contrary to the Housing Benefit Regulations because Mrs A would be able to claim her half of the rent against Housing Benefit and Mr A=s rental payment would then decrease by half as well. He added that he was taking legal advice on the matter. Mr A points out that Mrs A was already paying half the rent (paragraph 11) and that she alone would benefit. The Council=s position is that Mr A, as a tenant, is liable for the rent.

18. Mr A wrote to Officer B on 26 October 2001. He requested that the NHO change his mother=s status to that of authorised occupant and deal with the request to register her as a joint tenant. He said that Mrs A paid her share of the rent by direct debit to the Council from her benefits and had little money for other bills. He added that Mrs A had been unable to work for several months, that she had recently had an operation for cancer and that she would be unable to carry shopping or do tasks around the house which required her to use her right arm. Mr A pointed out that Mrs A could not live alone, but if she were living elsewhere the Council would have to pay her full rent through Housing Benefit and provide help around the house. He offered to provide medical evidence to show that Mrs A could not be expected to live alone. He also said that, in his view, the reference in Officer B=s letter to the Solihull case (paragraph 7) supported his mother=s case.
19. The Council=s legal services department replied to Officer B on 31 October 2001. It pointed out that the Council was under no legal obligation to grant a joint tenancy, but could choose to do so at its discretion. The advice assumed that Mr and Mrs A had requested a joint tenancy because Mr A wished to move out, leaving Mrs A as the sole occupant. Mr A states that there is no basis for this assumption, and the Council has provided no evidence to substantiate it.
20. The NHO invited Mr A to attend an interview on 3 December 2001. He took a day off work and was asked to submit evidence to prove that he and Mrs A were living at the property address. He did so. An officer promised to refer the matter to Officer B for a decision. Shortly afterwards she wrote to Mr A to say that the Council recognised him as the sole tenant and Mrs A as an authorised occupant. The letter did not give any reasons for this decision.
21. Mr A wrote on 18 December 2001 to Officer E to complain. He asked him to provide a reason why the Council did not grant his request, although his situation was consistent with its policy.
22. On 12 February 2002 Officer E replied. He confirmed that Mrs A met the criteria

for a joint tenancy. But he referred Mr A to Officer B=s letter of 5 October 2001. He said that creating a joint tenancy could be construed as contrary to the Housing Benefit Regulations in respect of contrived liabilities.

23. Mr A wrote back to Officer E on 27 February 2002. He complained that Mrs A met the Council=s requirements for the grant of a joint tenancy. He said that the Council=s policy did not give officers discretion to overrule the policy. He reiterated the details of his mother=s medical condition, saying that she cannot live independently, and that, if she did so, she would claim Housing and Council Tax Benefit and require the Council to provide help around the home. He said that the extract from the Housing Benefit Regulations (see paragraph 7) supported his position. This tenancy would not be created to take advantage of Housing Benefit Regulations as Mrs A could not reasonably be expected to live alone. He offered to supply medical evidence to support this. He added that he believed the Council was acting in a discriminatory manner, and had misinformed him that Mrs A did not meet the requirements of the policy when she did.
24. In a memorandum to the Council=s Assistant Customer Feedback Manager dated 8 March 2002 Officer E explained the reason why the Council was resisting Mr A=s application. If it agreed the request for a joint tenancy, there would be nothing to prevent Mr A from assigning the tenancy to Mrs A, who would then be able to claim Housing Benefit on the whole of the rent. He said that this could be construed as a device to get round the Housing Benefit Regulations.
25. Officer B emailed the Assistant Customer Feedback Manager on 12 March 2002, saying that the letter of 27 February 2002 was the first he could recall of any mention of Mrs A=s medical condition. He pointed out that if the Council granted a joint tenancy the beneficiary would be Mr A, whose rent payments would be reduced by 50%.
26. Officer B has since explained why he does not believe this case to be comparable to the Solihull case referred to in paragraph 7. He said that in the Solihull case the claimant appeared to be trying to secure a joint tenancy in the full knowledge that he or she could not afford the rent. Here, when Mrs A moved in she was a lodger and was paying rent.
27. Mr A disagrees with Officer B=s interpretation of the Solihull case. He says that his mother was claiming Housing Benefit before she moved in with him and is forced to rely on her pension and benefits to pay the rent, which she cannot afford. He adds that his mother has been accepted as an authorised occupant since 31 March 2000 (paragraph 11), and that he could assign the tenancy to her at any time. If he were to do so, Mrs A would be eligible to claim Housing Benefit on the full

rent, rather than on her share of it, and the Council would have to meet this liability.

Conclusions

28. Mr A has made repeated requests for the creation of a joint tenancy since his mother moved into his property. The Council has a policy on this. But when the Council refused these requests it repeatedly gave him reasons for doing so which bear no relation to its policy. This was maladministration.
29. The Council=s policy does not specify that officers are given discretion to grant or refuse a joint tenancy, and for the sake of clarity it should do so. I accept that they have this discretion. But that does not give them an arbitrary power. The exercise of that discretion must be reasonable and must not take into account irrelevant factors.
30. In this case the Council says it has taken a decision to refuse to grant a joint tenancy because Mr A might subsequently assign the tenancy to his mother, who would be eligible to claim Housing Benefit on the full rent. This argument does not hold water. The Council acknowledged that Mrs A would be able to succeed to the tenancy in its letter of 3 August 2001 (paragraph 14). As I have explained in paragraphs 4 and 5, this would have given Mr A the right to assign the tenancy to her at any time since then. The Council could neither prevent him from doing so by law, nor prevent Mrs A from claiming Housing Benefit on the full rent thereafter. In any event, a change in Mr A's circumstances could enable him to claim Housing Benefit if he became unable to pay his rent. To refuse to grant a joint tenancy solely on the basis that it might give rise to a claim for Housing Benefit covering part of the rent is to rely on an irrelevant consideration and that was maladministration. I accept that an arrangement which was fabricated to take advantage of the Housing Benefit system could be a relevant consideration: but there is no evidence at all that this is the case here.
31. The Council relies on the Solihull case (paragraph 7) to say that the creation of a joint tenancy might be a device to circumvent Housing Benefit Regulations. But, on the face of it, the conclusion in the Solihull case parallels the situation in which Mr and Mrs A find themselves. The judgement appears to state that the creation of a joint tenancy where one party would be eligible to claim Housing Benefit would not be a device to get round the requirement of the Housing Benefit Regulations. This is what Mr A has asked the Council to do. It does not therefore seem reasonable for the Council to rely on the Solihull case as a reason for refusing his request.

32. The Council was also given details in October 2001 of Mrs A=s health problems. Mr A reiterated this point in February 2002. But the Council does not appear to have taken this factor into account, or even asked Mr A to provide evidence from the NHS to substantiate what he has stated. Yet the fact that Mrs A can no longer live independently and requires care from Mr A, if correct, would be a material factor which I would expect the Council to take into account when considering his request for a joint tenancy. Ignoring a relevant consideration in this way is maladministration.
33. What injustice has the Council=s maladministration caused Mr and Mrs A? The initial stream of misinformation must have caused a great deal of frustration, especially when they finally received a copy of the Council=s policy. Mr A has been put to a lot of time and trouble and had to take a day off work to provide evidence that he was still living at the property. And Mrs A might have been able to claim Housing Benefit if the request had been granted. I cannot conclude that the request would automatically have been granted if the Council had considered it properly. But I see no reason why a proper determination of the application should not have been made by 1 April 2000.

Finding

34. The maladministration I describe in paragraphs 28, 30 and 32 has caused the injustice I describe in paragraph 33.
35. To remedy that ‘injustice’ I recommend that the Council:
- a) pays Mr A £500;
 - b) determines within its existing policy the application for Mr A and Mrs A to become joint tenants, ignoring all irrelevant considerations;
 - c) if the application is granted, makes Mrs A an ex gratia payment equivalent to the amount of Housing Benefit she would have received had she applied for Benefit as a joint tenant, the Benefit period to run from 1 April 2000;
 - d) reviews its policies and procedures in respect of joint tenancies to ensure that the maladministration I have identified does not, as far as possible, recur.

J R White
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15 January 2003