

APPEALS PANEL 2

MONDAY 17 FEBRUARY 2020 AT 2.00PM

PRESENT: Councillors Allison, Brown (as substitute for Councillor McNulty) and Mrs Bowman.

OFFICERS: Assistant Solicitor
Corporate Director of Governance and Regulatory Services
Regulatory Services Manager

**ALSO
PRESENT:** Complainants x3
Complainants' Representative

AP2.01/20 APPOINTMENT OF CHAIR

It was proposed and seconded that Councillor Mrs Bowman be appointed Chair for the remainder of the 2019/20 municipal year.

RESOLVED: That Councillor Mrs Bowman be appointed Chair of the Appeals Panel 2.

Councillor Mrs Bowman thereupon took the Chair.

AP2.02/20 APOLOGIES FOR ABSENCE

An apology for absence was submitted on behalf of Councillor McNulty.

AP2.03/20 DECLARATIONS OF INTEREST

There were no declarations of interest in respect of the complaint.

AP2.04/20 PUBLIC AND PRESS

RESOLVED - That in accordance with Section 100A(4) of the Local Government Act 1972, the Public and Press were excluded from the meeting during consideration of the following item of business on the grounds that it involved the likely disclosure of exempt information, as defined in Paragraph Number 1 of Part 1 of Schedule 12A of the 1972 Local Government Act.

AP2.05/20 COMPLAINT AGAINST REGULATORY SERVICES

The Chair introduced the Panel and confirmed that all those present had seen and read the relevant documentation, copies of which had been circulated.

The Chair invited the Complainants (A, B & C) to summarise their complaint. Complainant A addressed the Panel on behalf of all three Complainants.

The Complainant set out in some detail the reason for the complaint. He began by thanking the Panel for the opportunity to discuss the complaint and thanking the Customer Services Supervisor for her support and guidance during the complaint process.

The Complainant explained his personal and professional relationship with the other two complainants who were the joint tenants on the lease of the building named in the complaint. He outlined the background to the tenancy and highlighted the issues that the complainants had

previously had in contacting their landlord who was the freeholder of the property. The Complainant detailed the how the property was used and who rented the rooms in the property along with details of the agreement between the Complainant and the tenants in the building. He added that there had been delays historically in carrying out repairs to the property due to the cultural differences of the tenants.

The Complainant brought a set of six documents which had been omitted from the Council's submission which he felt were important for the consideration of his complaint. The Panel agreed to the submission of the documents and adjourned to read the documents at 2.10pm and reconvened at 2.15pm.

The Complainant informed the Panel that the complaint had three parts to it:

- Why had the Council moved directly to financial penalty?
- Errors made in the Financial Penalty Notices
- Delay between the inspection and the receipt of the report.

The Complainant informed the Panel of the timeline for the Housing Act 2004 inspection and subsequent documents. He explained that the initial letter gave 24 hours' notice that the premises would be inspected by the Rogue Landlord Officer and the tenants in the premises also received the letter. The Complainants felt that the inspection had been quite positive but the use of the term 'Rogue Landlord' cast aspersions on the reputation of the business owners as landlords before any inspection had taken place.

The Complainants' Representative informed the Panel of his involvement which had primarily been to address the negative connotations of the term 'Rogue Landlord'.

The Complainant questioned the fairness of receiving Financial Penalty Notices without informing him in writing of the issues raised in the inspection. He also questioned the decision to issue a Financial Penalty Notice (FPN) instead of issuing a Notice of Improvement and therefore giving the Complainants time to improve the standard of the property as per the remit of the Rogue Landlord Project.

Referring to the receipt of the FPNs the Complainant stated that they had not included any information pertaining to the legal process and as a result he contacted his representative for advice. In addition, he detailed several administrative errors on the legal documents and questioned their validity. He felt strongly that the FPNs should have been corrected and re-issued with an apology.

The Complainant then raised various issues he had with the Officer's report which had been submitted to the Panel. He reiterated the fact that, despite paying the fines, he had not been informed of the work that was required on the premises following the inspection and he drew the Panel's attention to some examples of best practice from other authorities which he suggested the Council adopt.

The report included a letter which assumed that the Council had apologised for all the errors which had been made and the Complainant stated that this had not been the case. An apology had been made for a specific error but not for everything.

The Complainant informed the Panel that he had sought legal advice and had been advised not to appeal the FPNs due to the persuasive language used by the Council, even though the Notice contained errors. He felt that the authority had tried to downplay the errors in the FPNs despite the significant financial implications. In addition, he felt that errors on the FPNs were a

breach of the data protection legislation and he had concerns that his information may have gone out on other legal notices.

The Complainant reported that the initial inspection took place in August 2019 and it took more than 15 weeks for a report to be issued which stated the defects in the property. This had been the first list of issues which the complainants had received.

The Complainants' Representative felt that the Council should have provided more support and explanation on the legal process as the whole process had been confusing. The errors in the document had made the matter worse and had not been of the standard expected of Carlisle City Council.

The Complainant explained that there had been conflicting advice from Officers and the Fire Service which had resulted in unnecessary and costly work in the property. He added that some of the faults listed at the property had not been identified at the initial inspection but had been added after a further meeting with officers, which had been at the request of the Complainant. He also stated that some of the improvement works had been carried out straight after the inspection and prior to the FPN arriving.

The Complainant highlighted some of the issues which had been included in the FPN which he had understood to be the responsibility of his landlord.

Drawing the Panel's attention to a letter in the pack the complainant confirmed that he had been a Member of the National Landlords Association since August 2019 and was an accredited landlord, prior to that he had been a member of PIMS which was a landlord advisory service.

The Complainant summed up stating that the complaint was about the process and not the Officers although he felt that the complaint process had become unnecessarily personal.

Complainant B informed the Panel that the matter had caused her family a lot of emotional and financial distress. It was her view that the Council had not provided a good service, moreover she felt that more could have been done by the Council to support and educate individuals from different ethnic minorities.

The Complainant and the Complainants' Representative agreed that the process was missing an educational element, and more should be done to understand different cultures and to bring people together to help with interpretation and support for those who could not speak or write English well.

Complainant C added that other landlords had had similar issues but did not have someone who could take the matter further and they were waiting on the outcome of the Panel.

In response to questions from the Panel, the Complainant confirmed:

- that the initial letter received informing the Complainants and their tenants of the inspection had no information about the process or the possible implications of the inspection. At the request of the Panel the Complainant circulated a copy of the initial letter.
- the Complainants had agreements with their tenants, details of which the Complainant shared with the Panel
- the Complainants did not carry out regular checks on the property.
- it had been understood that some of the issues raised in the inspection had been the responsibility of the freeholder.
- the Complainants had attempted to contact their landlord via letter, text and email.

- he had worked with officers from several departments within the Council and had positive experiences with all apart from on this matter.
- he had been a landlord since 2016 but not in Houses of Multiple Occupation. Some of his properties had been inspected for other reasons.

The Chair sought clarification as to what outcome the Complainant wished to achieve.

The Complainant clarified that he would like two of the fines returned as it was one property and one business. He also asked for the Council to adopt best practice policies and procedures similar to other authorities to improve the process for the future.

The Chair summed up the complaint as follows:

- A list of issues, which had been identified during the Housing Act 2004 inspection, had not been provided in a timely manner;
- It was unfair that a Financial Penalty Notice had been issued to all three partners in the business;
- It was unfair that Financial Penalty Notices had been issued opposed to Improvement Notices;
- There were several errors contained within the Financial Penalty Notices, some of which breached Data Protection;
- That it was inappropriate and unfair to use the term 'Rogue Landlord'.

The Complainant agreed the summary.

The Chair thanked the Complainants for their input and advised that they would be informed by letter within 20 working days of the Panel's decision.

The Complainant left the hearing at 3.50pm

Consideration was given by the Panel as to which officers they needed to speak to in order to clarify any issues which needed to be addressed.

The Regulatory Services Manager was invited to attend the meeting. The Chair outlined the complaint and invited the Officer to respond.

The Regulatory Services Manager gave an overview of the Rogue Landlord Project explaining that the Project identified rogue landlords and food businesses in the Botchergate area of the City where there was potential house, fire safety, crime and migration issues. 48 inspections had been undertaken with partners and various orders and notices had been issued. The number of housing inspectors in the Council's Housing and Pollution Team was small and as a result their time concentrated on reactive investigations of complaints, the Rogue Landlord Project gave the Council an opportunity to apply to government for funding to have a proactive officer who would check properties, often where vulnerable people lived, and improve the standards of their living. Rogue Landlord was government terminology and was the title of the funding and the Project.

He clarified that the Complainant received 24 hours notice for the enforcement visit because it was a residential property, had it not been there would have been no notice given prior to the inspection. Likewise, permission was not necessarily asked for when photographic evidence was required as the City Council was there under the Housing Act as the enforcement authority and had to collect evidence.

He reported that the issues identified in the property were of such a serious nature that Financial Penalty Notices were issued to the Complainants. In response to an appeal made by the Complainant the financial penalty had been reduced. It was not a specific requirement of

the authority to provide a list of issues however the Complainants had knowledge of the issues in the property as they began to make improvements within days of the inspection, they did not need to wait for any list of errors. The Complainants were the landlords of several properties and should be aware of their obligations to ensure that the properties being rented out were safe and suitable for their tenants.

The Regulatory Services Manager agreed that the mistakes made in the documents were unsatisfactory but was content that the mistakes did not affect the validity of the documents. He reassured the Panel that a robust process had been put in place to ensure future documents were correct and officers had been reminded of the importance of checking that all information was correct on documents. The opportunity for the Complainants to appeal the Financial Penalty Notices had been to the first-tier tribunal and the Complainants had chosen not to appeal and had paid the fines. Referring to comments made regarding cultural differences the Regulatory Services Manager confirmed that all staff received Equality and Diversity training.

The Regulatory Services Manager explained that the Council had a good working relationship with the Residential Landlords Association and provided advice and support as well as attend meetings. The Council's website was up to date and contained a lot of information on Housing in Multiple Occupation and included links to other organisations and partners which could advise landlords.

In summing up the Regulatory Services Manager stated that the Rogue Landlord Project had been successful in helping to raise the standards of living for many people, however, he acknowledged that there were lessons to be learned moving forward.

The Regulatory Services Manager left the meeting at 4.42pm.

The Corporate Director of Governance and Regulatory Services was invited to attend the meeting. The Chair outlined the complaint and invited the Officer to respond to the legality of the FPNs in particular.

The Corporate Director of Governance and Regulatory Services was satisfied that the mistakes in the documents were not material to the contents of the FPNs and the FPNs were valid. He accepted that the mistakes had been frustrating, and he reassured the Panel that a robust process was now in place within the section.

With regard to the issuing of Financial Penalty Notices to each of the business partners, this could not be changed as each partner was equally responsible for the property, it would not be possible to issue an FPN to one partner as a decision would need to be made as to which partner and this would leave the Council open to challenge.

The Corporate Director of Governance and Regulatory Services left the meeting at 4.58pm

The Panel then considered all the evidence presented to them prior to and during the hearing and:

RESOLVED – 1) That the appeal against Regulatory Services (GD.09/20) is not upheld.

2) The Panel noted that:

- robust procedures had been put in place in the Regulatory Services Section to prevent future mistakes in documentation;
- that all Council staff received Equality and Diversity training;
- that the Council's website was up to date and contained relevant and necessary information.

AP2.06/20 SUSPENSION OF STANDING ORDERS

During consideration of the above item, it was moved, seconded and RESOLVED that Council Procedure Rule 9, in relation to the duration of meetings be suspended in order that the meeting could continue over the time limit of 3 hours.

(The meeting closed at 5.14pm.)