

# Section 5 Arbitration

The experience in Clackmannanshire

# Background

- Clacks is a small LA – 48,000 population
- Homeless applications – 1100 per annum
- Very few homeless housed by RSL's
- Only 2 S5's made prior to this one
- Neither S5 resulted in housing
- New management structure in place

# Case Background

- Client member of notorious family
- Client one of the most public of the family
- In temp accommodation for 18 months
- Police wanted family spread out
- Previous housing attempts failed
  - 1<sup>st</sup> attempt – not suitable
  - 2<sup>nd</sup> attempt – arson when community discovered who their new neighbour was.

# Why Section 5?

- House became available that met all needs
- House was in RSL stock
- No landlord would volunteer to house client
- We have a duty to secure permanent accommodation.
- Executive gave us the S5 tool – culpable if we didn't use our powers to secure a solution for our client.

## Section 5

- Client unintentionally homeless & in priority need
- RSL must offer accommodation within 6 weeks unless has good reason not to.
- Only two examples of “good reason”
  1. No accommodation available
  2. Only available accommodation of a specialist nature and not suitable for the client.

# The Referral

- Asked to meet with a housing manager from the association – April 6th
- Presented them with the S5 referral at the meeting
- S5 referral identified the specific property we thought appropriate
- Meeting arranged for April 15th

# Meetings

- 2 Constructive meetings
- Police, Social Work, Housing Support, Press Unit, Community Wardens, Homelessness and RSL management.
- Housing support offered
- Press support offered
- Increased warden patrols for 3 months
- Police would deal with any issues

# Follow up questions from RSL

- 3 rounds of letter – all asking pretty much the same thing.
- How did our duty arise?
- Have we had regard to availability of appropriate accommodation?
- Is referral in accordance with views of applicant?
- Has applicant been evicted or have ASBO?
- What were client circumstances prior to application?
- What are the concerns of the police?



# Answers

- Applicant applied as homeless and was assessed as in priority need – not intentional
- In temp accommodation – little suitable available
- Area requested by client
- No knowledge of eviction or ASBO
- Can't reveal that
- Community safety – they were at the meetings

## RSL refusal – 25<sup>th</sup> May

- Asked for information on how property is appropriate – not forthcoming.
- Asked for information on evictions & ASBO's – not forthcoming.
- Concerned about safety of all parties
- “incompatible with our objective of establishing and maintaining balanced and sustainable communities”

# Work to this point

- 7 weeks
- 3 meetings
- 8 letters.
- No house.

# Arbitration

- Information note from Communities Scotland – Sept 2002
- Where RSL fails to comply with S5 without good cause; and,
- the parties can't reach agreement; then,
- must appoint arbiter.
- The decision of arbiter is binding.
- Governed by S6 of 2001 Act

# Procedures

- Parties have 5 days to reach agreement following decision not to comply or end of “reasonable period” – 6 weeks.
- If can't reach agreement that there was “good cause” – appoint arbiter
- Parties have 5 days to appoint arbiter
- If can't agree on arbiter then Communities Scotland will appoint one

# Procedures

- Parties free to appoint an arbiter – as long as they agree who it should be.
- “Arbiter must be suitably qualified, impartial and operate to code of guidance that ensures independence”
- Communities Scotland recommend use of Institute of Arbiters.

# Costs

- Registration fee for Institute of Arbiters =  
£100 + VAT = £117.50
- Arbitrator can charge £100 per hour plus VAT  
and reasonable expenses.
- Our costs = 9.5 hours @ £100 + 8.5 hours  
of admin @ £35 per hour – total costs =  
£1247.50
- We agreed to split costs prior to arbitration

# Procedures

- Submission to be provided to arbiter at beginning of process
- Arbiter may call a preliminary meeting to agree terms of arbitration
- Will not investigate – decision based on information provided
- May call a hearing if believes it necessary
- The whole process should be completed in 9 days.



# Appeals

- No appeals allowed – parties agree to be bound by arbiters decision
- Failure of RSL to comply with arbiters decision – Communities Scotland can appoint a manager to go into the RSL and enforce the decision.

# Our impressions

- Timescales very tight – need to keep diary clear to respond to requests with little notice.
- Need to be very precise and detailed with submissions –onus on parties to provide correct info.
- Arbiter lacked knowledge of homelessness – background as Chartered Surveyor

# Concerns

- Arbiter lacked appropriate knowledge
- Gave a strong impression that was taking account of irrelevant matters.
- We had to take a robust stance –pointing him in the correct legal direction.

# Irrelevancies

- “did elected members ..take the decision to start allocating houses to the applicants family”
- Where was applicant living 2 years before referral?
- Why had the applicant been in prison 3 years before?

# Outcome

- All points found in favour of the Council
- “ I find that since the principals set out above have been adhered to the presumption should be that in most cases there would be no good reason for an RSL not to comply with a request made by a Local Authority. I therefore find that the Respondent is able to make appropriate accommodation available and has no good reason for non-compliance.”

**“the presumption should be that in most cases there would be no good reason for an RSL not to comply with a request made by a Local Authority”**

# Conclusions

- Improved working relationship between parties.
- Clarified our responsibilities
- Strengthened position of homeless people in Council area
- Increased commitment of all RSL's towards homeless applicants.