

Case 200500735: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Housing; Statutory repair notices

Overview

The complainant (Mr C) raised a number of concerns about how the repairs contract on his property was managed and his dissatisfaction with the increased cost from the original estimate.

Specific complaints and conclusions

The complaints which have been investigated are:

- (a) failure to adequately supervise work on site and ensure costs were minimised (*partially upheld*);
- (b) failure to maintain contact with the complainant and consult with him about additional works (*not upheld*);
- (c) failure to ensure that the work was carried out on time and in accordance with the statutory notice schedule (*upheld*); and
- (d) failure to comply with their customer care charter (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council review and reinforce the advice given on site visits and ensure that the guidance makes clear to officers that they are required to record every site visit which is carried out.

Main Investigation Report

Introduction

1. On 10 August 2005 the Ombudsman accepted a complaint from Mr C, in which he alleged that The City of Edinburgh Council (the Council) mismanaged a contract for repairs undertaken on his property.

2. The complaints from Mr C which I have investigated are:
 - (a) failure to adequately supervise work on site and ensure costs were minimised;
 - (b) failure to maintain contact with the complainant and consult with him about additional works;
 - (c) failure to ensure that the work was carried out on time and in accordance with the statutory notice schedule; and
 - (d) failure to comply with their customer care charter.

3. In making his complaint, Mr C stated that he was seeking the Council's agreement to the costs of the work being no higher than the original estimate and a satisfactory resolution of the snagging issues.

Investigation

4. My findings and conclusions are set out below and, although I have not included every detail investigated in this report, I am satisfied that no matter of significance has been overlooked. I was provided with a copy of the advisory guide which is produced by the Council entitled 'About Your Statutory Notice'; a draft of an amended Council Protocol; details of the works; and the final account. Mr C and the Council have been given an opportunity to comment on a draft of this report.

5. The Council wrote to Mr C on 2 November 2004 informing him that, as he and his neighbours had failed to carry out the repairs to their property in accordance with the Statutory Notice served in 2003, a contractor had been appointed to carry out the necessary repairs. The estimated (inclusive) cost per share was £2,710.00 but it was explained that the works would be subject to re-measurement and that, if any extra repair work was found necessary, this would be added to the final account.

6. From April to June 2005, Mr C was in contact with the Council – by telephone and in writing – pursuing his concern about the extent and nature of the works which were being carried out, beyond the schedule in the Statutory Notice. In particular, he was concerned that the roof had been re-slatted rather than overhauled and stone mullions (window and a door) had been replaced. He complained of a lack of supervision and stated that any discussion with officers about the additional work and costs was unsatisfactory. His position was that, as he had not been consulted about any of the additional works, the project should not exceed the costs estimated in the Statutory Notice.

7. On 8 June 2005, Mr C made a formal complaint to the Council. He alleged that the project had been mismanaged; the increase in costs was 'exorbitant'; delay; a deviation in the original work schedule; and a complete lack of communication (failure to respond properly to telephone calls and correspondence). In the meantime, the Council's Senior Conservation Officer (Officer 1) met with Mr C and the owners of the other properties involved on 27 June 2005. He wrote on 30 June, apologising on behalf of his Department for the lack of communication in relation to the additional works carried out over and above the original estimate. However, he pointed out that:

'Whilst it is agreed that the owners should have been informed of the additional works prior to their commencement it should also be noted that the owners abrogate their right to influence the works once the Council has been authorised to implement the repairs in default of the owners.

Whilst communication with the owners is only part of the administrative process I confirm that the Council is to waive its 15% administration charge in light of this failure.'

8. He referred to the additional works and explained why these were carried out. Although the owners had asked whether or not the costs of some or all of the additional works could be waived, he confirmed earlier advice to the effect that the Council would bear the cost of the contractor returning to the site to carry out the works which had been identified to the rear stonework (replacement of one cill and the repair of two further cills and two lintols) but that the cost of the items would be charged to the owners. This was because the Council was only able to waive its own administration fee:

'The owners have had value and benefit from the works carried out and it may be considered an unjustified enrichment were these works to be borne from the public purse and not paid for by the owners.'

9. The Head of Corporate Property & Emergency Planning (Officer 2) responded to Mr C's formal complaint. He concurred that the owners should have been informed at an earlier date that additional works were required, however, he explained that defects can often only be fully identified once the scaffold is erected and closer inspection and/or disruptive surveys are carried out. He explained the reasons why the contract was delayed but stated that this was not related to the increase in costs to the owners and he was unable to agree to Mr C's suggestion that his bill should be no more than the original estimate, for the reasons given by Officer 1. However, he noted that his Department had recognised and apologised for a failure in service, due to lack of communication in relation to the additional works, and to this he added an apology to Mr C for the failure to comply with the Council's customer care charter on response times to some of his correspondence.

10. In making his formal complaint to this office, Mr C stated that he was totally dissatisfied with the Council's response.

11. In my enquiry to the Council on 7 March 2006, I asked them to provide me with advice on their standards for the supervision of repairs contracts and their comments on whether or not it was considered that the job was properly supervised. I also asked for a copy of their advisory guide. I asked too for clarification on the advice given to Mr C (that the cost of the works could not be reduced because there should not be a charge on the public purse) and asked if this was Council policy.

12. I also asked the Council to clarify whether, having investigated Mr C's complaint and found that there was service failure in lack of communication, they were satisfied that their procedures were robust enough to avoid a recurrence.

13. Advice was sought also on whether the contract was subject to any particular delay, apart from the time involved in waiting for materials, and details of the works undertaken. Further, I requested an update on the items which were outstanding (including the snagging list).

14. I met with Officer 1 at his request and discussed the complaint. He informed me that the Council had reviewed the matter again and were proposing to reduce the bill and Mr C's liability. Officer 1 followed up our meeting with formal comments on the heads of complaint and confirmation of the action taken by the Council to address identified shortcomings.

(a) Failure to adequately supervise work on site and ensure costs were minimised

15. Mr C had pointed out that the terms of the Council's advisory guide 'About Your Statutory Notice' specified that:

'a Conservation Officer/Clerk of Works from the Council will visit the property on a regular basis to ensure the work is being carried out in accordance with the approved specifications and conditions of contract.'

He stated that there had been no obvious indication that the work had been adequately supervised and a number of 'significant' snagging items remained outstanding (Mr C commented that he has not identified any other snagging items requiring attention because of his concerns regarding the handling of the contract by the Council).

16. Officer 1 clarified that there are no minimum standards set by the Council for the supervision of contracts and frequency of visits can depend on a number of factors. He referred to the same section in the advisory guide: 'How is the work done?' which gives advice that the site will be visited on a regular basis to ensure the work is carried out in accordance with the statutory notice schedule.

17. On the costs, Officer 1 commented that, although Mr C claimed shortcoming by the Council because they had failed to ensure that the costs were minimised; the Council had full control of the works because of the failure of those on whom the Statutory Notice was served to comply with it; and they were satisfied that the works undertaken were required. There was no basis, therefore, to reduce the costs for the work and this was the opinion of the Council Solicitor who had, however, also offered advice that there was certain discretion available to the Council to waive the administration costs, on the basis that communication with the owners was unsatisfactory.

18. In their comments on the proposed report, the Council have advised that the number of visits required is very much dependent on the size of the contract, the nature of the works, the stage of the project, difficulties/problems encountered, site activity/progress and that the decision is currently made by the case officer and, where required, by the line manager. Site visits were recorded in April and May 2005. However, it was commented also that, although previous site visits were made, these were not recorded.

(a) Conclusion

19. Both Mr C and the Council have referred to the Council's advisory guide on Statutory Repairs to support their view on this head of complaint but it is clear that, in the absence of a 'standard' for number of visits to be undertaken, there is nothing to measure against and make a judgement on whether what was carried out here was reasonable. The Council were satisfied that the works were supervised to an acceptable standard. However, this cannot be demonstrated from the recorded evidence. Accordingly, I uphold this part of the complaint.

20. The issue on minimising costs is clearer and I am satisfied that Mr C was made aware, in initial advice about the cost of his share, that this was an estimate and could change depending on what works were required. Accordingly, I do not uphold this aspect of the complaint.

(a) Recommendation

21. The Ombudsman recommends that the Council review and reinforce the advice given on site visits and ensure that the guidance makes clear to officers that they are required to record every site visit which is carried out

(b) Failure to maintain contact with the complainant and consult with him about additional works

22. The Council were satisfied that they did respond to Mr C's letters and returned his telephone calls or left messages. However, in recognition that there was a service failure to communicate with the owners about the additional works, the Council had apologised. The offer to waive the 15% administration charge made on 30 June 2005 recognised this failing. Mr C complained that there had been a long period during March and April 2005 when he had received no satisfactory response to both letters and telephone messages and he had tried to

speak to five different officers. However, he acknowledged that the Council had proffered an apology for delays in responding and the lack of communication in a letter to him dated 19 May 2005.

(b) Conclusion

23. I am satisfied that the Council dealt with this issue prior to the complaint to this office and that there was no particular outstanding incident identified by Mr C which required further investigation. With regard to the Council's procedures in the event of additional works being required, it was explained that a protocol is in place to cover this and that the failure in service delivery which the Council identified when Mr C made his formal complaint to them was set against this standard. I have seen a copy of the proposed changes to the protocol and I have been informed that the emphasis is on the need to inform owners of additional works. Accordingly, I am satisfied with the action the Council took both to address the specific and general issues arising from the complaint. On the grounds that the matter has already been addressed by the Council, I do not uphold complaint (b).

(c) Failure to ensure that the work was carried out on time and in accordance with the statutory notice schedule

24. Mr C stated that the contractor was on site for a period of approximately three months because the work was carried out on a piecemeal basis. The Council have commented that there was a delay of three weeks when the contractor was asked to cease operations in order that the Council could inform the owners of the additional works but the cost of the hire of the scaffolding was not passed on to the owners. Some disruption and inconvenience occurs when work of this nature is undertaken - and is unavoidable - but I can understand why any apparent delay could cause concern. There is no suggestion that a timescale or indication of likely period on site was given formally by the Council and they have only identified a short period of delay. Moreover, the Council have stated that the work was carried out to their satisfaction - apart from a couple of minor snagging items which will be dealt with at the end of the Defects Liability Period.

25. The scheduled works included overhauling all slating and repair of defective stonework but, in the event, once the contractor was on site more extensive repair was considered necessary and the Council instructed replacement of the roof and defective stonework. The Council were authorised to arrange for repairs. Where

there were shortcomings was in their failure to communicate timeously with the owners of the properties about the increased scope of the works which were required and the extra (probable) cost, particularly as this trebled from the original estimate. In recognition that there was shortcoming, the Council notified Mr C that they would reduce the total bill by a further £4,000 (approximately).

(c) Conclusion

26. Clearly this statutory repairs notice was not well managed and the Council's own investigations established this fact. The time factor must, in part at least, be down to the more major repair work which was undertaken. I uphold this complaint. However, I am satisfied that the Council took appropriate action to discuss the owners' concerns and investigate the matter. Meetings were arranged by the Council at the request of some of the owners. When commenting on the draft report, Mr C has stated that he was not party to some of these meetings and decisions were made without him present. However, I have noted from the correspondence on file that two meetings were organised by his co-proprietors and held in their homes and that, in view of this, the Department did not specifically advise Mr C of these meetings. In the circumstances, I have not seen grounds to be critical of the Council. I also commend the Council for reviewing the matter again after Mr C formally complained to this office and in the revised offer made to reduce the bill by a further £4,000 approximately (the cost of the work to the rear elevation). The total bill to the owners is reduced from the previous (final) figure by some £8,000 (inclusive of the Council's administrative fee). I consider this to be a suitable remedy for the administrative shortcoming on the Council's part.

(d) Failure to comply with their customer care charter

27. The Council had acknowledged and apologised for their failure to comply with their charter (in terms of timescale to respond to telephone calls and correspondence) before the complaint was submitted to this office and I have seen no evidence, from my enquiries, that there is an outstanding issue under this head of complaint. In the circumstances, I do not uphold this complaint.

30 January 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	The City of Edinburgh Council
Officer 1	Senior Conservation Officer
Officer 2	Head of Corporate Property & Emergency Planning