

Complaint reference:
15 001 502

Complaint against:
Spelthorne Borough Council

The Ombudsman's final decision

Summary: there was fault in the way the Council considered Mrs X's complaints about poor quality work by building contractors who carried out adaptations to her home with funding from a Disabled Facilities Grant. That caused injustice to her husband, Mr X, because he was not able to make full use of the new facilities.

The complaint

1. Mrs X complains about the way the Council responded when she complained about poor quality work by building contractors who carried out adaptations in her home to meet the needs of her husband who is disabled. She also complains about the conduct of three named Council officers.
2. Mrs X disagrees with the Occupational Therapist's assessments of her husband's needs and the recommendations she made to the Council. The Occupational Therapist is employed by the social services authority - Surrey County Council.
3. Mrs X is dissatisfied with action taken by staff who work for the Home Improvement Agency (HIA).

What I have investigated

4. I investigated the Council's actions including Mrs X's complaint about the conduct of three Council officers.
5. The Council was not responsible for supervising the building works and resolving other disputes between Mrs X and the building contractors.
6. I did not investigate the complaint about the Home Improvement Agency (HIA), the Occupational Therapist or the building contractors for the reasons given in paragraph 66 to 68.

The Ombudsman's role and powers

7. 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)*)

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8. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

How I considered this complaint

9. I considered Mrs X's complaint and her correspondence with the Council. I made enquiries to the Council and considered the evidence it sent me. This includes grant notices and agreements and correspondence between officers and Mrs X about her complaint.
10. I considered a report written by an independent surveyor who inspected the completed works and his photographs.
11. I sent my draft decision to Mrs X and the Council and considered their comments. I met Mrs X at her home. She showed me the extension and the outstanding defects. Following the meeting, I discussed the case with a senior environmental health manager at the Council and the independent surveyor who inspected the property.
12. These further enquiries led me to make significant changes to the original draft decision. So I sent Mrs X, the Council and the independent surveyor the amended draft decision statement to give them a further opportunity to comment before I made a final decision. I have taken their comments into account.

What I found

The Council's role and responsibilities

13. Three organisations were involved in this Disabled Facilities Grant (DFG) application: the HIA, Surrey County Council and Spelthorne Borough Council. Mrs X has also complained about the conduct and competence of the building contractors. It is therefore important to explain the role and responsibilities of Spelthorne Borough Council as the local housing authority.
14. The Council assesses applications for DFGs. It must decide whether the proposed works are necessary and appropriate to meet the needs of the disabled person. It must consult the social services authority about the disabled person's needs. It does a means test to decide whether the disabled person makes a financial contribution to the cost of the works.
15. However the Council does not inspect or supervise the works on behalf of the grant applicant while they are in progress. In this case that was the responsibility of technical staff who work for the HIA. The Council took no part in selecting or appointing the building contractors. The HIA manages this part of the process in its role as the applicant's agent.
16. The Council must carry out a final inspection of the completed works to ensure they meet a reasonable standard before it releases payments to the contractors. The Council's guidance says it will not certify any works as satisfactorily completed if the workmanship is of unacceptable quality or it has not met the objectives of the grant. The Council requires the contractor to take remedial action if the works are defective.

The background to the complaint

17. Mr X is disabled following a stroke. In April 2013 he signed an agreement with the HIA authorising it to deal with his application for a DFG. The grant was to extend an existing rear extension to provide a shower room with a level access shower, WC and washbasin. The agreement said the HIA would act as Mr X's agent to process the grant application and organise the works in his home.
18. The HIA obtained quotations for the grant works from four building contractors on its approved list. In December 2013 Mr X signed a form accepting the lowest quotation. The form explained the contract for the building works was between him and the contractor. It added that any legal issues would be between him and the contractor.
19. On 27 June 2014 the Council approved a grant of £24,886.92. Mr X did not have to make a financial contribution.
20. In June 2014 Mr X suffered a second stroke and was hospitalised.
21. On 17 July Occupational Therapists from the hospital and County Council visited Mrs X to review whether any changes should be made to the agreed specification of works before Mr X was discharged from hospital. A Council officer (Officer A) and an officer from the HIA were also present. It was decided to include a ramp and widening of the internal doors to accommodate a wheelchair. At the time it was thought Mr X may need to use a wheelchair when he returned home.
22. In the event the original scheme proceeded because Mr & Mrs X did not want a ramp and Mr X made good progress and did not need to use a wheelchair indoors. The original specification of works included a standard height WC.

The building works start

23. The contractors started work on 3 September 2014.
24. Mrs X made a complaint to the HIA about the contractors in October. She said they had not installed a folding shower seat, the WC was too low for Mr X and there was no grab rail. The Occupational Therapist agreed to order a wall-mounted chair and fit a raised WC seat and drop down rail.
25. On 22 October the building contractors informed the Council the works were completed.
26. Mrs X made a further complaint to the HIA on 24 October. She expressed concern about the safety of the electrical works, requested guarantees for some items and complained about the contractors' conduct. She reported defects with the plumbing to the WC, the height of the seat and the shower doors. She also listed some external defects and damage to her fence and garden. Mrs X was not prepared to let the contractors back into her home to rectify the defects and complete the works. The HIA sent the Council a copy of the letter.
27. On 11 November a senior manager in the Environmental Health team replied to Mrs X's complaint. She confirmed the electrical works had been certified as safe by a registered competent contractor after some defects were rectified. She listed all the defects Mrs X had reported. She said Mrs X should contact the team to

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- make an appointment for an officer to visit to inspect the works. The officer would look at all the items on Mrs X's snagging list.
28. The Council wanted to do a joint post-works inspection with the OT and the HIA on 3 November. But Mrs X did not want some of the officers to attend so the visit did not take place. On 10 December Surrey County Council assigned a new Occupational Therapist to Mr X's case.
 29. Meanwhile one of the Council's building control officers had visited on 3 November. The Council says Mrs X asked him to leave before he had time to complete the inspection.
 30. On 12 November the contractors requested payment for the building works. The Council decided to withhold 25% of the approved grant (just under £5,000) to fund the outstanding remedial works. It paid 75% of the grant to the contractors on 8 December. The Council says it is confident this reserved sum is sufficient to fund the works. It based its assessment on the costings provided by contractors and officers' experience of the cost of building works.
 31. On 16 December a grants officer visited the property and drew up a list of 18 outstanding issues. She noted Mrs X had alleged the contractors had damaged the fence, garden and a grate to an external air vent. She found significant defects with the sliding doors to the shower room, poor quality grouting to tiles in the shower room and the wrong material used to seal the waste to the washbasin. She passed the list to the HIA. Mrs X says the grants officer omitted some defects from her list and included some works that were not necessary.
 32. The new Occupational Therapist also visited on 16 December. She agreed with the previous OT's assessment that a raised seat fitted to the existing WC would meet Mr X's long term needs. Mrs X disagreed. She considered a raised seat would be unhygienic and said there was a raised WC in the first floor bathroom. Having considered Mrs X's comments, the Occupational Therapist agreed in January 2015 to change her recommendation to a new raised WC pan with grab rails.
 33. The senior EHO sent the list of defects to Mrs X on in early January. She confirmed the new OT had agreed the existing WC should be replaced with a raised WC pan (rather than a raised seat) and grab rails should be fitted. The Council agreed to fund the new WC and grab rails as additional items.
 34. On 6 February the grants officer sent Mrs X a new specification listing all the outstanding works and snagging items. The replacement of the WC and grab rails was included. She explained the Council needed two quotations. Mrs X could ask the HIA to obtain them or she could find contractors herself.
 35. Mrs X did not accept the specification was complete because it did not include all the defects she had reported. She also refused to proceed until the contractors paid her for their use of electricity.
 36. A senior officer from the HIA met Mrs X on 11 March. Council officers and HIA staff then met to agree a way forward. On 24 March the senior officer wrote to Mrs X to confirm that an independent organisation that accredits builders and other tradespersons would inspect the works and draw up a final list of remedial works. According to her letter, she enclosed a cheque for £50 from the contractors to cover the cost of electricity. Mrs X says she did not receive a cheque and has never been reimbursed for the electricity costs.

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37. The independent surveyor says Mrs X contacted his organisation on 26 March 2015. He says all the parties involved had asked his organisation to investigate the complaint at the same time.
38. The independent surveyor told me he had never met the contractors or had any direct contact with them but he had inspected their work in the past.
39. The independent surveyor inspected the property on 30 March 2015. I have looked at his photographs, read his report and spoken to him about his findings and recommendations. He considered the February 2015 specification included some works that were not necessary and missed some defects he found when he inspected the property. He did a thorough inspection of the property and drew up a comprehensive snagging list. He found evidence of poor workmanship. He said the contractors were responsible for most of the problems.
40. The Council received the surveyor's report on 20 April. The surveyor confirmed he sent a copy of his report, without his conclusions and recommendations, to Mrs X the following day.
41. On 23 June the grants officer sent Mr & Mrs X a revised schedule of works. She included most, but not all, of the works recommended in the independent surveyor's report. As a goodwill gesture, she included the replacement of three damaged fence panels. She added half height shower doors to contain water. She explained this was the final list of works that could be funded from the original DFG. The new raised WC and fence panels would be funded as additional items.
42. She advised Mrs X to get two quotations from contractors or ask the HIA to do that using the new specification.
43. Mrs X was dissatisfied because the revised schedule of works omitted some of the snagging items in the independent surveyor's report. The following items were not in the final schedule:
- resecure a light switch on the wall adjacent to the shower room;
 - seal, prime and repaint a wooden fascia at the rear of the property where the contractors had used nails which had rusted;
 - works to seal/repaint two sections of lead flashing on the roof at the rear of the property;
 - refix a TV cable which was left loose on the roof after work was done on the roof;
 - fitting grab rails for the new raised WC
44. Mrs X did not want to get quotations from new contractors until the Council's schedule of works includes all the items from the snagging list in the independent surveyor's report.
45. The senior EHO told me the Council did not include these items in the final schedule of works because officers did not consider these defects related to the works done by the building contractors under the DFG. They thought the roof defects related to defects on the original rear extension. The independent surveyor says none of the Council officers contacted him to ask him to explain why he had included these items in his report. When I spoke to him he was certain the defects were a result of work done by the building contractors.
46. There has been a deadlock since June 2015. The snagging works are still outstanding and the WC has not been replaced.

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47. During this investigation, I asked the Council to reconsider the schedule of works and its reasons for excluding some items from the independent surveyor's report. I suggested officers should speak to the independent surveyor to explain their concerns and find out why he considered the building contractors were responsible for all the defects listed in his report.
 48. The Council has now completed the review and Mrs X recently collected the new schedule of works which includes all the previously excluded items.
 49. Mrs X told me her husband can use the shower but she has to mop up water from the floor. He cannot use the WC in the ground floor wet room because it is too low and there are no grab rails. She says he spends most of his time upstairs where he can use a raised WC. She considers the Council should pay £5,000 to recognise the serious impact the delay has had on her husband's quality of life and the distress caused to him and her family.

Mrs X's complaints about Council officers

50. In August 2014 Mrs X complained about a comment a grants officer made when he visited on 19 July. She had asked him whether a skylight could be included in the specification to increase natural light in the shower room. Mrs X says the officer told her she would have to pay for it herself if she could afford to. She said she felt embarrassed and belittled by this comment. She felt he had spoken to her in an aggressive and bullying manner.
51. A manager investigated Mrs X's complaint. She explained a DFG can only be awarded for essential works to meet the disabled person's needs. She said the grants officer had been trying to explain to Mrs X there was no essential need for a skylight because there was a window in the shower room. The officer's intention was to explain she could fund this as additional work at her own expense. The manager spoke to the grants officer and another person who attended the July visit. She said the grants officer had not intended to say anything to upset or offend Mrs X. She said an officer had already apologised to Mrs X. Mrs X had declined an offer to meet the grants officer to explain why she was upset by his comments. The manager repeated the Council's apology.
52. Mrs X says she is dissatisfied with the way the manager investigated her complaint about the grants officer. She says she defended the grants officer when he had spoken to her in a very abrupt and discourteous way.
53. I have read these officers' written communications with Mrs X and the tone of their letters is courteous and professional.

Analysis

54. The Council did not select the building contractor or compile the approved list of contractors for the HIA. It was not responsible for overseeing or supervising the works while they were underway. So it is not responsible for the quality of the work done by the contractors. The evidence I have seen shows Mr X selected the contractors after considering quotations provided by his agent, the HIA. The contract was between Mr X and the builders: the Council was not a party to it.
55. When the DFG works are completed, the Council had to inspect to ensure they were of a reasonable standard and complied with the grant specification. The inspection should take place before payment is released to the building contractor. The Council may withhold some of the grant if it is not satisfied and remedial works are necessary.

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56. The Council accepts some works were not completed to a satisfactory standard. So it retained 25% of the DFG to cover the cost of remedial works. By then Mrs X had lost faith in the contractors' competence and she did not want them to return. The Council sent her a schedule of works and asked her to get two quotations from new contractors. When Mrs X disputed the works listed in the schedule, the Council consulted the HIA and they agreed to ask an independent surveyor to inspect the works and draw up a definitive snagging list.
57. Mrs X has questioned the independence and impartiality of the surveyor. I have read his report and spoken to him. He confirmed he has never met the building contractors but he had previously inspected their work at other properties. Part of his role is to inspect properties when complaints are made about the standard of work by registered contractors. He found fault with the quality and finish of some of the contractors' work. He also recommended the builders were put on probation with the accreditation scheme. For these reasons I do not share Mrs X's view that he was not impartial or independent.
58. In April 2015 the Council received the independent surveyor's report. The grants officer prepared a new specification which she sent to Mrs X on 23 June with a request for two quotations. However she omitted some of the snagging items from the surveyor's report because she did not consider these defects were caused by the contractors during the DFG works. No further progress has been made since then. Mrs X disagreed with the decision to exclude some items from the schedule so she did not seek new quotations.
59. I consider the Council could have done more to resolve the dispute and finalise the schedule of remedial works. The Council and the HIA jointly commissioned the independent surveyor to inspect the property and come up with a definitive list of snagging works. If Council officers had doubts about some of his recommendations, they should have spoken to him when they received his report to clarify matters. If this had happened, it seems likely the dispute would have been resolved much sooner. The failure to review the schedule of works, and speak directly to the independent surveyor sooner, was fault.
60. If the Council had contacted the independent surveyor sooner, it seems likely an agreed schedule of remedial works would have been drawn up within two months of his inspection. So there has been an unreasonable delay of ten months since June 2015 in preparing an agreed schedule which would allow the remedial works to start. During this time Mr X has not been able to use the ground floor WC. That has affected his quality of life and caused him some inconvenience.
61. I considered Mrs X's complaints about the three Council officers who were involved in dealing with the grant application and her complaint. The Council has already apologised to Mrs X for any unintentional offence caused by the officer who visited her on 19 July. The Ombudsman cannot achieve any more for her now. I have seen no evidence that the other two Council officers she named behaved unprofessionally when they considered her complaint.

Final decision

62. I have completed the investigation and upheld part of Mrs X's complaint. I found fault by the Council because there was unreasonable delay in resolving the dispute about the items to be included in the schedule of remedial works. The delay caused injustice to Mr X because he has had to wait longer for some of the adaptations he needs. It also caused distress to Mrs X and her family.

Agreed action

63. The Council has now completed the revised schedule of works. It includes all the items in the independent surveyor's snagging list. Mrs X now has the schedule which means she can get quotations from new contractors.
64. When Mrs X submits the new quotations, the Council has agreed it will consider them promptly so Mrs X can appoint a new contractor to start remedial works at the earliest possible date.
65. The Council will apologise to Mrs X and pay £750 to recognise the impact the delayed provision of a suitable ground floor WC had on Mr X.

Parts of the complaint that I did not investigate

66. I did not investigate action taken by the Home Improvement Agency (HIA). The HIA is an independent body and it was not carrying out functions on behalf of the Council. It is part of a large registered provider of social housing. The Ombudsman has no power to investigate a complaint about action taken by employees of the HIA.
67. The Occupational Therapist who assessed Mr X's need for adaptations, and made recommendations to Spelthorne Borough Council about the works, is employed by the social services authority - Surrey County Council. Mrs X did not complain to the Ombudsman about Surrey County Council. The Ombudsman would expect her to have pursued a complaint in the first instance through Surrey County Council's adult social care complaints procedure.
68. Mr X employed the building contractors. They were not acting as the Council's agents or contractors. So I have not investigated Mrs X's complaints that they were negligent, damaged her property, disposed of items or did not reimburse her for the electricity they used. Mrs X may wish to take up any unresolved issues with the contractors or their insurers.

Investigator's decision on behalf of the Ombudsman