



Report of the Director of Environment and Neighbourhoods and Director of Adult Social Care.

Executive Board

Date: 23rd January 2008

Subject: : Local Government Ombudsman report on adaptations to a Council house to meet the needs of the disabled tenant.

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In
(Details contained in the re

EXECUTIVE SUMMARY

This report provides details of a complaint investigated by the Local Government Ombudsman regarding a disabled customer whose needs for property adaptation were not dealt with in a timely manner. Members are asked to consider the report and the actions taken by the Council to remedy the issues raised.

1.0 Purpose Of This Report

1.1 To inform Members of a recent finding of maladministration and injustice in a report issued by the Local Government Ombudsman.

2.0 Background Information

2.1 Section 31(2) of the Local Government Act 1974 requires that where the Ombudsman issues a report with a finding of maladministration and injustice, the Authority will consider the report.

2.2 In relation to executive functions, this requirement is fulfilled by reporting to the Executive Board. A copy of the Ombudsman report is attached as Appendix A.

2.3 The Ombudsman's findings must be advertised in two newspapers and copies of the report made available for public inspection. Notices setting out the

2.4 Ombudsman's findings were placed in the Yorkshire Post and Yorkshire Evening Post on Wednesday 28th November 2007 and the report was available for inspection at the Civic Hall Information centre Leeds and at Merrion House, Leeds for three weeks from 28th November 2007.

3.0 Main Issues

3.1 The complainant's wife has a serious illness causing her to become profoundly disabled. The Health Service fund and provide her care but she also needed the family home to be adapted or to move. Under Section 2 of the Chronically Sick and Disabled Persons Act, the Council was responsible for assisting her.

3.2 The detail of the Ombudsman's findings is provided in Appendix A, a summary of which is provided at the front of the report in this appendix.

3.3 The substance of the complaint was that the complainant's wife was:

- confined to bed in the front living room of her home;
- unable to use a special wheelchair provided by the NHS that would have relieved her pain and discomfort;
- unable to use a toilet, bath, or shower and 'strip-washed' on her bed by her carers, adding to her pain and discomfort;
- unable to sit outside or with her family.

This situation occurred for two years despite representations from the family's advocate, MP, and Councillors since the end of 2005.

3.4 The Ombudsman has concluded that the Council's failure to recognise its duties under Section 2 of the Chronically Sick and Disabled Persons Act was maladministration, as was its failure to have any direct social work contact with the family for over 15 months. The Council acted with maladministration in relation to the Disabled Facilities Grant by:

- a delay in completing a financial assessment;
- failure to review the Grant Section's stance that a Disabled Facilities Grant (DFG) could not be used to provide or retain a family room when legislation says that a DFG can be used for '...facilitating access by the disabled occupant to a room used or usable as the principal family room...';
- its inability to resolve the conflict between what the Grants Section would fund and what the Community Occupational Therapist and the complainant felt was necessary to meet his wife's needs.

4.0 Council Response.

An explanation of the incidents identified by the Ombudsman as maladministration are addressed below. Paragraph 6.0 details the actions taken to address the points raised.

4.1 The Ombudsman found maladministration in there being no direct personal social work contact for a period of 15 months. The circumstances leading up to this commenced when the complainant's wife was discharged from Hospital in August 2004. At this stage, she was assessed as a 'level five' patient. The NHS Trust

approved funding for her continuing care and appointed a Case Manager. Adult Social Care maintained contact with the family through the Community Occupational Therapist. It is strictly correct that there was no direct personal contact with the family for 15 months from a social worker, however Adult Social Care was at all times maintained via the Community Occupational Therapist. Ensuring appropriate case management for complex cases is being addressed through the time-limited working group.

- 4.2 The period to complete the financial assessment for the DFG took sixteen weeks, from February to June. The financial assessment indicates the potential contribution an applicant may have to make towards the cost of the adaptation and allows applicants to make the necessary financial plans and arrangements, should this be necessary. Following receipt of the referral on 25th February, a visit was made to the family's home on 15th March in order to collect the initial information to undertake the test of resources. At this time, a query was raised regarding a recent payment previously made to the applicant which had to be clarified prior to the Authority being able to complete the financial assessment. The applicant provided the information to clarify the situation on 24th May. Following this, the assessment was completed and correspondence regarding a possible contribution was sent to the applicant on 1 June. An initial survey was arranged for the 10 June, but unfortunately access proved to be difficult on that date. The initial survey was therefore rearranged and took place on 16 June. This was the point at which the financial assessment was judged to have been completed.

The Council communicated to the Ombudsman that the speed at which the financial assessment could be undertaken was only partly within the control of the Authority and did rely on the provision of information from the applicant in order to proceed. Whilst the Ombudsman found maladministration on this point, the Council does not consider this delay was a significant element of the delay in meeting the applicant's needs.

- 4.3 There was a difference of opinion between the Grants Officer and the Community OT involved in the application at an early stage. This could be explained by the different perspectives being taken by the members of staff, in that the Grants Officer believed a solution at a lower cost was available (ie the shower and toilet could be located in the ground floor back room rather than into the kitchen area, which would require the kitchen to be relocated elsewhere). There is a clear tension that exists between the type and extent of adaptation delivered, in the context of finite financial resources for this work. Whilst a balance has to be struck, it is felt that this contributed to the stance taken by the grants officer and lead, in part, to an unsatisfactory decision on this occasion. It should be noted here that a separate report to Executive Board on 23 January seeks approval for a second significant cash injection to the 07/08 capital programme for DFG work.

The actions taken to avoid such unsatisfactory decisions are detailed in paragraph 6.3. This includes the production of local guidance for staff, also the creation of an independent panel to arbitrate and determine a clear way forward for any cases where disagreement exists in future.

- 4.4 The Ombudsman determined that the failure to review the grants section's view that a DFG should not be used to maintain a family room was maladministration. While legislation and Government circulars for DFGs are specific in some areas, there are other areas where little or no guidance is provided. The guidance for living rooms is clear that it is reasonable to use secondary rooms, store rooms, circulation areas etc and leave a principal living room, however guidance over specific sizes is not

provided. The Ombudsman has quoted the legislation which places an obligation upon Authority to facilitate a disabled person's access "to a room used or useable the principal family room". The optimum arrangement in this case would have been for the one of the ground floor reception rooms to be retained as a family living room, as sought by the applicant, albeit at a greater cost. It is accepted that the members of staff administering the grant did not interpret a legal requirement upon the Authority to the benefit of the applicant and as required. The events that offer an explanation of this position have been covered in the foregoing paragraph and the actions taken to avoid a recurrence are covered at 6.3.

5.0 The Council's response to the investigation

- 5.1 The Council accepts that although it has failed the applicant in this case, the work by the Ombudsman has provided a valuable review of particular aspects of social care and DFG processes. The Council has taken much from the investigation that will prove worthwhile in the future to guard against similar experiences.
- 5.2 Following the referral to the Ombudsman, the Council established a cross departmental group chaired by a chief officer to ensure that the complaint was properly addressed and resolved. The complainant, with his advocate, attended and supported the work of this group to achieve a satisfactory outcome.
- 5.3 The Council has established a time-limited officer working group to address the issues identified by the Ombudsman and through learning gained by addressing this complex case. The Council appreciates the continuing involvement of the complainant in the work of this group also.
- 5.4 The Council has accepted in full the recommendations of the Ombudsman and has apologised to the complainant. The recommended compensation has been paid to the complainant.

6.0 Actions taken by the Council to date

- 6.1 A suitable property has been identified that meets the needs of the complainant's wife and family. The house has been available from early December and a move is imminent. It should be noted that adaptations were made to the family's existing home as an interim measure.
- 6.2 An action plan has been developed in response to the recommendations contained in the Ombudsman's report and a copy is attached at Appendix B.
- 6.3 A number of overall improvements have been commenced or completed. These include:
 - The Adaptations Operational Group was established in July 2007. This group is chaired by an officer representing the Strategic Landlord and involves representatives from the ALMOs, Adaptations Agency, and Adult Social Care. The purpose of the group is to oversee and share good practice on adaptations cross-tenure. Work to establish an appeals panel to resolve disputes about adaptations where Council staff and/or the applicant cannot agree on the works to be completed. Currently, the Adaptations Operations Group will act in this capacity, however this facility will be improved once the appeals panel is fully developed. It is intended that the Appeals Panel be operational in advance of the requirement by the Ombudsman.

- A number of detailed documents are now in use in the Adaptations Agency to cover policies and practice in delivering DFGs. In particular, a local guidance document for officers regarding the provision of extensions and use of existing space within dwellings for officers when assessing potential schemes has now been drafted. This is one of a series of guidance documents produced within the Adaptations Agency and staff training will be comprehensive to ensure clear understanding amongst staff administering DFGs.
- The Adaptations Framework with the ALMOs was launched in November 2006. There is a draft detailed procedure manual to be agreed with all Leeds ALMOs and Belle Isle Tenant Management Organisation, ensuring a consistent service for customers requiring adaptations in council homes.
- The lettings policy and associated procedures were revised in June 2007. This included the introduction of a system of ALMO & BITMO case management involving both quarterly and annual reviews.
- The Leeds Disabled Persons Housing Strategy will be launched in early 2008 which includes an action plan to address the needs of all disabled persons requiring housing in the city.

6.4 The time limited working group referred to in 5.3 has had its initial meeting and agreed membership and terms of reference for its work, with representation from all relevant organisations. The complainant has also offered to remain involved and assist the Council with this work. This group will report into the Adaptations Operational Group and will pay close attention to the delivery of the action plan (Appendix B) and will specifically aim to:

- Design a process which supports disabled people, who have complex housing needs, to be provided with accessible housing, which may include adaptations and/or re-housing.
- Consider disabled people in all tenures, and those who need to change tenure to have their housing needs met.
- Ensure associated policies and procedures, particularly the revised lettings policy is consistent with the adaptations framework.
- Consult with all stakeholders on the proposals.
- Ensure issues raised by Ombudsman's enquires are addressed.
- Include a process of appeals/dispute resolution.
- Work within the framework determined by legislation and good practice guidance.
- Identify any implications for Council policy and governance and any legal and resource implications.

6.5 The time limited group is chaired by the Chief Officer – Adult Services with membership drawn from appropriate elements of the City Council and the NHS with involvement from the voluntary sector and service user with advocacy support. (The complainant has taken trouble to comment to the press that he is working with the Council to improve the system) The aim is to have interim proposals by April 2008. Final proposals will be presented for sign off through appropriate organisational governance arrangements, in order to be adopted as policy across all partner organisations, and will be implemented through the existing standing cross council Adaptations Operational Group.

7.0 Implications For Council Policy And Governance

- 7.1 The Council arrangements for providing adaptations will be reviewed as outlined in this report and any implications for Council policy and governance will be highlighted through that review.

8.0 Legal And Resource Implications

- 8.1 The Council has legal obligations under the Chronically Sick and Disabled Act 1970, the Human Rights Act 1998 and the Housing Grants Construction and Regeneration Act 1996. Any resource implications will be identified through the review.

9.0 Conclusions

- 9.1 Satisfactory resolution of this case has required cooperation and joint working between Adult Social Care, the Strategic Landlord, Environmental Health, the Adaptations Agency, the Medical Housing Team, two ALMOs, the Primary Care Trust and Leeds Teaching Hospital Trust. The Ombudsman has reported that the action taken by the Council since her investigation provides a substantive remedy to the injustice experienced by the complainant.
- 9.2 The case has highlighted a number of issues which have already or will receive due attention, thus serving well for disabled residents seeking assistance from the Council to meet their housing needs in the future.

10.0 Recommendations

Members are requested to:

- 10.1 Receive and note the Ombudsman's report and findings and the Council's response.
- 10.2 Note that fundamental changes to procedure and policy have resulted from the complaint.

Report

on an investigation into
complaint no 05/C/13157 against
Leeds City Council

20 November 2007

**Investigation into complaint no 05/C/13157
against Leeds City Council**

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Report summary

The complainant's wife has a serious illness causing her to become profoundly disabled. The Health Service fund and provide her care but she also needed the family home to be adapted or to move. Under Section 2 of the Chronically Sick and Disabled Persons Act, the Council was responsible for assisting her.

The family applied to move to a house that was either already accessible for a wheelchair user or easier to adapt than their own home. Their application was put into the second highest category of priority but they had to bid for properties under the Choice Based Lettings Scheme. After four months when no suitable properties had come up the complainant abandoned hope of being re-housed and applied for a Disabled Facilities Grant.

A Council Community Occupational Therapist helped the family to apply for a Disabled Facilities Grant (DFG) to adapt their home but the Grants Section (in a different Department) said that not all of the proposed work was necessary. The work that the Grants Section were prepared to fund would have meant that the entire ground floor would have been used for her bedroom, a bathroom and toilet, and the family kitchen. There would have been nowhere for the family to sit together because medical equipment filled her downstairs bedroom.

Neither senior managers nor social workers were involved in trying to resolve the disagreement with the Grants Section. As a result of this, together with some problems about finance, a seriously ill and profoundly disabled woman was, for two years longer than necessary:

- confined to bed in the front living room of her home;
- unable to use a special wheelchair provided by the NHS that would have relieved her pain and discomfort;
- unable to use a toilet, bath, or shower and 'strip-washed' on her bed by her carers, adding to her pain and discomfort;
- unable to sit outside or with her family.

This has been despite vigorous representations from the family's advocate, MP, and Councillors since the end of 2005.

Almost two years after his wife had been discharged from hospital and with no prospect in sight of resolving the DFG, the complainant again asked to be re-housed. The family were given the same, second-highest, priority but this time a manager of one of the housing Arms Length Management Organisations agreed to make a 'direct let' if a suitable property became available. This relieved the complainant of the burden of checking what was available and submitting bids in that area.

In March 2007 a suitable property was identified and, in line with another Ombudsman's investigation, the Council has agreed to provide a pre-fabricated 'pod' extension with

bedroom, toilet and bathroom. The works should be completed soon. Meanwhile the Council has used DFG funding to widen the doors and other work in the present home allowing wheelchair access.

Although it was extremely insensitive to expect the complainant to bid competitively for properties, the investigation found no evidence of maladministration in the way that the Council dealt with the re-housing applications. It is some measure of the extreme pressure on social housing, especially properties adapted to be wheelchair accessible, that all the higher priority cases were in even more difficult situations than the complainant and his wife and that allocations had been properly made to applicants with higher priority.

The Council has already changed its lettings policy so that direct lets can be made in exceptional circumstances like these.

The Council's failure to recognise its duties under Section 2 of the Chronically Sick and Disabled Persons Act was maladministration, as was its failure to have any direct social work contact with the family for over 15 months.

The Council acted with maladministration in relation to the Disabled Facilities Grant by:

- delay in completing a financial assessment;
- failure to review the Grant Section's stance that a Disabled Facilities Grant (DFG) could not be used to provide or retain a family room when legislation says that a DFG can be used for '...facilitating access by the disabled occupant to a room used or usable as the principal family room...';
- its inability to resolve the conflict between what the Grants Section would fund and what the Community Occupational Therapist and the complainant felt was necessary to meet his wife's needs.

Finding

Maladministration and injustice, remedy agreed.

Recommended remedy

The Ombudsman recommended that the Council should:

- make payments totalling £6,605 to the complainant;
- establish a mechanism for resolving disputes about what adaptations are required to meet a disabled person's needs and report back to her within six months of the issues of this report on how this mechanism will operate;
- ensure that all relevant officers are aware, and periodically reminded of, its duty under section 2 of the Chronically Sick and Disabled Person's Act;
- produce, and send to her within six months, a report about the lessons to be learnt from the complainant's experience and the changes it will make to its practice and

procedures: specifically this should include guidance on the use of DFG funding to provide or retain, as well as provide access to, principal family rooms.

The Council has accepted all these recommendations, is setting up an Appeal Panel to resolve disputes about adaptations, and has invited the complainant to take part in meetings about improving services.

Background

- Mrs E¹ is seriously ill and became profoundly disabled by a condition related to her illness. She has very restricted movement and is unable to do anything for herself. Mr E complains that since the end of 2003, the Council failed to take action to meet his wife's needs and as a result Mrs E has been unable to have a bath or shower at home, unable to use an ordinary toilet and been caused much additional pain and discomfort. In addition, because of indoor and outdoor access problems with her wheelchair, Mrs E has been largely confined to her bed. Mr and Mrs E and their young adult children have suffered great distress.
- In December 2003 Mrs E was discharged from hospital and referred to the Social Services Department for assessment. A Community Occupational Therapist made an assessment in January 2004 and identified ways of adapting the Es' home to meet Mrs E's needs. Over the next six months there was uncertainty about Mrs E's condition and her needs changed and developed. The proposed adaptation works were not progressed because of this uncertainty but some equipment was supplied including a hoist to help transfer her from her bed to a chair or commode. There were some problems with the hoist and in establishing the best sort of equipment for her.
- Mrs E was readmitted to hospital and discharged in August 2004. The NHS Trust approved funding for her continuing care and appointed a Case Manager. The NHS Trust funded personal care for Mrs E from Mondays to Fridays: Mrs E had the services of one carer from 08.00 to 17.00 and an additional carer for two hours from late morning to early afternoon on each weekday. The family wished to provide the care Mrs E needed in the evenings and at weekends. In addition, the NHS Trust paid for equipment such as Mrs E's hospital type bed and her wheelchair. The continuing care package did not include assistance with aids and adaptations which were the responsibility of the Council as local social services authority.
- Section 2 of the Chronically Sick and Disabled Persons Act places a duty on the Council to provide assistance for a disabled person "in arranging for the carrying out any works of adaptation in his home where it is satisfied this is necessary to meet that person's needs".
- Whilst Mrs E was in hospital in August 2004 Mr E was provided with information about a carer's assessment but did not ask to be assessed.
- The Council's Hospital Social Worker Team completed a care assessment of Mrs E and sent it to the Social Services Initial Response Team. In September a Social Worker from that Team visited Mr and Mrs E's home for a meeting with Mr E, the NHS Trust's Case Manager and a district nurse. At this meeting the continuing care package was discussed, but Mr E also said

¹ Section 30 (3) of the 1974 Local Government Act says that a Local Government Ombudsman's report should not normally name or identify people.

that he wanted clarification about adaptations to their home and the possibility of rehousing. The Community Occupational Therapist

- The E's home is a semi-detached house with four bedrooms and a bathroom on the first floor level, two reception rooms and a step down to a kitchen at ground floor level, and a seating area at lower ground floor level at the back.
- When Mrs E was in hospital the family said that they wanted to use the ground floor front room for her when she was discharged. It was by then no longer possible for Mrs E to use the stair lift that her husband had had installed.
- The Community Occupational Therapist identified that Mrs E would need doors widening on the ground floor so that she could leave the front room to spend time with her family in the back room and use a new, superior wheelchair to be supplied by the NHS that would give her body far better support, ease her pain and make it easier and safer for her to move around inside and outside the house.
- In October 2004 Mr E enquired about the possibility of being rehoused as an alternative to having major adaptations done to their home. The Community Occupational Therapist helped them to complete the application form and arranged for the hospital consultant to support the application.
- The E's were awarded the second highest priority for rehousing. They were expected to bid for properties under the Council's Choice Based Lettings Scheme. This meant that Mr E had to check every week for properties coming vacant in the areas the family would consider, either on the Leeds Homes web site or in the weekly magazine, and make a bid.
- In December 2004 the Social Services' Initial Response Team effectively closed their file on Mrs E's case, in terms of active social work involvement, and passed responsibility to the Long Term Team to deal with issues as they arose. The Community Occupational Therapist who had helped Mr E complete a housing application form remained in regular contact with the family: he was employed by the Council and working in what was then the Social Services Department.
- After four months no suitable homes had come up through the lettings system and so in February 2005 Mr E gave up hope of being rehoused. He told the Community Occupational Therapist that he would apply for a Disabled Facilities Grant (DFG) to adapt their home. The Community Occupational Therapist completed a Care Plan Summary and sent it with an 'enquiry form for grant aid' to the Grants Section of the Housing Renewal and Environmental Health Division. His manager designated the enquiry as medium priority.
- The proposed works were to make wheelchair access throughout the ground floor, turn the kitchen into a toilet/shower room and relocate the kitchen on the lower ground floor. Mrs E did not need access to a kitchen as she could not do anything for herself. A copy of an architect's plan commissioned by Mr E was also sent to the Grants Section. This showed the relocated kitchen being partly in a small extension that would allow Mrs E access to the outside of the property.
- The Grant Enquiry was processed in the usual way for medium priority cases and between February and June 2005 Mr E was financially assessed and told he would not need to make a contribution to the costs.

- Section 23 of the Housing Grants, Construction and Regeneration Act 1996 places a **duty** on local housing authorities to approve applications for DFGs for a range of purposes, including
 - providing a disabled person with an accessible room with a bath or shower, or enabling them to have access to an existing bathroom
 - providing an accessible lavatory, or enabling them to have access to an existing lavatory, and
 - facilitating a disabled person's access "to a room used or useable as the principal family room".
- The Act also gives authorities a **power** to approve DFGs "for the purpose of making the dwelling or building suitable for the accommodation, welfare or employment of the disabled occupant in any other respect".
- Authorities can only approve applications for DFGs for any purpose if they are satisfied that "the relevant works are necessary and appropriate to meet the needs of the disabled applicant".
- The maximum amount available for a DFG is normally £25,000 but a council can pay more if it has a policy setting out the circumstances in which it will do so. Leeds City Council has a Housing Assistance Scheme that says that Council will consider providing additional financial assistance through loans supported by equity in an applicant's property or, "as a last resort", by non-repayable grants.
- In June 2005 a Grants Officer and the Community Occupational Therapist visited to survey the property. The Grants Officer told Mr and Mrs E that a shower and toilet could be put into the ground floor back room at lower cost than putting them into the kitchen area, and that if the shower and toilet were put into the existing kitchen the Es would not be given grant for the cost of relocating the kitchen at the lower ground floor level. Mr and Mrs E did not want to lose the ground floor back room as the only room where the family could sit with Mrs E. The hoist, hospital type bed and other medical equipment that she needed meant that there was no space to use the front room, (neither would using the front room have given her a 'change of scene'). They had no means of paying to relocate the kitchen themselves.
- The Grants Section prepared a Schedule of Works to put the toilet and shower into the kitchen area but not to relocate the kitchen on the lower ground floor level. Mr and Mrs E were given a list of contractors to choose three to invite to tender for the work.
- Mr E felt that he had no option but to allow the grants process to go forward but was dismayed that the family would lose their only family room or their kitchen if the adaptations his wife needed went ahead. In the second half of 2005, as well as expressing his concerns to the Community Occupational Therapist and the Grants Officer, Mr E sought advice or help from other individuals and bodies including:
 - his Member of Parliament
 - a senior Councillor
 - the central government department with oversight of housing matters

- the local Home Improvement Agency (HIA) – HIAs are not for profit organisations which assist vulnerable owner-occupiers to repair, maintain and adapt their homes
 - the national co-ordinating body for HIAs, and
 - voluntary organisations which provide more general advice, advocacy and support to people with disabilities (some of which were suggested to him by the Community Occupational Therapist).
- After some initial delay and abortive communications with a social worker Mr E made contact with a social work manager in the Long Term Team. The manager's response was to tell Mr E in December 2005 that:
 - the Grants Section was aware of and would address the DFG issues and;
 - he was “not in a position to offer him any further advice”.
- The cheapest of the three tenders for the adaptation work was over £4,000 more than the Grants Section thought was reasonable. They told Mr E that he would have to either pay this himself or find a way of reducing the cost. Partly in response to this and partly in response to the representations that it was receiving on Mr and Mrs E's behalf, the Council identified a possible way ahead. Its Home Assistance Scheme included 'equity release loans' for homeowners when DFG work would cost more than £25,000. Although not strictly applicable to the E's circumstances the Grants Officer indicated that the Council would be flexible. Mr E did not feel that he could use this option as he believed that he was in negative equity. He did not provide any evidence of this and so the issue was not pursued.
 - In March 2006 the manager and social worker from the Social Services Department's Long Term Team attended one of the regular review meetings held by the NHS Trust Case Manager. The Social Worker noted that Mrs E's care needs were 'generally felt to be met' but 'still outstanding issues around the alterations to the house'. This was 19 months after Mrs E had first had a care assessment by the Social Services Hospital Social Work Team since when there had been no further social work assessment, review or revised care plan.
 - The local Home Improvement Agency, who had been unable to undertake this work earlier, were now able to become more involved. They surveyed the house and submitted plans to the Grants Section leaving the ground floor as it was and creating an extension at the lower ground floor level with a family room, bedroom and bathroom for Mrs E. This was costed at more than twice the amount of £25,000 payable as a DFG, leaving Mr E with the problem of raising additional funds.
 - Mr E complained to me in November 2005. In May 2006 I published a report about maladministration by Leeds City Council causing delays in major adaptations to meet the needs of another disabled person. In that case, as a result of my report, the Council provided a pre-fabricated “pod” with bedroom toilet and bathroom.
 - By June 2006 it was 22 months since Mrs E had been discharged from hospital and 21 months since she had moved into the downstairs front room with no access to a shower, bath or toilet. Mr E, seeing no way of paying for the work that the Council would not fund under a DFG, reconsidered the option of rehousing.

- The Council convened a case review meeting at the end of that month, quickly reactivated the rehousing application with the same (second highest) level of priority and circulated details to all housing managers. The manager of the Leeds South Arms Length Management Organisation (ALMO) for Mr E's area agreed to make a direct let if a suitable property became available. The manager in the Social Services Long Term Team decided that rehousing and the DFG should be pursued at the same time to keep options open. Mr E was however, still having to compete, under the Choice Based Lettings Scheme, with other high priority applicants for properties in other parts of the city. He made five unsuccessful bids.
- Once my investigation was underway the Council make renewed efforts to find a solution with the Chief Officer for Adult Services holding monthly meetings with the Community Occupational Therapist, the Leeds South ALMO Housing Manager and the Long Term Team Social Work Manager. The Grants Officer did not attend all these meetings but was sent the notes of the meetings.
- In March 2007 Mr E bid for a property in another part of the city. It was identified as being adaptable to meet Mrs E's needs with works and either a pre-fabricated or site constructed extension. Planning permission for the extension has been given, work is progressing well and it is anticipated that the E's will be able to move in before the end of this year. Meanwhile, the Council approved funding to widen the doors and some others works at their present home to improve the internal and external wheelchair access for Mrs E: once this work was completed the NHS Trust could deliver the superior wheelchair which the Trust had agreed to provide for Mrs E in the summer of 2004. The work was completed in July 2007. Because by this time Mr E's income had changed he was required to contribute £1605 to the cost of this work.
- Since the events which gave rise to this complaint the Council has changed its Lettings Policy to allow, in exceptional cases, a direct offer of accommodation to be made to an applicant requiring an adapted property.
- Mr E is pleased and very relieved that an end is in sight to the family's housing problems and that his wife's needs will be met. He wants to use this report to thank all the people who have helped to reach this point: the advocate who provided him and Mrs E with valuable support; the Member of Parliament; the senior Councillor who has been pressing for a solution to his problems; the officers from the local HIA and the national HIA co-ordinating organisation; the local voluntary agency; the Health Trust's Case Manager and other medical staff who have at various points supported the need for the family's needs to be met; and, latterly, to the Council's Chief Executive and other officers who have worked to achieve the solution.
- However, Mr E remains deeply concerned that, by the time he and his family are rehoused late in 2007, it will have taken four years for their needs, in particular Mrs E's needs, to be met. For the greater part of those four years Mrs E has had no access to a bath or to a shower, able to have only strip washes which medical staff have confirmed will not have helped her condition. She has been obliged to use a commode for toileting which, given her condition, has been very uncomfortable. She has been virtually confined to the front downstairs room of their house, without easy access to the family room or to safe and stable access to the outside. Mr E has slept on the floor beside his wife's hospital-type bed throughout the last four years, so he can be there for her immediately when she wakes up in the night and needs help, in particular if she has choking fits (which Mr E says are quite common). There is no space in that room for a bed for him and, he says, the arrangement has affected his health.

- In addition to all the stress which he and his family have suffered Mr E has had to spend a great deal of his time and energy pursuing the Council's officers and pressing them for a solution to his family's problems. In his view, the Council should have taken a much more active and co-ordinated role in resolving issues.

The Council's view

- The Council's Adult Services want to learn from this complaint and have identified the need in such complex cases for one officer to co-ordinate the work of different Council services, liaise with Health, and be proactive in ensuring that un-met needs are met. They are keen to provide DFG applicants with a "seamless service" as encouraged by Government guidance.
- The Council says that the delays in processing the DFG arose because Mr E would not accept that Grants Sections' view that the back ground floor room should be used as a toilet and bathroom for Mrs E and not as a family room. At the time Mr E made his complaint to me the Grants Section did not accept that the Council has power to use a DFG to ensure the continued existence of a family room. Nor did they consider that Article 8 of the European Convention of Human Rights 'everyone has the right to respect for his private and family life' creates an obligation on the Council to take account of family life when considering a DFG. The Council was prepared to exercise discretion and give Mr E an equity release loan.
- Having considered a draft of this report and the recommendations I was proposing to make the Council has agreed to implement them in full.

Findings

- My investigation found no evidence of maladministration by the Council in the way that it dealt with Mr and Mrs E's applications for rehousing. It was insensitive to expect someone in Mr E's position to devote time and energy to bidding for properties under the Choice Based Lettings Scheme in late 2004 and early 2005. This was not, however, contrary to any law, regulation, guidance or Council policy. I am pleased that the Council has now revised its Lettings Policy to allow for direct lets to be made in exceptional circumstances.
- My investigator checked on the allocations of properties for which Mr E had unsuccessfully bid in late 2006 and early 2007 and on a sample of cases awarded higher priority. It is some measure of the extreme pressure on social housing, especially properties adapted to be wheelchair accessible, that she found that all the higher priority cases were in even more difficult situations than Mr and Mrs E and that the allocations had been properly made to applicants with higher priority.
- Housing officers and especially the senior manager from Leeds South ALMO responded very positively to the second application for rehousing. It is largely as a result of their efforts that Mr and Mrs E will now have their needs met.
- The Council did not seem to appreciate that it had a duty under Section 2 of the Chronically Sick and Disabled Person's Act 1970 to meet Mrs E's assessed need to have her home adapted. Its failure to fulfil this duty was maladministration as was failing to have any direct personal social work contact with the family for 15 months, despite the continuing contact which the Community Occupational Therapist employed by the Council and working in Adult Services had with the family during that time.
- There was maladministration by the Council in relation to the Disabled Facilities Grant in:

- the delay in making the financial assessment between February and June 2005, that is, between receiving the DFG enquiry with the Community Occupational Therapist's proposal for the work and the Grants Officer notifying Mr E that there was a cheaper option that would meet Mrs E's needs;
 - having no means of resolving the conflict between the Community Occupational Therapist's view and that of the Grants Officer about what work was "necessary and appropriate" to meet Mrs E's needs;
 - not being prepared to review and reconsider the Grants Section's view that a DFG could not be used to retain a family room, when Section 23 of the Housing Grants, Construction and Regeneration Act 1996 says that a DFG can be given for "...facilitating access by the disabled occupant to a room used or usable as the principal family room...."
- This maladministration may not have resulted in the considerable injustice that the E's suffered if the Council had been alert to and fulfilling its duty under the Chronically Sick and Disabled Person's Act . No-one was proactive in finding a resolution of the problems in order that Mrs E's needs could be met in a reasonable timescale and without undue effort and stress for Mr E.
 - The Council's policy gave it discretion to pay more than £25,000 in a DFG once the other options set out in the Home Assistance Scheme had been exhausted. As Mr E did not provide proof to the Grants Section that he was in "negative equity", the matter was left and the Council never reached the point of considering whether to exercise its discretion and award the full cost of the works. Although the Council could and should have done more to advise Mr E I do not find that it failed to exercise its discretion.

Remedy and Recommendations

- The action that the Council has taken since this investigation started will provide a substantive remedy to the injustice experienced by Mr and Mrs E when they complained.
- The nature and extent of the adaptations work needed meant that the works would not have been done for some months after Mrs E was discharged from hospital. It is reasonable to allow 10 months between her discharge and when the works could have been completed. By the time they move into their new home Mr and Mrs E will have waited almost two years beyond that. In recognition of the impact of this delay on Mr and Mrs E, the Council should pay them £5,000. In addition, the Council should refund to Mr E the £1,605 he had to pay in 2007 for the access improvement works to their present home: but for the Council's maladministration this work should have been carried out in 2005 when Mr E's assessed contribution to the grant-aided works was nil. The Council has agreed to make both payments.
- I am glad that, in the light of this report, the Council recognises that it needs a mechanism for resolving differences of opinion between the Grants Section and Adult Services about the extent and nature of adaptation works needed to meet a disabled person's assessed needs. The Council is proposing to introduce an Appeals Panel for this purpose and, at the time of the publication of this report, it is considering how such a Panel might best be constituted. It has agreed that this Panel will be established and operational within the timescale I propose.

- I have asked the Council to inform me within six months of this report of how the Appeal Panel will work and to report formally to Councillors on its operation 12 months after implementation. The Council has agreed to do this.
- I have also recommended that the Council should ensure that all relevant officers are aware, and periodically reminded of its duty under Section 2 of the Chronically Sick and Disabled Person Act. Again the Council has accepted this recommendation.
- Learning from complaints is important and the Council's Social Services Department has already taken a positive approach to this. I have also asked the Council to produce a report about the lessons from Mr and Mrs E's experience and the changes that it has made (or will make) to its practice and procedure to avoid such problems in other cases. Specifically, the report should give guidance to all relevant officers on the approach to be taken to funding provision of and access to family rooms through DFGs. That report should be considered at all the meetings of relevant management teams and sent to me within six months.
- The Council has not only agreed to produce such a report, but it has also invited Mr E to participate in meetings which will take place over the next few months at which lessons to be learned from his complaint will be considered. I am very pleased that Mr E wishes to contribute to this process: his perspective and experience of the Council's services in recent years will provide the Council with extremely valuable input towards making the improvements it wants to introduce.

Anne Seex
Local Government Ombudsman
Beverley House
17 Shipton Road
York
YO30 5FZ
20 November 2007

APPENDIX B

ACTION PLAN IN RESPONSE TO REPORT ON AN OMBUDSMAN INVESTIGATION INTO MR AND MRS E's COMPLAINT AGAINST LEEDS CITY COUNCIL – REPORT DATED 20 NOVEMBER 2007

OUTCOME	ACTION REQUIRED	PERSON RESPONSIBLE	TIMESCALE	UPDATE
<ul style="list-style-type: none"> The Council's failure to recognise its duties under Section 2 of the Chronically Sick and Disabled Persons Act - to meet Mrs E assessed need to have her home adapted, was maladministration 	<p>To consider the implications of Section 2 of the Chronically Sick and Disabled Persons Act which places responsibility on the Council to assist the disabled service user</p> <p>Review Policy and Practice in view of this Issue Guidance to staff</p> <p>Training of relevant staff</p> <p>Report back to the Ombudsman within six months of 20 November 2007 – by 20 May 2008 how the mechanism will operate</p>	<p>Director of Adult Social Services</p>	<p>January 2008</p> <p>By March 2008</p> <p>April 2008</p> <p>During 2008</p> <p>May 2008</p>	
<ul style="list-style-type: none"> Failure to consider that Article 8 of the European Convention of Human Rights 'everyone has the right to respect for his private and family life' created an obligation on the Council to take account of family life when considering a DFG 	<p>To consider the implications of Article 8 European Convention on Human Rights Act 1998 'Right to Respect for Private Family Life' when considering DFG</p> <p>Review Policy and Practice in view of this Issue Guidance to staff</p> <p>Report back to the Ombudsman within six months of 20 November 2007 – by 20 May 2008 how the mechanism will operate</p>	<p>Director of Environment and Neighbourhoods</p>	<p>December 2007</p> <p>By March 2008</p> <p>March 2008</p>	<p>Completed Dec 07</p>

<ul style="list-style-type: none"> the inability to resolve the conflict between what the Grants Section would fund and what the Community Occupational Therapist and Mr and Mrs E felt were necessary to meet Mrs E's needs. 	<ul style="list-style-type: none"> facilitating a disabled person's access "to a room used or useable as the principal family room" <p>Review Policy and Practice so that all relevant staff are aware of what the Disabled Facilities Grant can be used to provide or retain</p> <p>Issue Guidance to staff</p> <p>Training of all relevant staff</p> <p>Establish a mechanism for resolving disputes about what adaptations are required to meet a disabled person's needs</p> <p>Set up an Appeal Panel to resolve disputes about adaptations</p> <p>Report back to the Ombudsman within six months of 20 November 2007 – by 20 May 2008 how the mechanism will operate</p>	<p>Director of Environment and Neighbourhoods and Director of Adult Social Services</p> <p>Director of Environment and Neighbourhoods</p> <p>Director of Environment and Neighbourhoods and Director of Adult Social Services</p>	<p>March 2008</p> <p>March 2008</p> <p>June 2008</p> <p>March 2008</p> <p>March 2008</p> <p>May 2008</p>	
<ul style="list-style-type: none"> The 'direct let' system by one of the ALMOS was found to be 	<p>All ALMOS to consider its lettings policy so that "direct lets" can be made in exceptional</p>	<p>Director of Environment and</p>	<p>By March 2008</p>	<p>Completed & in place from</p>

better practice as it relieved Mr and Mrs E of the burden of checking what was available and submitting bids	circumstances	Neighbourhoods with Chief Executives of the 3 ALMOs		June 07.
<ul style="list-style-type: none"> By the time Mr and Mrs E move into their new home, they will have waiting almost two years beyond what is reasonable time-scale. In recognition of the delay the Council should pay £5,000 compensation and refund to Mr E £1,605 he had to pay in 2007 for the access improvement works to their present home – but for the Council’s maladministration this work should have been carried out in 2005 when his assessed contribution was nil. 	Compensation of £5,000 and reimbursement of £1,605	Judith Kasolo, Social Care Services Complaints Manager	Cheque requested on 14 November 2007	Mr and Mrs E have confirmed receipt of the cheque totalling £6,605
<ul style="list-style-type: none"> Neither Senior Managers nor Social Workers were involved in trying to resolve the disagreements 	The need to have a Senior Officer oversee any such disagreements between other agencies	Director of Environment and Neighbourhoods and Director of Adult Social Services	Arrangements to be agreed and in place January 2008	
<ul style="list-style-type: none"> Mr and Mrs E’s complaints upheld 	Letter of apology to be sent to Mr and Mrs E in response to the Ombudsman’s findings	Director of Adult Social Services and Director of Environment and Neighbourhoods	January 2008	

Mr and Mrs E Action Plan December 2007