



Local Authority remedies misunderstanding with elderly vendor in property re-purchase agreement

Legislation	Ombudsmen Act 1975
Agency	Local authority
Ombudsman	Anand Satyanand
Case number(s)	A6559
Date	1998

Valuation of property for re-purchase—reliance by Council on valuer’s expertise—Council did not disclose information about recent comparable sales—perceived threat to withdraw unilaterally from transaction—Council’s intention to offer vendor opportunity to seek release from contract—apology and ex gratia payment offered for misunderstanding

For many years, the Council had been active in providing retirement accommodation for the elderly of the district. A number of Council-owned, residential complexes had been developed, comprising groups of individual units, each with its own separate title. These units were allocated among waiting applicants according to an assessment of need and sold on concessional terms to the successful applicants. The terms of sale included a re-purchase option in favour of the Council, exercisable by the Council upon receiving notice that the then owner no longer wished to reside in the unit. Units bought back were then re-allocated to waiting applicants. The option detailed a specific, professional valuation mechanism for fixing the Council’s purchase price, and provided for abatement according to a formula related to the length of the vendor’s tenure of the unit. In recent years, demand among the elderly for concessional purchase of these units seemed to be falling off and a more general market was developing. Several units had been sold on the open market.

The complainant had given the Council the requisite notice when age and frailty had rendered her unable to care for herself and she was admitted to a rest home. The Council exercised its option and ordered the requisite valuation. There was no provision entitling either party to resile from the transaction of sale and purchase created by the Council’s exercise of its option.

When the valuation report on the unit came to hand, the complainant and her advisers considered it failed to reflect recent market movements and was too low. It transpired that the valuer concerned had been unaware of the Council's recent open market sale of a unit, in the same block as the complainant's property. The unit was said to be comparable to the complainant's but had been sold at a price significantly in excess of that arrived at by the valuer in respect of the complainant's unit. The complainant considered that the Council had failed to fulfil the duty of care she believed it had to her to ensure that the valuer had the details of the Council's recent sales.

This view was put to the Council at the time by the complainant's solicitors, who were endeavouring to secure prompt settlement and to achieve a better sale price. Correspondence about these issues between the solicitors for both parties culminated in a suggestion by the Council's solicitors that the complainant consider obtaining an independent valuation. Their letter ended with a remark which suggested that the Council's patience was not inexhaustible and a statement to the effect that the Council was near the point at which it would 'consider withdrawing [its] offer to repurchase the unit'. The complainant saw this remark as something of a threat and was distressed by it. Her solicitors promptly pointed out that the Council was bound by its exercised option and was not in a position to withdraw unilaterally. Eventually, agreement having been reached on valuation matters after a revised valuation had been provided and the transaction having been settled, a wide-ranging complaint was made about the Council's handling of the matter.

The investigation focused on two main issues. The first was an allegation that the Council had been in breach of a duty to ensure that the valuer was aware of relevant sales which had been made by the Council and which, being recent, might be known only to the Council. There were also allegations as to various other factors which the complainant contended had affected adversely the professionalism of the valuer in a manner which the Council should have foreseen. These factors were related to an agreed fee structure for the provision of valuation reports in a succinct form and to the alleged changes in the marketing of the units. The Council's response was that it was not only entitled, but also obliged, to rely on the advice of the valuer instructed in terms of the option; the responsibility to obtain the appropriate information on which to base an opinion as to value lay with the valuer as a properly qualified professional. The Council and its staff were not so qualified, and it was not their responsibility to instruct the valuer in any way or offer any market information unless the valuer so requested.

It did not appear to be unreasonable or oppressive for the Council to rely on the professionalism of its valuer in this case. The other factors raised by the complainant were not seen as affecting the responsibility of the valuer to maintain professionalism in the particular circumstances. The Council was entitled to seek ways of minimising its costs, but it was the valuer's responsibility to determine whether the Council's expectations of what services should cost could be met without compromising a proper, professional approach to the performance of valuation functions. Similarly, it was the valuer's responsibility to identify any changes in the market, or in the Council's marketing practice, which might have an impact on the valuation exercise. The evidence in this case did not suggest that anything had arisen to transfer to the Council any of the burden of responsibility for ensuring the professionalism of its valuer.

The second issue related to the perception of a threat in the remark in the correspondence that the Council might consider withdrawing its offer to repurchase the unit. In commenting on this matter, the Council said the remark had been intended as an indication that, if the complainant were not satisfied with the valuation, it was open to the vendor to ask the Council to release her from her contract of sale so that she could market the property herself. The Council's intention in this regard had not, however, been explained either to the complainant or to her advisors at the time. When this apparent mis-communication came to light during the investigation, the Council tendered an apology for any distress caused and made a modest ex gratia payment to recognise in a tangible way both the distress suffered by an elderly person who felt particularly vulnerable in the circumstances and also the legal costs incurred in responding to the perceived 'threat'. This resolved this aspect of the complaint and the investigation was discontinued.

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