

Report

on an investigation into
complaint no 04/C/16622 against
Leeds City Council

4 May 2006

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Key to names used

Mr and Mrs Walker	the complainants
Officer A	Occupational Therapist
Officer B	Principal Disability Access Officer
Officer C	Senior Environmental Health Officer
Officer D	Surveyor
Officer E	Adaptations Manager
Officer F	ALMO Regeneration Manager
Officer G	ALMO Chief Executive
Officer H	ALMO Principal Partnering and Capital Surveyor.

Report Summary

The complaint is from a tenant of the Council who is a disabled man who says that the Council delayed in providing adaptations to his home to meet his needs as a disabled person.

The complainant's needs were assessed as long ago as September 2002. Over three years later he has still not had those needs met. The delay is clearly maladministration. The Council accepts that in the period between September 2002 and June 2003 the case drifted with no decision being taken, because there was no clear procedure for dealing with such adaptation cases where no agreement had been reached either between the officers involved or between those officers and the applicant. The lack of a clear written policy in such circumstances is also maladministration.

Supervision of the officer dealing with the complainant's case was also inadequate which in turn was maladministration.

Communication with the complainant was also poor and was additional maladministration.

The Council has, to its credit, accepted the maladministration identified by the Ombudsman, and has made some fundamental changes in its procedures and policy.

The complainant has also been offered alternative accommodation which meets the complainant's and his family's needs, or that facilities are otherwise provided to meet those needs.

The Ombudsman has also recommended that the Council pay the complainant's family £5,000 as well as funding a two week holiday with travel during the school holidays of summer 2006.

Introduction

1. Mr Walker who is a tenant of the Council complains that the Council has delayed in providing adaptations to his home to meet his needs as a disabled person.
2. For legal reasons, the names used in this report are not the real names of the people and places concerned¹.
3. An officer of the Commission has visited the complainant, has examined the Council's files and has interviewed officers of the Council.
4. An opportunity has been given for the complainant and the Council to comment on a draft of this report prior to the addition of the conclusion.

Legal and Administrative Background

5. If a council is satisfied that a disabled person has certain needs, including the need for assistance in carrying out works of adaptation in his or her home, it has a duty to make provision for those works².
6. Leeds City Council is a social services authority and has a duty to assess a person with disabilities on request and to decide whether that person has a need for welfare services³.
7. The responsibility of a social services authority to make arrangements for home adaptations can be discharged on its behalf by a housing authority. The housing authority has a choice of how to deal with the adaptations works in properties it owns. It may either give a Disabled Facilities Grant or by doing the work itself. Government advice is that, if the Council decides to undertake the works itself, they should be carried out on the same terms as if a disabled facilities grant has been awarded⁴.
8. A disabled facilities grant involves an assessment of what is necessary and appropriate, and reasonable and practicable to meet the applicant's needs⁵.

1 Local Government Act 1974, section 30(3)

2 Chronically Sick and Disabled Persons Act 1970, section 2

3 Disabled Persons (Services Consultation and Representation) Act 1986, section 4

4 DoE Circular 10/90 Annex I para 11

5 section 24(3) Housing Grants, Construction and Regeneration Act 1996

9. The Department of Health has issued guidance to health authorities and social services authorities which says:

“An authority may take into account the resources available when deciding how to respond to an individual’s assessment. However, once an authority has indicated that a service should be provided to meet an individual’s needs and the authority is under a legal obligation to provide it or to arrange for its provision, then the service must be provided. It will not be possible for an authority to use budgeting difficulties as a basis for refusing to provide the service.”⁶

10. The Council can take into consideration the age and condition of the building⁷. If the Council has options how it can meet the person’s needs, it can take into account the respective costs of each option⁸.
11. Another Local Government Ombudsman has said she would be critical of delays of more than six months from the social services referral to the execution of the works⁹.
12. On 1 February 2003 Leeds City Council transferred over the management of its housing stock to six Arms Length Management Organisations (ALMO’s). The management of Mr and Mrs Walker’s home was transferred to Spotlands Area Homes¹⁰. The Council still owns the home and the land it is on.
13. At the time, in April 2002, an occupational therapy (OT) assessment was started in this case. The Council does not have a written policy or procedure for dealing with adaptations cases for Council tenants. It did, however, have a standard, but unwritten, practice, which is described in the paragraph below. It also had guidance for the OT and Environmental Health Officer on the decision whether to grant an extension or a through lift.
14. Before April 2005, the Council’s OT carried out an assessment to decide what was necessary and appropriate for Mr Walker. At the time of the assessment, September 2002, a Council environmental health officer would

6 DoH letter CO(92) 34 1992 the ‘Lamming letter’ para 13

7 s24 (3)(b)(i) Housing Grants and Construction Act 1996

8 R v Kirklees MBC EP Daylin (1998) 1 CCLR 512

9 Local Government Ombudsman report into complaint number 04/C/12312 and 02/C/8679

10 Local Government Act 1974, section 30(3)

then decide what was a reasonable and practicable way to provide for those needs. If adaptations to a property were required and would cost more than £10,000, the case was passed to the Property Services Department for its decision, who would then carry out the construction. The manager says that generally they would agree with the environmental health officer's decisions. From June 2003 onwards the case was passed from the OT to a newly set up Council department called the Adaptations Agency. Its role was to decide what was reasonable and practicable to meet the assessed needs and to then take the scheme forward including drawing up the plans, tendering the work and monitoring it. Leeds City Council had total control over what adaptations were carried out on its homes managed by each of the six ALMOs, albeit the cost came out of the ALMO's budget. In April 2005 Spotlands took control of its own adaptations budget. This means that once it receives an OT assessment, it carries out its own survey and progresses the case. The Council's Adaptations Agency is not involved.

Investigation

15. Mr and Mrs Walker are Council tenants. They live in a two bedroom detached two storey house. They have twins, a boy and a girl, who were born on 8 March 1996.
16. In April 2001 Mr Walker suffered a stroke and was taken into hospital. On 18 April 2001 Officer A (an Occupational Therapist) visited Mr Walker's home. He decided that Mr Walker needed some minor adaptations to his home. These included a ramp to the house's front entrance and hand rails on the internal staircase. At the time Mr and Mrs Walker told Officer A that a councillor had told them they would be able to move to a three bed roomed bungalow being built nearby.
17. By March 2002 Mr Walker's condition had deteriorated. Following an MP's letter to a councillor, in which he said that Mr Walker was sleeping on a sofa, and a letter to the Council direct, Officer A visited Mr and Mrs Walker on 31 May 2002. He recalls that he referred the provision of a bed to the District Nurse. He then wrote to the complainant's GP. The GP's response stated:

"...his mobility has deteriorated significantly to the point where he requires an electric wheel chair for virtually all mobility."
18. Officers A, B (a Principal Disability Access Officer), C (a Senior Environmental Health Officer) and D (an Agency Surveyor), attended a site

meeting on 22 August 2002. They looked at the option of a through lift from the living room straight up to the bedroom. Some officers did not believe this was the best option. Although it may have met Mr Walker's needs in the short term, once his children reached 10, they would require a three bed-room house. The family would not be statutory overcrowded, but under the Council's housing policy they would be entitled to a three bed-room house. Although a through lift would technically fit, some officers believed it would be very cramped. Mr and Mrs Walker are clear that they explicitly told the Council they did not want a through lift. Their understanding was that an extension was the best way to meet their needs.

19. Officer C sent a memo the next day to Officer B to say that she thought a through lift would be reasonable and practicable. She came to this view because technically it would fit and they had fitted such lifts in properties she believed were much smaller than Mr Walker's. She could not take into account the children's age, as she believes the policy within her department was clear that adaptations could not be used to deal with overcrowding. She had been told to deal with Council and private tenants in the same manner, which meant that she could only consider the statutory overcrowding rules and not the Council's policy. Officer B wrote to the complainants the next day. He explained it was now for Officer A to submit his recommendations. He did so on 9 September 2002. Officer A said that the Council should:

“...provide access to level showering, toileting, a double bedroom and access to living facilities in the house.”

20. In October 2002, Officer B told Officer C that the case would go to a Housing Panel for a decision on how Mr Walker's needs could be met. On 22 November 2002 a letter was sent to the MP explaining that the case would go to the Housing Panel. On 8 January 2003 the Director of Social Services wrote to Mr Walker and explained that the case would go to the next Housing Delegation Decision Panel. It did not do so, as no such panel existed at that time. Officer C's understanding was that the case had been passed to Officer I (Head of Property Services) for his decision. She says that she requested his decision by email. Officer I has no recollection of the case.
21. In March and June 2003 the complainant's MP asked the Council for an update. Officer A and Officer E (the manager of the newly set up Adaptations Agency) discussed the possibility of rehousing the complainants. In May Officer B told the complainants of one property to which they could be transferred but Mr and Mrs Walker did not like it and no formal written offer was made. Officers then visited the complainants in early July 2003. Officer

E wrote to Mr Walker on 15 July 2003 to confirm he thought that the best option would be to build an extension to one side of the property. He allocated the case to Officer D to progress it. It seems from the drawings he made that he visited the complainants in September, October and December 2003 and January 2004. The approved plans are dated January 2004. The complainants say that Officer D had to visit the house again once he had drawn up plans because the initial plans were inaccurate.

22. Officer D applied for both planning permission and building control consent in mid January 2004 and they were both obtained by 24 February 2004. On 5 March 2004 Officer E signed an application for Director Approval for the expenditure. Tenders for the extension were sent out in May. These said the start date would be 16 August and it was to be completed by 3 December 2004. In June the contractor's Health and Safety statement was signed. Which was required before work could be started. They sent their costing to the Council on 20 June: the total cost would be £47,788.60. On 29 July 2004, Chief Officers' Approval of the costs was approved by the Council's Corporate Services Director, the Legal and Democratic Services Director and the Deputy Chief Executive.
23. Mr and Mrs Walker say they were told that work would be completed in April 2004. When that did not happen they were told it would be in September. When no work started they approached their MP again who wrote to the Council at the beginning of December. There is no evidence on the Adaptations Agency file that Mr Walker was ever kept up to date between June 2003 and December 2004.
24. The Council informed the ALMO that work was due to start in the New Year. As the cost was to come out of the ALMO's budget, they had to formally approve the scheme and wanted to have a say in how its budget would be spent. On 22 December 2004, Officer F, (the ALMO's Regeneration Manager), emailed Officer B. She said that Officer G, the ALMO's Chief Executive, had decided that:

“...Mr Walker's re- housing option should be re-visited. This is for two reasons, cost effectiveness of building an extension and long term future needs of Mr Walker”.

She went on to request that the decision to build the extension be deferred until after the ALMO's board meeting on 10 January 2005. Officer B replied and agreed to the deferment. Officer F agreed to let Mr Walker and the MP know.

25. The ALMO's Chief Executive asked Officer H, (the ALMO's Principal Partnering and Capital Surveyor, who as part of his role had to appraise whether a property could meet the decent homes standard) to provide a report on the benefits of building a bungalow for this complainant, and another case, rather than building an extension. Officer G claims this is because he believed that the original assessment was to provide a new purpose built home. Officer F wrote to the complainants on 23 December 2004 to explain that they were now investigating the possibility of building a new home rather than an extension. The ALMO's Chief Executive wrote to the MP on 2 February 2005. He said that:

“ on examining the scheme we expressed concerns about the cost, which appears to be on a level with the provision of a new bungalow, the suitability of the adapted property to meet Mr Walker's long term needs, and future demand and use for the adapted property. Our conclusion was that provision of a new build bungalow was a better option for Mr Walker and the stock profile of the area.”

26. On 20 January 2005 Officer H's report went to the ALMO's board. The report did not mention Mr Walker's physical condition, nor the length of time he has had been waiting for his needs to be met. It contained a detailed assessment of the options for an extension against the provision of alternative accommodation. They recommended that the ALMO go ahead with building new homes rather than building extensions. In order for this to happen the Council, which owns the property, had to give permission for it to be demolished and for a new property to be built. A report was sent to the Council's Director of Housing and Neighbourhoods in February 2005. He wanted more information on the history of the adaptation application before granting permission. Officer H claims he made a number of telephone calls to the Council's Adaptations Agency to get the information needed. When he failed to get it, he decided to email instead. He emailed Officer B on 5 and 13 May 2005. He sent further emails in June. On 10 June Officer E replied. But he gave only a summary of what had happened. Officer H replied to explain he needed a complete chronological account. On 6 July 2005 Officer H emailed Officer E again and asked for a date for a meeting to discuss it. One date he had proposed had been declined by Officer E. Officer E replied by saying he was due to go on leave and other officers had more knowledge than him. Officer H then requested by email on 22 July to inspect the files so he could get the information for himself. He received no response. He then emailed the ALMO's Chief Executive on 27 July 2005 and passed the case

back to him with an explanation that he could not get the information he was requesting which he needed to progress the case. The officers involved in this case, told my investigator when interviewed that the relationship between the ALMO and the Adaptations Agency was not good and had deteriorated during 2005.

27. Following my investigating officer's interviews in early September, the Council's Adaptations Agency sent its file to the ALMO. In September the ALMO sent a further report to the Director of Neighbourhoods and Housing. It put forward proposals to meet Mr Walker's needs. The Council authorised these on 28 September 2005. The details of proposals have been provided to me under a Section 32(3)¹¹ notice and are not, therefore, included in this report. Officer G denies having seen this document.
28. Spotlands wrote to Mr Walker on 8 November 2005 offering him an alternative property half a mile away from his current home. The property has three bed rooms one of which is on the ground floor and has bathroom facilities attached to it. It is in need of repairs and improvements, but Spotlands claim it would have been available in a matter of weeks. Mr Walker viewed the property. He decided not to take it, because of its location, because in his view he could not access the long steep driveway in his wheelchair and also because he is reluctant to leave his home particularly when he has been promised an extension. On 28 November 2005, Spotlands wrote to Mr Walker again. They explained that Mr Walker's home is on land that the Council has identified as having development potential. They are intending to appraise whether Mr Walker's current home is 'sustainable'. The results were considered at Spotland's Board meeting on 26 January 2006. It goes on to say that:

“ given the information that we have at the moment it is likely that the option appraisal will result in a recommendation to the Council that your home is demolished ”.

The letter goes on to urge Mr Walker to accept the offer made in its letter of 8 November 2005 and that Spotlands is looking at a temporary extension to Mr Walker's home. Council officers visited Mr Walker's home on Saturday 10 December 2005 to measure for the installation of a temporary prefabricated

¹¹ Section 32(3) Local Government Act 1974 allows a Council to provide information but declare that it should not be disclosed to any third parties due to public interests concerns.

extension, known as a POD. This would contain a bedroom and bathroom. Mr Walker says he was told this would not be installed until January 2006.

Conclusion

29. Mr Walker's needs were assessed in September 2002. Over three years later, he still has not had those long term needs met. This is maladministration.
30. Between September 2002 and June 2003 there was no clear procedure for dealing with adaptations cases where no agreement had been reached between the officers involved, or between the Council and the applicant. The Council accepts that during this period the case drifted with no final decision being made. This may have been because the departments were aware the new Adaptations Agency was to be established and because of a wish to meet Mr Walker's desires. Mr Walker's case seems to have been a victim of reorganisations. The lack of a clear written policy is maladministration.
31. Once the Adaptations Agency became involved, the case was moved on, but at a very slow rate. It took 18 months for plans to be drawn up, planning permission applied for and tenders submitted. During this time there appears to have been no supervision of the officer dealing with the case, or any tracking of older cases. This process took a year too long, which is maladministration. Although the Council says the Housing Office was kept informed of progress the complainants say they were not informed of progress. This is also maladministration.
32. It came as a complete surprise when the complainants learnt at Christmas 2004 that the extension they were expecting to be built imminently, and had been promised, would no longer be built. It is not clear how Spotlands managed to stop this process or why they were allowed to. At the time the Council could have just carried on and built it. But it did not. The Council now says it agreed to the works being stopped in order for a review to be carried out into the proposals to take into account all the circumstances pertaining to the case. No evidence of this decision has been provided. It is also not clear why the Adaptations Agency did not consult the ALMO before December 2005. By not doing so they seem to have added to the delays and carried out what has now proved to be unnecessary work. This is maladministration.
33. The ALMO's January 2005 board meeting's decision was flawed, because it had no knowledge of Mr Walker's condition or the background to the Council's request for approval for the extension. From December 2004 to

September 2005 the case was not progressed because the ALMO could not get the information it needed from the Council to progress its ideas and the Council seems to have decided to leave the meeting of Mr Walker's needs to the ALMO. It took my investigating officer's insistence to get the information passed to the ALMO. The ALMO, though, has to take some responsibility for the delay during this period. It is now clear from the ALMO's letter of 28 November 2005 that the ALMO was concerned about the long term plans for the land Mr Walker's home occupied. As it has taken the ALMO some time to finalise its plans, this appears to have been the motive for its delay in extending Mr Walker's property. This is also Mr Walker's view.

34. While the ALMO's relationship with the Adaptations Agency was deteriorating, and the ALMO was planning its long term redevelopment plans, the needs of Mr Walker, who spent from October 2002 sleeping on a duvet on the floor and is now sleeping on a small camping bed in his living room every night, seem to have been forgotten. Whatever the relationship between the ALMO and the Council, the Council had a duty to meet Mr Walker's needs and it has failed to do so. Since April 2002, Mr Walker has not been able to use the bathroom facilities. Throughout this time he has, therefore, had to cope with strip washes. Mrs Walker says this is very difficult to do. He has also had to use a commode in the living room, which he says has been unpleasant for the whole family. There has also been a wider detrimental effect to his family who have had to cope with Mr Walker camping in the living room. Mrs Walker believes the childrens' special educational needs have been badly affected by the housing conditions. Mr Walker's increasing and understandable frustration, and now disappointment in not getting the promised extension, cannot be overestimated. He claims he has suffered three extra strokes because of having to sleep on the floor and that Mrs Walker has attempted suicide on five occasions.

Remedy

35. The Council has to its credit accepted the maladministration outlined in this report and the remedy proposed below. It has also made some fundamental changes in procedure and policy as a result of this report and Mr Walker's case.
36. The ALMO has now proposed to offer alternative accommodation to Mr Walker as a way of meeting his needs. The Council should now find a

property which the OT agrees meets the needs of Mr Walker and his family. It should ensure that it is up to the Decent Homes Standard and is in excellent condition throughout. If this is not possible, it should ensure the POD is fitted as soon as possible, I understand one has been ordered. The Council should also ensure that in the meantime the upstairs bathroom is in a usable and good condition. It should then offer Mr Walker one of the new bungalows to be built on the site around his home. It should also agree with Mr Walker, and provide floor coverings and main items of furniture and fittings. The Council should fully facilitate Mr Walker's and his family's move, beyond that provided for by its policies. The Council should arrange for an Advocate to help Mr Walker, and his family, through this process.

37. Mr Walker has been subjected to significant delays. For the injustice caused to him detailed above I recommend that the Council pay Mr Walker's family £5,000. This is not to reflect any personal injuries alleged to have been caused to the family by the housing conditions.
38. The Council should recognise the strain placed upon family life and relationships and pay for a two week UK holiday during the summer 2006 school holidays for the family. This should include a payment for the family's travel. The holiday details should be agreed with the family.

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4 May 2006