

Scottish Parliament Region: Mid Scotland and Fife

Case 200502323: Fife Council

Summary of Investigation

Category

Local government: Land and Property; Common repairs to former council houses

Overview

The complainant (Ms C), an owner-occupier, raised a number of concerns regarding the way her requests to Fife Council (the Council) for repair and improvements to the development where she resides were handled.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to take appropriate and timely action in respect of Ms C's requests for repairs and improvements outlined in her letter of 6 November 2005 (*not upheld*).

Redress and recommendation

The Ombudsman has no recommendation to make.

Main Investigation Report

Introduction

1. The complainant (Ms C) is an owner-occupier of a flat in a complex of three blocks totalling 24 flats in a town in Fife. Ms C has resided there since 1998 and is one of nine owner-occupiers. The other 15 flats are owned by Fife Council (the Council). None of the three blocks has a majority of owner-occupiers.

2. The complaint from Ms C which I have investigated is that the Council failed to take appropriate and timely action in respect of Ms C's requests for repairs and improvements outlined in her letter of 6 November 2005.

Investigation

3. The investigation is based on information supplied by Ms C and on the Council's response to my enquiries. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Ms C raised with the Council issues regarding the procurement of contracts in 1996 for works on the roofs of the three blocks. I regarded these issues as being outside jurisdiction since, under section 8 and schedule 4 paragraph 7 (1) of the Scottish Public Services Ombudsman Act 2002, the Ombudsman must not investigate action taken in matters relating to contractual transactions of a listed authority. Ms C and the Council were given an opportunity to comment on a draft of this report.

Complaint: The Council failed to take appropriate and timely action in respect of Ms C's requests for repairs and improvements outlined in her letter of 6 November 2005

4. The three blocks comprising 24 flats were built by a former local authority. The roofs of the blocks are flat and were constructed with a bituminous felt covering. In 1996, prior to the reorganisation of local government in Scotland, roof repairs were required to the properties and these were commissioned by the former North East Fife District Council (the District Council). A final payment of repairs grant was made on 31 January 1997 to the former owner of Ms C's home. Ms C supplied a copy of a document obtained from the contractor in 1999 which stated that the roof coverings were guaranteed to cover labour for ten years from completion date, and that the materials were guaranteed by the manufacturer for 20 years.

5. In 2003 the roofs began to leak. The Council undertook repairs. In Ms C's view this work was inadequate and prejudiced both guarantees. In the same year a residents' association was formed primarily in response to the Council letting one of the flats as a unit for the homeless. The residents' association, comprising both tenants and owners, among other matters, pursued the issue of the leaking roofs and also contacted the Council regarding the installation of door entry systems in the three blocks both to provide security to residents and to encourage upkeep of the property.

6. In a letter of 6 November 2005 to the former Chief Executive of the Council, which she copied to this office with her form of complaint, Ms C set out 11 instances in which she considered the Council had been derelict in their duties to residents and where she sought action.

7. The issues Ms C raised related to the alleged failure of the local authority to follow procurement legislation in commissioning roof repairs in 1996 and to keep adequate records; two specific points about advice to owners on the presence and specialist removal of asbestos in the buildings; failure to attend to serious roof disrepair and the alleged invalidation of the warranty; a failure to respond to a request for security entrances to the blocks; a failure to consult owners about proposed repairs to a paved area which Ms C understood would cost £15,000; a failure to consult owners regarding the type, colour and quality of replacement floor tiles; and unnecessary damage to stonework caused on 2 and 3 November 2005 when, she alleged, workman incompetently demolished the wrong area to provide planned bin recesses.

8. In a covering letter of 21 November 2005 to this office Ms C stated at the heart of the current problems were the leaking roofs. Ms C was advised by reply that our further consideration of the matter would require to await completion of the Council's complaints procedure.

9. On 23 December 2005, the former Chief Executive responded to the 11 points raised by Ms C in a three page letter. He stated that the roof replacement had been commissioned in 1996 by the District Council, that tenants and owners were made aware of the impending works and that competitive estimates had been obtained, otherwise grants to owner-occupiers would not have been authorised. With reference to asbestos, he stated that all tenants are given advice about the presence of asbestos in artex, thermoplastic floor tiles, etc. when they sign their tenancy agreement. The former Chief

Executive confirmed that the floor tiles had contained a form of asbestos (chrysotile). While not hazardous and outside the Asbestos Licensing Regulations 1983 (as amended), it was the Council's practice to use a Health and Safety Executive licensed contractor to carry out all asbestos related removal or treatment works. Owner-occupiers would normally have the benefit of a survey at time of purchase and that should have alerted them to whether asbestos could be present.

10. The former Chief Executive stated that the 1996 roof works were carried out by a firm who he understood were no longer trading. The warranty was extant but there was no requirement to retain other records from that time. The former Chief Executive accepted that the warranty had been invalidated by the Council carrying out emergency works in the intervening period. As a result of this, Housing Services had instructed that patch repairs be carried out at no cost to the owners until the warranty period expired. He said that the Council intended to instruct a full report on the condition of the roof and to review the position thereafter. The former Chief Executive added that a roof leak had been identified in one of the flats and work had been undertaken but there had been no other report in the previous three months.

11. With regard to the security entrances, the former Chief Executive stated that the Council no longer had the paperwork associated with the quotes obtained in 2003 for the proposed door entry systems. A new Area Officer was then about to be appointed and he or she would liaise with the residents before seeking further quotes. The former Chief Executive said that the local office were unaware of the cost quoted by Ms C for works to the paved area, but the Council would also seek new quotes and liaise with residents. Referring to the floor tiles, the Council accepted that due to their age, damaged floor tiles in communal areas had to be replaced but an exact match could not be found. He maintained that the Chairman of the residents' association had been consulted and that there had been no charge to owner-occupiers for these works.

12. The former Chief Executive accepted that contractors, who were instructed by the Area Officer to convert a stoned area to a bin store (at the request of both tenants and owners), had unfortunately excavated the wrong area, and not the area which had been agreed. The contractor had been instructed to reinstate the area and consultation was to take place to find an alternative location for the bin store as the one identified was on a slight incline and was not suitable.

13. The former Chief Executive concluded by stating that as with any mutual repair involving the Council and owner-occupiers, owners could obtain specifications and costs for works and the Tenements (Scotland) Act 2004 laid down the procedure which the Council would follow when carrying out mutual repairs in the future, if it intended to recoup any part of the costs. The former Chief Executive informed Ms C that if she was unhappy with his reply she could take her complaint to the Ombudsman.

14. Ms C responded to the former Chief Executive by email of 8 January 2006. She informed him that other residents had been affected by water ingress.

15. The former Chief Executive's letter was copied directly to the Ombudsman's office. On 18 January 2006 I wrote to Ms C noting that various instructions and undertakings had been given in respect of roof repairs, security entrances and reinstatement of the bin area and that I would await hearing from her before considering further the substance of her complaint.

16. Ms C sent a further email to the former Chief Executive on 1 February 2006 with reference to roof repairs. She also maintained that the warranty for the roofing materials had a further ten years to run. She considered that the Council were in no position to force the owners to pay for a replacement roof, the need for which arose out of failure by the District Council and the Council to meet their responsibilities. Ms C also confirmed in that email that a pile of rubble associated with the abortive bin store works, which had been a hazard to residents for two months, had been removed.

17. Ms C continued to correspond further with the Council on the status of the previous guarantee and surveys of the roof. In the absence of clarification of the Council's intentions she instructed a survey from roof specialists. She stated that this survey reported that the wrong construction material had been used in 1996 and that mistake had been compounded by the inadequate repairs carried out by the Council. Ms C informed me that the findings of the survey were made available to the Council but the Council failed to make use of them or to pursue the matter with the contractor who undertook the works in 1996 who she understood was still in business.

18. In an email of 21 April 2006 to me, Ms C stated residents had heard nothing further on the roofs, the proposed door entry systems, and the paved area. She also stressed that the floor tiles were a source of discontent to residents and that the reinstatement work relating to the first bin store area was a shambles and unacceptable and that a new bin area had not been provided. Ms C raised again the issue of asbestos in the flats.

19. On 19 May 2006, shortly before the former Chief Executive retired, Ms C sent an email to him seeking an update on the roof repairs and the other outstanding matters.

20. By July 2006, having sought alternative options for repair of the roofs, the Council planned a meeting under the Tenements (Scotland) Act 2004 to update owners. That meeting was held with owners on 27 September 2006. Due to other commitments, Ms C was not able to attend. On 2 October 2006 Ms C emailed the new Chief Executive seeking clarification of points relating to a quotation from a particular firm.

21. Following the meeting with owners, the Council's Locality Manager wrote to each of the owners on 13 October 2006 setting out options for dealing with ongoing problems of water penetration. These were: (a) continue with patching as and when required, with owners being billed proportionately; (b) coat the roofs with a liquid coating at an indicative cost of £34,430 plus VAT from a particular contractor with the Council's Housing Service meeting 75% of the costs as a repair to the roof; or (c) convert the existing flat roof to a pitched roof at a cost of £78,200 plus VAT (with the Council's contribution being pegged at the same as (b)). Owners were invited to complete and return a pro forma indicating their preferred option.

22. In a further letter of 30 November 2006 the Locality Manager wrote to each owner advising him or her that he had received replies from eight out of the nine owners within the blocks. The preference of the majority of owners was for (b) and this was also the preferred option of the Council representing the tenants within the blocks. A leaflet was enclosed giving details of the type of material being specified. The Locality Manager stated that the Council intended to issue tender documents to a number of firms and thereafter write to owners informing them of their likely financial liability.

23. Ms C informed me that she was the owner who did not reply. She was not happy with the Council's removal of a roof which was still under guarantee. She believed that the Council should have approached the manufacturers or that they should have borne the full cost of the problems they had created by undertaking sub-standard repairs.

24. On 8 December 2006 I wrote to the Chief Executive seeking an update on matters outstanding when his predecessor had written to Ms C on 23 December 2005. The Chief Executive replied on 9 January 2007 setting out the then current position with regard to the roofs. He confirmed that quotes had been obtained to carry out improvement work at the paved area in the 2007/08 financial year, with the full cost being met by the Council. Quotes had also been requested for door entry systems. When received, this information would be shared at a future planned meeting with owners with a view to an agreement being reached in respect of shared costs for this proposed work. I forwarded the Chief Executive's reply to Ms C with a letter of 19 January 2007 and invited her comments.

25. Ms C communicated with me by email on 8 March 2007 stating that she had been unable to attend a meeting of Council officers and owners held on 27 February 2007 and was disappointed that no notes or minutes had been forthcoming. With respect to the roofs she stated that the owners had not been given sight of the tenders. She indicated that, in light of legal advice she had received, the courts would be asked to resolve the Council's liability in respect of the roof. She confirmed that a figure had been provided orally to owners for the installation of door entry systems. She expressed her anxiety about the paved area where two trees had become overgrown, were now unsuitable for a confined area, and presented a risk to elderly and frail residents. She maintained that the materials used to replace damaged floor tiles had been inappropriate. She also stated that the area wrongly excavated for the bin store remained unsightly.

26. I sought a further update from the Chief Executive and this was received on 4 April 2007. He included a letter sent to the owners on 6 March 2007 intimating a Scheme Decision under the Tenements (Scotland) Act 2004 in respect of the proposed roof repair using a liquid coating. The total cost of the roof works would be £52,650 inclusive of VAT. The Council undertook to meet 75% of the cost, thereby restricting the net cost to individual owners to £644.42. The Chief Executive confirmed that the issues of the paving slabs and door

entry systems had been discussed with the owners on 27 February 2007. It had been agreed that the paving slabs would be repaired as necessary as opposed to any major works being carried out. A quote for the installation of door entry systems was also considered but the owners present indicated that they did not wish to pursue that matter at that time.

27. I wrote to Ms C on 27 April 2007 forwarding this information and also asked her to clarify the nature of the court action to which she had referred in her email of 8 March 2007. On commenting on the draft report Ms C stated that her solicitors would contact the Council's solicitors in that regard.

28. The roof works were implemented in late June and early July 2007. Unfortunately in a period of heavy rain during the course of the works some residents sustained water ingress to their flats.

29. Prior to issuing the draft report on my investigation I checked with the Council with regard to the outstanding matter of the refuse bin store. The Council informed me that work on the original replacement site had been stopped when neighbours in the immediate location (not the block where Ms C resides) had complained. The contractor had been asked to make good the area. The Council considered that although the reinstatement work was not perfect, it was satisfactory. As no other suitable sites were available to relocate the bins, no further action had been taken.

Conclusion

30. Ms C's original letter of complaint of 6 November 2005 to the former Chief Executive was wide ranging and dealt with matters which in so far as they related to the commissioning of the 1996 roof works involved the Council's predecessor and occurred prior to Ms C becoming owner of her flat in 1998. If Ms C considers action by the Council after 1996 invalidated the guarantees and the Council should pay the entire cost of the recent remedial work, then it would be open to her to take action in the courts or to resist the Council's attempts to recover her proportion of the costs. For my part, I note that the Council maintained the roofs without cost to the owners until the expiry of one of the two guarantees in 2006. I see no evidence of shortcoming or service failure in respect of the Council's actions in consulting with owners or commissioning the recent roof works.

31. I consider also that the Council have dealt appropriately with the other issues raised in Ms C's initial letter of complaint. The Council have confirmed that asbestos is present in the floor tiles but is not hazardous, the majority of Ms C's fellow owners do not currently wish to contribute to a door entry system, reduced repairs to the paved area will be carried out at the Council's expense in this financial year, and in the absence of an alternative suitable site, it has not been possible for the Council to relocate the refuse bin store.

32. I do not uphold Ms C's complaint.

19 December 2007

Explanation of abbreviations used

Ms C	The complainant
The Council	Fife Council
The District Council	The former North East Fife District Council