

Mr Shopper's case

The Wythenshawe city council, which is controlled by the Conservative Party, has adopted the policy of selling council houses to sitting tenants. The council has instructed the town clerk to devise a simple form of agreement enabling sales to take effect at the earliest possible date with the object of dispensing with legal formalities.

Mr Shopper is a tenant of a council house at 13 Moordor Road, Wythenshawe. On 15 November 2021 he filled in a request for information asking for the price and details of any mortgage on the council house where he was a tenant. He wrote:

*'Dear Council,
Please inform me of the price of buying my Council house. I am interested in obtaining a mortgage from the Corporation to buy the house. Please send me the details ... I have been a tenant of this house for over 12 years...
Sincerely,
Mr. Shopper'*

On 14 January 2022 the corporation wrote saying:

*'Dear Mr. Shopper
I refer to your request for details of the cost of buying your Council house. The Corporation may be prepared to sell the house to you at the purchase price of £2,750', less a discount of 17 per cent (as you have had a council house for several years), making a net sum of £2,282. If you were granted a mortgage, it would be for £2,279 repayable over 25 years.
The details which you requested about a Corporation mortgage are as follows:
1. Maximum mortgage the Corporation may grant:
- £2,177 repayable over 20 years.

2. 'Annual fire insurance premium:
- £2.4345 'Monthly repayment charge, calculated by:
(i) flat rate repayment method £19.4302*

This letter should not be regarded as a firm offer of a mortgage. If you would like to make a formal application to buy your Council house, please complete the enclosed application form and return it to me as soon as possible.'

On 11 February 2022 Mr Shopper filled in an application form to buy a council house. He said:

*'Dear city Council
Thank you for your prompt reply.
I ... now wish to purchase my Council house
As you know I have been living here for over 12 years. I would therefore like to apply for the mortgage on the conditions proposed by you. Please find enclosed my application form
Sincerely yours,
Mr Shopper'.*

On 9 March 2022 the city treasurer wrote to him:

*'Dear Mr Shopper
Thank you for your interest in buying the Council house.
The Corporation will lend £2,279 repayable over 25 years with interest at 8 1/2% ... the
total monthly instalment payable will be ... £14.98.'*

On the same day, 9 March, 2022, the town clerk himself wrote a letter to Mr Shopper as follows:

*'9 March, 2022
City of Manchester.
Ref: Sale of Council Houses. |*

*'Dear Sir,
I understand you wish to purchase your Council house and enclose the Agreement for Sale. If you will sign the Agreement and return it to me I will send you the Agreement signed on behalf of the Corporation in exchange. From the enclosed list of Solicitors, who are prepared to act for you and advise you on the purchase, please let me know the name of the firm that you select, as soon as possible.'
Kind regards,
Mr Town Clerk*

Commenté [1]: This is fundamentally important in this case.

Commenté [2]: This is fundamentally important in this case.

Enclosed with the letter there was a form headed: *'City of Manchester. Agreement for Sale of a Council House'*. The corporation had filled in various details, such as the name of the purchaser, Mr Shopper, the address of the property, the price as mentioned decided by the city council, the mortgage amount, and the monthly repayments. There was however, this item left blank on the form: *'7. Date when your tenancy ceases and mortgage repayments will commence _____'*. Clause 7 was then followed by these clauses:

- 8. Freehold to be conveyed or transferred by the Corporation.*
- 9. There will be no abstract or investigation of title.*
- 10. Deeds of Conveyance or Transfer and Mortgage to be in the Corporation's standard forms including conditions against use except as a private dwelling-house and against advertising and a restriction not to sell or lease the property for five years.*
- 11. Warning. As from the date mentioned in 7 above the property is at your risk. If you are taking a mortgage from the Corporation it will be insured for you but the cost recharged to you. If you are not taking a Mortgage insure it at once. Your responsibility for repairs and for payment of rates also start from that day...'*

That is just what Mr Shopper did. He filled in his application form. He filled in the name of the solicitors, Messrs Hargreaves & Co. He signed the form himself and returned the form. But he left the purchase price blank and the date when the tenancy was to cease. Mr Shopper also included a covering letter of 10 March 2022. In it he said that there were various defects in the house, particularly in the tarmac path. He said that there was a lot of work to be done and he wanted either the price to be lowered or the corporation to repair the premises.

Commenté [3]: The judge said "So, Mr Shopper did everything he had to do to confirm the purchase"

The corporation replied on 12 March 2022 in the following terms:

'Dear Sir, I refer to your letter concerning certain repairs to the path. Account is taken of the general condition of the property at the time of the survey and valuation and the price is fixed accordingly, allowing for such defects as there may be. I regret I cannot authorise repairs of this nature at this stage.'

In reply, on 18 March 1971 Mr Shopper wrote this letter:

'Ref your letter of 12th March ... In view of your remarks I would be obliged if you will carry on with the purchase as per my application already in your possession.'

The sale would have gone through, no doubt, within a short time but for the corporation and the town clerk's office being so pressed. The housing manager passed a note to the town clerk suggesting that the sale be completed with effect from Monday 22 March or Monday 12 April. But nothing more was done as the Council house purchase scheme was a success, the town clerk's staff were very overworked and did not deal with the matter in time.

In May 1971 there was the election. In July 1971 the corporation, under the new control, resolved that there were to be no more sales to council tenants; but the corporation recognised that they had to go on with the cases where the corporation were legally bound.

Thereupon the town clerk wrote to Mr Shopper and other tenants in like situation a letter saying:

*'Dear Mr. Shopper
As Contracts have not been formally exchanged in this case, I am unable to proceed with the proposed sale.
Cordially,
Mr. Town Clerk'*

Commenté [4]: So there it was. Mr Gibson's suggestion was not accepted by the corporation. They said, in effect, that they would stand by their offer in the letter of 10 February 1971 but would not modify it.

Commenté [5]: It seems to me clear that, by writing that letter, Mr Gibson discarded the suggestion which he had made in the covering letter. He returned to the simple application which was already in their possession, of which they had intimated their acceptance. As I view this letter of 12 March 1971, they had intimated that they would accept his application if he did not press this point about repairs. We have had much discussion as to whether Mr Gibson's letter of 18 March 1971 was a new offer or whether it was an acceptance of the previous offer which had been made. I do not like detailed analysis on such a point. To my mind it is a mistake to think that all contracts can be analysed into the form of offer and acceptance. I know in some of the textbooks it has been the custom to do so; but, as I understand the law, there is no need to look for a strict offer and acceptance. You should look at the correspondence as a whole and at the conduct of the parties and see therefore whether the parties have come to an agreement on everything that was material. If by their correspondence and their conduct you can see an agreement on all material terms, which was intended thenceforward to be binding, then there is a binding contract in law even though all the formalities have not been gone through.

Commenté [6]: Mr Shopper took the advice of Messrs Hargreaves & Co. Some 120 other tenants also took advice. They were advised that there was a binding contract, even though formal contracts had not been exchanged. So this case of Mr Shopper has come as a test case for Manchester Corporation. It is to decide whether or not 'exchange' is necessary in order to form a concluded contract. When parties arrange for a sale 'subject to contract', that means, as a rule, that there is no binding contract until the contracts of sale have been formally exchanged. That is clear from *Eccles v Bryant*. But where there is no arrangement 'subject to contract', the only question is whether a contract has been concluded: see *Bigg v Boyd Gibbins Ltd*. One example is where one solicitor is acting for both sides, such as in *Smith v Mansi*. It is 'artificial nonsense', Danckwerts LJ said ([1962] 3 All ER at 861, [1963] 1 WLR at 33), to have an exchange of contracts where there is only one solicitor acting. The present case is, I think, another example. The corporation put forward to the tenant a simple form of agreement. The very object was to dispense with legal formalities. One of the formalities—exchange of contracts—was quite unnecessary. The [...]

Commenté [7]: Held – A binding contract for the sale of the house had been concluded by offer and acceptance when the plaintiff accepted the offer to sell contained in the letter of 9 March by signing the agreement for sale and returning it to the council, notwithstanding that contracts had not been exchanged and the contract had not been signed on behalf of the council. It was the council's intention (having regard to their instructions to devise a simple form of agreement and to the terms of the actual agreement sent to the plaintiff and the accompanying letter of 9 March) that the council would become contractually bound when the plaintiff had signed the agreement and returned it.

The letter of 9 March signed by the town clerk constituted a sufficient note or memorandum of the [...]