

# HOUSING AND SOCIAL SERVICES

THE TOWN HALL HORNTON STREET LONDON W8 7NX

Executive Director Jean Daintith

Chief Housing Officer Mr Gerald Wild

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THE ROYAL  
BOROUGH OF



KENSINGTON  
AND CHELSEA

16 December 2004

My reference: ccc/jm

Your reference:

Please ask for: Jean Daintith

Dear Ms Rawé,

My reply to her is my 27 Feb 05 to the Local Government Ombudsman  
See section 15 of my 3 Jun 08 Witness Statement for a summary of the  
battle I had to go through to get - an INCOMPLETE - set of the accounts

## Complaint against RBKC Housing Department

I am writing in response to your letter of 11 November 2004 to the Chief Housing Officer, Mr Gerald Wild who has been dealing with your complaint against the Housing Department. Given your dissatisfaction with the contents of Mr Wild's letter, as mentioned in his holding reply to you of 25 November, the matter has since been referred to myself as the Executive Director of Housing & Social Services under stage 3 of the Council's formal complaints procedure.

While I note the amount of correspondence you have supplied in support of your complaint, my basic understanding is that you are unhappy that the Council has not taken more affirmative action to ensure that your landlords or their managing agents Steel Services Ltd/Martin Russell Jones have supplied you with the summaries of year-end accounts for Jefferson House for the years 2002 and 2003. **I am aware that these documents have now been received by the Council and have also been sent to all lessees.**

**BUT NOT TO ME! WHY NOT? DUE TO REVENGE: I ONLY RECEIVED THEM IN FEB 05 - See my 27 Feb 05 to the LGO**  
As you are already aware, your original enquiry and subsequent complaint have been dealt with by officers from the Council's Tenancy Relations Service (TRS), the Department of Law and Administration (DLA) and the Chief Housing Officer (CHO). Having now discussed this case with officers from those departments and the CHO, I have set out below the Council's position on the points you raised in your letter of 11 November to Mr Wild.

1. The Ombudsman reached his opinion on the basis of information supplied to him by you. While it is your perception that the Council has unnecessarily delayed the matters about which you have complained, I would reiterate the view expressed in Mr Wild's letter of 15 October that the principal purpose of the Tenancy Relations Service is to try, wherever possible, to prevent homelessness and illegal evictions and that **while it has powers of prosecution, it is unlikely to be the first course of action pursued with regards to enforcing leasehold matters.**

In any case it is standard legal practice to send a letter before action to someone who may be sued or prosecuted and it does not necessarily follow that a person will be prosecuted or sued if they do not respond to the warning in the required manner.

2. Under the procedures operated by this Council it was entirely appropriate that Mr Wild conduct the investigation under stage 2 of the Council's corporate complaints **procedure. To create**

The length they will go to protect crooked landlords and their aides!

= 25 Jun 04 was an EMPTY THREAT = meaningless legislation

WHAT A GEM!

one central manual containing a "comprehensive repository of lessons learnt from previously identified failings" of this or any other local housing departments as you suggest would be both impractical and unworkable.

3. The Director of Law and Administration applies the Code for Crown Prosecutors in deciding whether or not to prosecute in any case. There are two stages in this decision. The first stage is the evidential test and the second stage is the public interest test. If the case does not pass the evidential test, it must not go ahead. If the case does pass the evidential test, then the prosecutor must decide if a prosecution is needed in the public interest. The decision is not made, as you have suggested, on a whim.

4. On 3<sup>rd</sup> September 2004, the DLA advised Mr Hutchings that there was a lack of information, which made it very difficult to decide whether or not a prosecution should be brought. Mr Hutchings was at that time still hopeful that Martin Russell Jones would provide the information you sought and additionally wrote to them on the 13 and 21 September, 4 and 12 October in order to try and expedite the matter. Mr Hutchings sought additional clarification on the case from the DLA and his manager before eventually writing to you on 25 October to request more information. While Mr Hutchings was acting in good faith and was trying to obviate the need for you personally to have to provide copies of what transpired to be a substantial number of documents, with hindsight I agree that you should have been advised of this development at an earlier stage and apologise that this was not the case.

5. The Council is the prosecuting authority for contraventions of the Landlord and Tenant Act 1985 and it considered prosecuting in this case. It *could* have resulted in a prosecution but in this case it did not.

6. The DLA advise that in this particular case, the evidential test was not satisfied when they examined the paperwork that had been presented and, therefore decided that it was not right to prosecute. It is unlikely to be in the public interest to prosecute where the court is likely to impose a nominal penalty and where the defendant has not right the loss or harm that may have been caused.

How come they have not been sent to me?

UNBELIEVABLE! Would I have gone through all of that hell if I had received them?

7. There has been no reluctance on the Council's part to assist you in obtaining the summary of relevant costs for the 2002 financial year. While the Council does not doubt your claim of not having received these documents as per your request to the landlords Under Section 21 of the Landlord and Tenant Act 1985, equally the Council had no reason to doubt that this information had not been provided to you by the landlord as they have claimed. Without more evidence that would prove the case beyond reasonable doubt, it was not possible for the DLA to advise that it had reasonable prospects of securing a conviction. Additionally, it is the view of the DLA that it was quite possible that the accounts, supporting receipts and documentation for the financial year 2002 were provided as part of the proceedings in the LVT. If these documents had been made available as part of the LVT proceedings, then no purpose whatsoever would be served by prosecuting the landlord for breach of its duty under section 21 of the Landlord and Tenant Act 1985.

8. While it is obvious that you feel aggrieved by the proceedings in the LVT and at West London County Court, I understand you have complained to both of those tribunals. It is not the Council's responsibility to revisit those complaints, our remit as previously detailed being to look at whether or not proceedings should have been brought under the Landlord and Tenant Act 1985 for the landlord's failure to produce summaries of the relevant costs for the years 2002 and 2003.

9. If the summary of the relevant costs for 2003 and all the accounts had been supplied as part of the proceedings in the LVT then it would have made no sense to prosecute for breach of the duty under section 21 of the Act.

Anything to protect 'Steel Services' = 'Dear Mr Andrew Ladsky' Housing 1st tried to get out of prosecuting by using the phoney excuse that SS was registered in BVI

10. I would refer you to the Council's views set out in point 3 (above) on the Code for Crown Prosecutors and Public Interest. The request for a summary of the relevant costs has to be supplied within one month of the request or within six months of the end of the period referred to in subsection (1) (a) or (b), whichever is the later. Mr Hutchings wrote to Martin Russell Jones on 25 June 2004, requesting a summary of the relevant costs for 2003. Six months from 31 December 2003 (end of the financial year for Steel Services Ltd.) is 30 June 2004. One month from 25 June 2004 (the date of the request by Mr Hutchings) was 25 July 2004, and therefore in this case, the later date.

11. As for points 10 and 3 (above).

12. The attitude of the Landlord and/or his agents is a factor that needs to be taken into account in deciding whether or not it is in the public interest to proceed to prosecution. It is quite often the case that the accountants are not in a position to certify the year-end accounts within such a framework. In this case, the Council has taken the view that it was still reasonable for these accounts to be under scrutiny by the landlord's auditors at that time.

13. Again the attitude of the Landlord and/or his agents need to be taken into account in deciding whether or not it is in the public interest to prosecute.

14. The account summaries have now been supplied.

15. The position has been reviewed in the light of all the information available and the Head of Housing Needs, Mr Martin Waddington (who manages the TRS) and his team have decided not to refer the matter for prosecution.

16. With hindsight, it is conceded that this part of the letter could have been more clearly expressed, as the supply of the section 21 summaries is not dependent on whether the Council prosecutes or not.

17. Your comments have been noted but again this ground has been covered elsewhere in this response. I can only reiterate that at the time the evidence was examined by the DLA, they were of the opinion that there was insufficient evidence to justify a prosecution.

18. The Council's view is that it will, wherever possible, try to obtain the information required by legislation, through regular means rather than pursuing a prosecution.

I will respond to the comments you have made in point 19 as part of my general summary.

While I would acknowledge the frustration you have experienced in this matter since first contacting the Council for assistance, I am satisfied that the Housing department and the DLA have endeavoured at all times to act in your best interests. It is obvious that the outcome has not happened as swiftly as you would have liked. However, since you approached the Council, dialogue between the Housing Needs Group and the DLA to discuss and progress your case has been necessarily regular and thorough. As is well documented, Mr Hutchings has made many telephone calls and written numerous times to Steel Services/Martin Russell Jones to seek clarification of various matters connected with your case. Although Mr Hutchings conducted a number of telephone calls with yourself in this matter during June and July of this year, given the degree of detail contained in your complaint to Councillor Ritchie of 30 August, the Housing Needs Group felt that it would be prudent to clear any subsequent correspondence in the matter to yourself through the DLA. I would also point out that officers have on occasions experienced difficulty and spent disproportionate amounts of time in trying to identify salient points relevant to the Council's remit in some of your submissions (I would cite as an example here

More accurately, their 'behind the scene' connections

your 42 page letter to Mr Hutchings of 11 November), all these factors contributing to the amount of time it has taken to reach this point.

See my 27 Feb 05 letter to the LGO

I reject totally your assertion that the Council's responses have been nothing more than 'get-out clauses'. I would say again that the Council has to carefully consider its position before undertaking any litigation and would not prosecute unless it was deemed absolutely necessary. I would also respectfully suggest that even if any prosecution had been instigated, the legal process might have taken a much longer time to arrive at what is essentially the same result.

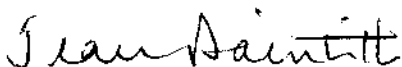
NOP! I had no accounts by then, and what I received in Feb 05 is an incomplete version - as evidenced by ICAEW's letter of 29 Aug 06

In conclusion, I would say that although the Council's performance in facilitating a resolution to your original request for assistance appears to have fallen short of your own expectations, that it has done so without the need to resort to potentially costly and time-consuming litigation, is from our point of view a satisfactory outcome. While the provision of the accounts summaries appear to be only part of the problems you have been taking up with your landlords and their agents, it is more appropriate that the related matters about which you have gone into much detail, would be better pursued through the LVT or the County Court.

I am aware that your complaint is under consideration by the Local Government Ombudsman and I am copying this letter to that service for their information. However, the Council's hope is that by virtue of this letter and with the recent provision to you of the accounts you had sought from Steel Services Ltd, that this matter would now be considered closed.

NOT SUPPLIED!

Yours sincerely,



Jean Daintith  
Executive Director  
Housing & Social Services

cc Pat Moriarty – Local Government Ombudsman  
Derek Myers – RBKC Chief Executive  
Gifty Edila – RBKC Director of Law & Administration  
Councillor Shireen Ritchie