

# Report by the Local Government Ombudsman

**Investigation into complaints against**

**South Oxfordshire District Council**

**(reference numbers: 14 010 196 and 14 006 797)**

**26 August 2015**

## The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

**Investigation into complaint numbers 14 010 196 and 14 006 797 against South Oxfordshire District Council**

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

**Key to names used**

Mrs X - the complainant for complaint 14 010 196

Ms Y - the complainant for complaint 14 006 797

## **Report summary**

### **Council house sales**

Mrs X and Ms Y complain that the Council failed to fully inform them of the conditions attached to a section 157 restriction when they bought their properties. This meant they were not aware the Council would only automatically grant consent to a future sale if the purchaser had a local connection.

Mrs X also complains the Council failed to consult her when it reviewed its procedures to ensure it only grants consent for the sale of properties with section 157 restrictions to people with local connection.

Ms Y also complains the Council wrongly told her she could not rent out a room in her property.

### **Finding**

Fault causing injustice and recommendations made.

### **Recommendations**

The Council should, within three months of the publication of this report, instruct the district valuer to carry out two valuations as follows:

- to assess the value of the properties at the point at which Mrs X and Ms Y sold with the partial restriction advised by the Council when they bought the properties; and
- to assess the value of the properties at the point at which Mrs X and Ms Y sold with the full section 157 restriction.

The district valuer should then compare the two valuations to see if the value of the properties was diminished by the full section 157 restriction. If the value was affected the Council should pay 50% of the difference to Mrs X and Ms Y.

The Council should also pay £250 each to Mrs X and Ms Y to acknowledge the significant stress caused to them.

## Introduction

1. Mrs X and Ms Y each complain that the Council failed to fully inform them of the conditions of a section 157 restriction when they bought their properties. This restricts who the property can be sold to.
2. Mrs X also complains the Council failed to consult her when it reviewed its procedures to ensure it only grants consent for the sale of properties with section 157 restrictions to people with local connection.
3. Ms Y also complains the Council wrongly told her she could not rent out a room in her property.

## Legal and administrative background

4. Section 157 of the Housing Act 1985 allows councils to impose a restriction on the future sales of properties purchased under the right to buy scheme if the property is in a national park, area of outstanding beauty or an area designated as a rural area. This provides that the property cannot be sold without the consent of the local council. The Council must agree to the sale of a property if the person purchasing the property has lived or worked in the national park, area of outstanding beauty or designated rural area for three years immediately before applying to buy the property. The Council has discretion to agree to the sale of a property to a person if they do not have a local connection.
5. A section 157 restriction also provides that the property must be used as the purchaser's main residence and it cannot be rented.
6. The purpose of the restriction is to suppress the housing market in the area to help local properties be available and affordable for local people. It also prevents them from being bought as second homes.
7. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this report we 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. We 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)*)

## How we considered this complaint

8. This report has been produced following consideration of the information provided by Mrs X, Ms Y and the Council.
9. The complainants and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

## Investigation

10. Mrs X and Ms Y each bought properties which were originally owned by the Council. The Council sold the properties under the right to buy scheme some years before Mrs X and Ms Y bought them. When selling the properties the Council imposed a section 157 restriction on future sales.

### **Mrs X's complaint**

11. Mrs X bought her property in 2007. During the sale process the seller's solicitor wrote to the Council to ask for its consent for Mrs X to buy the property. The Council wrote to the seller's solicitor advising it would grant consent under section 157 of the Housing Act 1985. This was on the understanding that Mrs X would occupy the property as her main residence. She also must not dispose of it to a limited company or by tenancy or licence. The seller's solicitor provided assurance that Mrs X would meet these conditions.
12. The Council then wrote to the seller's solicitor to grant consent to Mrs X buying the property. Mrs X did not work or live in the area before she bought the property. The Council did not check her residency before agreeing to the sale. Nor did any of its letters refer to buyers requiring a local connection for the Council to automatically grant consent to the sale. Mrs X has provided a copy of a letter dated 1998 from the Council to the solicitors acting for the previous owner when they bought the property. The letter states that the property is subject to a section 157 restriction. It does not state the Council will agree to the purchase if the purchaser has a local connection.
13. In 2013 the Council reviewed its policy for dealing with consent for sales of properties with section 157 restrictions. It published the terms of the section 157 restriction in full on its website and introduced an application form. The policy provides the Council will only grant consent to buyers who have a local connection to the Council's area or to current or former members of the armed forces with a local connection.
14. Mrs X put her house up for sale in 2014 and found a buyer. The buyer applied to the Council for consent for the sale to them. Mrs X said it was at this point the buyer found out that the Council would only automatically grant consent to a sale to people with a local connection. Mrs X had not told the buyer about this restriction as she was not aware of it. Although the buyers did not have a local connection the Council eventually agreed to the sale. Mrs X said the buyers reduced their offer by £6,000 as the restriction reduced the saleability of the property in the future.
15. Mrs X made a complaint to the Council which it considered through its complaints procedure. The Council acknowledged it did not check if Mrs X was a qualifying person when she bought the property. But it did not uphold her complaint.

### **Ms Y's complaint**

16. Ms Y bought her property in 2010. When buying the property Ms Y's solicitor wrote to the Council asking for its consent for her to buy the property. The Council wrote to Ms Y's solicitor advising it would grant consent under section 157 of the Housing Act 1985. This

was on the understanding that Ms Y would occupy the property as her main residence. She also must not dispose of it to a limited company or by tenancy or licence. Ms Y wrote to the Council to advise that she would meet these conditions. The Council then wrote to her solicitor to grant consent to her buying the property.

17. Before buying the property Ms Y's solicitor sent an email to the Council asking if she could rent out the property in the future. The Council advised that Ms Y could not dispose of the property by way of a tenancy.
18. Ms Y did not work or live in the area before she bought the property. The Council did not check this before agreeing to the sale. Nor did any of its letters refer to the local connection provision of section 157 of the Housing Act 1985.
19. In 2013 Ms Y put her property up for sale and found a buyer. The buyer then became aware the Council would only automatically grant consent to the sale if they had local connection. The buyers withdrew from the sale. Ms Y said she had to reduce the price of the property when she found out the nature of the full section 157 restriction. She also had to reject an above asking price offer for the property as the buyer did not have local connection. She eventually sold the property for less than the reduced asking price.
20. Ms Y made a complaint to the Council that it had failed to inform her that it would only automatically grant consent to buyers who had a local connection. She also complained the Council wrongly advised her she could not rent a room in the property so she lost rental income.
21. The Council responded to her complaint. It advised that the section 157 restriction would not have prevented Ms Y from renting out a room. But the Council had no evidence Ms Y or her solicitor had specifically asked if she could do this.
22. The Council also considered it had notified her of the section 157 restriction and Ms Y's solicitor should have informed her of its implications.

### **Mrs X's and Ms Y's position**

23. Mrs X and Ms Y consider the Council's failure to notify them that it would only automatically grant consent if a buyer had local connection caused significant stress to them. It made the sale of their properties more difficult as their buyers considered they had withheld information about the restriction. Mrs X considers this affected her reputation and her health.
24. Mrs X and Ms Y also consider the Council's failure to notify them of the full details of the restriction caused them financial loss. They bought the properties at market value because they were unaware of the full restriction. They consider the value of their properties was reduced as the local connection requirement limited the number of eligible buyers.
25. Mrs X and Ms Y say they would not have bought their property if they had known the Council would only automatically grant consent for a person with local connection to buy it. This is because it limited the number of people who could buy their property.

## The Council's position

26. The Council considers:

- the onus was on Mrs X's and Ms Y's solicitors to check the full details of the section 157 restriction and advise them on the full nature of the restriction and its implications;
- it exercised discretion to grant consent to all prospective purchasers of properties subject to a section 157 restriction and not enforce the full terms of the restriction until 2013. So it was not necessary for it to provide full details of the section 157 restriction or check if purchasers had local connection;
- there was no obligation to consult on its change of approach to now only granting consent to people with local connection; and
- Mrs X and Ms Y benefitted from being able to purchase the properties.

## Conclusions

27. The Council was at fault in failing to check if Mrs X and Ms Y had local connection when it granted consent to the sale of the properties to them. There is no evidence that it actively made a decision to exercise its discretion not to enforce the requirement for local connection. The Council's responses to Mrs X's and Ms Y's complaints states the Council made an error by not checking if they had local connection. So we can only conclude that the failure to check if Mrs X and Ms Y had local connection was an error on the part of the Council.
28. Even if the Council had decided to exercise discretion it should have explained this to Mrs X and Ms Y. It should have also advised them that it would be at the discretion of the Council to grant consent in future to purchasers without local connection.
29. The Council was at fault as it failed to give Mrs X's seller's solicitors and Ms Y's solicitor's complete information about the section 157 restriction. It was incumbent on the Council to give full details of the restriction when the solicitors made enquiries and requested the Council's consent for the sale of the properties to Mrs X and Ms Y.
30. Mrs X's and Ms Y's solicitors also had a responsibility in ensuring they were aware of the details of the section 157 requirement and its implications. But this did not absolve the Council from the responsibility to provide the solicitors with the full and accurate details of the section 157 restriction.
31. Mrs X considers the Council should have consulted her and other property owners of its decision to now check if a buyer has local connection. The Council is entitled to review its procedures to determine if they are fit for purpose. There is no requirement to consult when it does so.



32. There is no evidence the Council wrongly advised Ms Y that she could not rent out a room at her property. The email provided by Ms Y shows her solicitor did not ask if she could rent out a room. Her solicitor asked if she could rent out the property. The Council responded appropriately by advising that she could not dispose of it by tenancy or licence.

### **Injustice**

33. The value of Mrs X's and Ms Y's properties may always have been affected by the restriction that it must be their main residence and they could not rent the property. But the full section 157 restriction means there are a limited number of buyers who will automatically qualify for the purchase of the properties. This could have a greater effect on the value of the properties which have previously been sold without the hindrance of a limited pool of buyers. The restriction is also there in perpetuity unless the Council exercises discretion to remove it.
34. Mrs X and Ms Y bought the properties at market value. But they had to accept reduced offers when it became known the Council would only automatically consent to the sale to a buyer with local connection. Had the Council made the solicitors aware, Mrs X and Ms Y may have chosen not to proceed with the purchase, or negotiated a reduction in the price. Or they may have bought the properties with the full knowledge of how the future sale could be affected. The fact they only became aware during the sale of their property will also inevitably have caused significant stress to them.

### **Decision**

35. We have completed our investigation. There was fault by the Council which caused injustice to Mrs X and Ms Y. The Council should take the action identified in paragraphs 36, 37 and 38 to remedy that injustice

### **Recommendations**

36. The Council should, within three months of the publication of this report, instruct the district valuer to carry out two valuations as follows:
- to assess the value of the properties at the point at which Mrs X and Ms Y sold with the partial restriction advised by the Council when they bought the properties; and
  - to assess the value of the properties at the point at which Mrs X and Ms Y sold with the full section 157 restriction.

The district valuer should then compare the two valuations to see if the value of the properties was diminished by the full section 157 restriction. If the value was affected, the Council should pay 50% of the difference to Mrs X and Ms Y.

37. We are recommending that the Council pay 50% rather than 100% as we cannot hold the Council fully responsible for any advice given to Mrs X and Ms Y about the section 157 restriction at the time they bought their properties.

38. The Council should also pay £250 each to Mrs X and Ms Y to acknowledge the significant stress caused to them.