

Complaint reference:
16 003 710

Complaint against:
East Devon District Council

The Ombudsman's final decision

Summary: The Council was wrong to invite a bid after the advertised deadline. However, this fault did not directly cause the loss of the sale of Mr X's business.

The complaint

1. Mr X complains the Council put leases for two business units out to tender when he had a prospective buyer for his business which was operating from the units. He also complains the Council followed an improper process when deciding the successful bidder.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)

How I considered this complaint

3. As part of the investigation, I have:
 - considered the complaint and the documents provided by the complainant;
 - made enquiries of the Council and considered the comments and documents the Council provided;
 - discussed the issues with the complainant;
 - sent my draft decision to both the Council and the complainant and invited their comments.

What I found

4. Mr X ran a business from two units leased from the Council. He decided to retire and put his business up for sale. He found a prospective buyer, Mrs Z. In February 2015 Mr X wrote to the Council giving notice on the two units as required by the terms of his lease. Mr X said notice was given subject to the new lease being issued to Mrs Z who is buying the business as a going concern.
5. The Council responded confirming receipt of the notice. It said, as explained on the telephone recently, it cannot accept the notice subject to the lease being

given to a particular person. It said it had to market the units and would so within the three month notice period.

6. The Council marketed the two units on 17 February. The amount of interest in the units resulted in the Council using a “best and final offer” process. It says it has to ensure it achieves best value for the benefit of the wider tax-paying community and it felt this was the best way to maximise income.
7. After the deadline for the submission of bids, the officer dealing with the case contacted Mrs Z. He told her the value of the highest bid received and invited her to submit an increased offer. Mrs Z did make an increased offer to the Council after the advertised closing time. The Council accepts this should not have happened and the officer was the subject of disciplinary proceedings. The Council also accepts this may have given false hope to Mr X and his buyer, Mrs Z.
8. The Council granted the lease to the person making the highest bid by the stated deadline. This was not Mrs Z.
9. Mr X complained to the Council about the process. He says the failure to assign the lease to his buyer has resulted in a personal loss to him of about £30,000. He also says the community has lost an important service. The Council maintains that it made the correct decision. It says Mr X knew the lease could not be assigned someone he nominated. It says it followed a fair process and the highest bidder was granted the lease for the two units.

Analysis

10. The Ombudsman is concerned with complaints where a fault by a Council causes a significant injustice to the person making the complaint. There was fault in this case. The surveyor passed on information about the highest bid after the deadline and invited a higher bid. He should not have done this and the Council’s actions in disciplining him show it was fault.
11. However, I am not persuaded this fault has caused the injustice claimed by Mr X. He says as a result of Mrs Z not gaining the lease, she did not buy his business. He then had to sell off his equipment rather than sell the business as a going concern causing a loss of about £30,000.
12. Mr X knew the lease could not be assigned to someone of his choice. Clause 17 of his lease agreement, which he signed in October 2013, clearly states this. The Council also made this clear in its letter of 9 February 2015 after Mr X put in his written notice.
13. While I have sympathy for the position Mr X is in, I am not persuaded any losses he incurred are as a direct result of fault by the Council. I am satisfied it granted the lease in line with the advertised process by giving it to the person who made the highest bid within the advertised timescale. The fault in this case happened after the bidding process had closed. The Council had no part in Mrs Z’s decision not to continue with the purchase of Mr X’s property.

Final decision

14. The complaint will not be pursued further as the injustice claimed by Mr X is not as a direct result of the Council’s fault.

Investigator’s decision on behalf of the Ombudsman