

23 August 2018

Complaint reference:
15 018 979**Complaint against:**
Forest Heath District Council

The Ombudsman's final decision

Summary: Mr X complains about the way the Council dealt with his disabled facilities grant works and the complaints he made about this. The Ombudsman finds the Council was at fault and caused Mr X distress. It should identify an independent person to arrange and oversee the remedial works, and pay Mr X £200.

The complaint

1. The complainant, whom I shall refer to as Mr X, complains that when the Council arranged a bathroom adaptation for him, it did not ensure the contractor completed the work satisfactorily. It also failed to respond to his complaints about this.
2. Mr X says the contractor left him with an unsanitary and unsafe bathroom. He says someone offered to do the most urgent work and the Council has not paid them for this.

The Ombudsman's role and powers

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I considered information from the complainant and from the Council.
6. I sent both parties a copy of my draft decision for comment and took account of the comments I received in response.

What I found

Background

7. Disabled Facilities Grants (DFG) are provided under the terms of the Housing Grants, Construction and Regeneration Act 1996. Councils have a statutory duty to provide grant aid to disabled people for a range of adaptations.

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8. Usually, responsibility for the works lies with the person who will enter a contract with the contractor. Councils usually have no responsibility for the standard of work even if it approves the contractor. The contract should provide the person with a means of recourse should there be problems.
 9. Home improvement agencies (HIA) provide support to people with managing the grant application and works.
 10. Eligible works should be completed within 12 months of a DFG being approved. This means the adaptation should be fit for purpose. Councils can, at their discretion, extend that period if new works arise and may re-determine applications if circumstances change.
 11. In February 2015, the government withdrew its guidance “Delivering Housing Adaptations for Disabled People: A Good Practice Guide”. It replaced it with “Home adaptations for disabled people: a detailed guide to related legislation, guidance and good practice” published by the Homes Adaptations Consortium in 2013.
 12. This non statutory guidance stresses the importance of close links between housing and social care authorities to ensure local people receive the most suitable help. The guidance says even where the same authority delivers these services it is important to ensure joint protocols and agreements exist to ensure an effective service.
 13. Councils have a statutory duty to make reasonable adjustments to practices that cause disabled people disadvantage. Where a disabled person would be put at substantial disadvantage without additional help, councils should take reasonable steps to avoid that disadvantage. (*Equality Act 2010 sections 20 & 29*)

What happened

Mr X’s previous complaint

14. Mr X is severely disabled; this affects his mobility, communication and his ability to deal effectively with others. In 2012, an occupational therapist recommended an adaptation to his bathroom to provide a level access shower under the DFG scheme. A home improvement agency (HIA) helped Mr X but his relationship with the HIA soon broke down. The Council approved his application in June 2014 and helped him find suitable contractors to do the work. The contractors withdrew and the Council told Mr X he must submit quotes from new contractors.
15. The Council’s offer of a Disabled Facilities Grant expired in February 2015 as the works had not begun. It asked Mr X to make a new application.
16. The Council received a new Occupational Therapy (OT) recommendation for Mr X’s bathroom adaptations in March 2015 with minor alterations to the original. Mr X wanted an HIA to help with his application.
17. The HIA said Mr X had refused to sign the standard agreement it required. In 2012 the Council had persuaded the HIA to waive the agreement, but it would not agree another waiver. Mr X asked the Council to find a contractor for him as his disability prevented him from doing this successfully but the Council declined as it had no power to enter into a contract on Mr B’s behalf.
18. In September 2015, Mr X complained to the Ombudsman and we recommended the Council:
 - apologise to Mr X for the avoidable distress and trouble he was caused;

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- identify and secure quotes from appropriate companies to complete the adaptations to Mr X's bathroom and forward the details to him for approval;
 - offer Mr X assistance to complete any outstanding DFG application documents.

Later events

19. The Council identified a contractor and met with it to discuss the works. It wrote to the contractor to advise it had approved the grant based on the costs the contractor submitted. It said the contractor was required to notify Mr X and the Council officer dealing with the case if:
 - Any unforeseen works are found.
 - The works are more extensive than estimated.
 - For any reason the final cost is higher than originally estimated.
20. The schedule of works agreed stated that works were to be "in strict accordance" with the OT recommendations. It also specified that all areas disturbed should be made good. The Council said if works were not agreed as eligible for grant, no payment would be made towards the cost of those additional works. It also advised the contractor that it would not be able to inspect after the works and would pay on receipt of photographic evidence. It asked the contractor to get Mr X's signature on a completion certificate, but said to complete the form and advise if this caused unnecessary problems.
21. The contractor met with Mr X who agreed to the arrangement, and in early December 2015, the work began. I have seen no evidence of an agreed contract.
22. On 24 December 2015, the contractor left the work unfinished. They said Mr X had been difficult to work with, changing his mind on every detail and demanding changes the contractor felt were neither relevant or necessary. Mr X disputes this. The contractor said they would not return. They advised the Council there was some outstanding work covered by the schedule of works.
23. The contractor told the Council it had completed some extra work agreed with Mr X, including additional tiling, but had not completed all the work it had agreed to do outside of the grant.
24. The contractor said Mr X had also raised some issues about the work, which they had not dealt with.
25. Mr X contacted the Council when the offices reopened after Christmas. He said the outside drainage was not satisfactory and there were several problems with the bathroom including a leak from the toilet waste pipe. He asked the Council to withhold payment. A contractor known personally to Mr X (Mr Z) carried out some of the work that Mr X said needed doing. Mr X sent the Council a list of what Mr Z had done.
26. Mr Z also noted the floor was not draining away properly in the shower and the tiling had not been started in the right place so there was a 20mm difference.
27. Mr X complained to the Council and asked it to pay Mr Z for the work already completed and to agree to pay Mr Z to complete the remaining work. The Council agreed to inspect the works but problems arose with arranging this and Mr X would not allow access.
28. An officer from the Council visited Mr X in April to see what work was outstanding. While the visit began well, it broke down. Mr X agreed to further inspection, but

would not allow those dealing with the issue to visit because his relationship with those officers had broken down. Eventually, the relationship between Mr X and the Council broke down completely, and he complained to us.

29. Council records show when the contractor consulted with its Building Control team there had been some confusion about connecting the internal work to the outside drainage. As a result, the external drainage was unsatisfactory and needed substantial alterations to make it right. At the time, the Council noted that it might need to remedy the drainage in future. It adjusted the payment to the contractor to take account of the variations which had caused the problem.
30. In May 2016, the Council said it would pay for some of the plumbing work and the external drainage work. It said it would do this if Mr X agreed enough access for visits and inspections.
31. The Council says that, due to the breakdown in communication with Mr X, it could not do the remedial work it had agreed to. So, Mr X's bathroom and outside drainage remains unfinished over two years after the contractor left. Although Mr X can use the bathroom, the drainage is not fit for purpose and there are significant questions about whether the flooring and toilet are fit for purpose.
32. The Council suggested paying Mr X £2,500 to complete the works plus a further sum to cover any administrative help he needed. This would enable Mr X to engage his own contractor (Mr Z) to carry out the work. However, by this time, Mr X was not sure whether Mr Z would agree to do any more work for him.
33. The Council told me it does not have any concerns about Mr Z's assessment of the work needed; it does not dispute the inadequate quality of the work. However, it does not agree it is at fault in the way it dealt with this or that it is responsible for the cost of putting it right.
34. Mr X and the Council have provided a list of the work they say needs doing, and quotes for this. The total estimated cost of the remedial works (assuming all are necessary) is £3,402.45. However, these quotes are now out of date and that may affect the cost. This suggests the work needed is significantly more extensive than the Council's original financial offer would cover.
35. Mr X also says his porch was damaged when the contractor dug under its supports and cut the main framework during the external drainage works. This has only recently become apparent. He says it cannot be repaired and needs replacing.
36. Mr X says he agrees to access for necessary inspection and to complete the works.

Was there fault which caused injustice?

37. The Council had a duty to ensure the works were delivered and fit for purpose. When Mr X did not get the support he needed from the HIA, the Council arranged and managed the works. This was helpful, but in doing this it needed to ensure the works were properly completed and fit for purpose. It was at fault because it failed to adequately manage the contractor.
38. Although the Council put in place measures to ensure the contractor worked to the OT's specification, the contractor failed to alert the Council to variations. The contractor did not complete the works satisfactorily either in terms of the specification or in terms of quality. This was evident when Mr X first contacted the Council reporting leaks, exposed wiring and problems with drainage.

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39. At an early stage Mr Z noted the floor was not draining properly, and he repaired superficial damage to the porch. This suggests that Mr X's belief that the porch was more substantially damaged is not without good grounds.
40. Due to his medical conditions and disabilities, Mr X does not always respond in the most helpful way and this causes him to be disadvantaged; the Council cannot always avoid this. Nevertheless, it needed to address the problems with the works. The Council was at fault in the way it dealt with the problem which left Mr X with ongoing issues around a bathroom that was intended to improve his life. This caused him significant and avoidable distress.
41. The Council was slow to respond effectively to his complaints and there was also a delay in it providing me with some information I asked it for. It was at fault here and this caused Mr X more distress.
42. The Council's offer of £2,500 for Mr X to arrange remedial works himself was unlikely to be enough to pay for the remedial works which potentially total almost £3,500. Additionally, if Mr X could have arranged his own contractor and overseen the works, the Council would not have needed to do this for him in the first place.

Agreed action

43. To put right the injustice it caused, I recommended the Council:
- apologise to Mr X
 - pay Mr X £200 for the distress it caused him.
 - identify a suitably qualified person, independent of the Council, to manage the remedial works including:
 1. identifying the work needed, besides the external drainage works, to meet the OT specification without further variation;
 2. ensuring the bathroom and associated drainage and plumbing affected by the original works is fit for purpose;
 3. ensuring damage to the porch is inspected and, if likely to be due to the original grant works, repaired to ensure it is fit for purpose;
 4. gathering quotes;
 5. arranging works;
 6. ensuring Mr Z is paid for the work he completed;
 7. arranging building control certification; and
 8. overseeing the entire process to conclusion.
44. The Council has agreed to these actions and has already identified an independent person.
45. The independent person will be responsible for all decisions relating to the remedial works. Mr X has already agreed the OT specification and therefore only needs to agree options such as the colour of flooring. There should be no variations to items once agreed.
46. If the Council engages a suitable person who carries out the tasks above satisfactorily, but Mr X's actions mean the work cannot be carried out, we are likely to consider that it has made sufficient effort to resolve the problem.

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47. The Council should send us a copy of the apology and evidence of the payment to Mr X within one month of the final decision. The Council has already provided details of the independent person.
 48. The Council should submit evidence of works completed and amounts paid to Mr Z and any other contractor, to the Ombudsman within three months of the final decision.

Final decision

49. I have completed my investigation and uphold Mr X's complaint that when the Council arranged a bathroom adaptation for him, it did not ensure it was satisfactorily completed. It also failed to respond to his complaints about this.

Investigator's decision on behalf of the Ombudsman