

Scottish Parliament Region: Mid Scotland and Fife

Case 200603272: Stirling Council

Summary of Investigation

Category

Local government: Housing; repairs to council house

Overview

The complainant (Mr C) raised concerns about how Stirling Council (the Council) had handled his reports about the condition of windows in his council flat.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to take appropriate steps to ensure that Mr C's windows are in a good state of repair (*not upheld*);
- (b) failed to check on the adequacy of repairs carried out in February 2006 (*upheld*); and
- (c) failed to accept the advice of a window contractor that the windows in Mr C's flat should be replaced and upgraded (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council apologise to Mr C for their failing with regard to inspection.

Main Investigation Report

Introduction

1. The complainant (Mr C) stated that he has health problems and is prone to stress. He moved into his present upper four in a block council flat in a town in the area of Stirling Council (the Council) in March 2005. From July 2005 onwards, Mr C reported problems of draughts and cold from what he considered to be substandard windows in his flat and he remained not satisfied after works of repair were carried out.

2. The complaints from Mr C which I have investigated are that the Council:
- (a) failed to take appropriate steps to ensure that Mr C's windows are in a good state of repair;
 - (b) failed to check on the adequacy of repairs carried out in February 2006; and
 - (c) failed to accept the advice of a window contractor that the windows in Mr C's flat should be replaced and upgraded.

Investigation

3. The investigation is based on information supplied by Mr C and the Council. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

(a) The Council failed to take appropriate steps to ensure that Mr C's windows are in a good state of repair

4. In June 2005, some three months after moving into his present flat, Mr C reported problems with the windows in his flat to the Council. An inspection of the windows was carried out by the Council on 8 July 2005 and instructions were issued to seal round the windows in Mr C's flat. This work was completed on 29 July 2005.

5. A letter from Mr C was received by the Area Housing Manager (Officer 1) in September 2005 in which Mr C complained that he was experiencing draughts from windows. The seals round the windows were subsequently inspected. Works orders were instructed on 18 October 2005 to clean and lubricate all the window gaskets in Mr C's flat. These works were completed on 1 November 2005.

6. During a visit by a council Energy Officer (Officer 2) and his colleague on 23 November 2005, Mr C stated that he was still experiencing draughts from his windows. An instruction was subsequently issued that a specialist contractor (Contractor A) survey the windows and report back. A representative of Contractor A visited Mr C's flat on 16 January 2006 and reported to the Council's local office on 18 January 2006 that the following work was required at an estimated cost of £350 plus VAT:

- external silicone seals require to be removed and replaced;
- PVC plates under cills were required; and
- internal ingoes and facings required to be sealed against cavity draughts.

7. According to the Council, these works were completed on 8 February 2006. The Council stated that works were also instructed on 12 December 2005 to fit thermostatic valves to four radiators in Mr C's flat with a view to controlling room temperatures within a preset comfort level. Access was not obtained and the works order was cancelled. A recall order was issued on 13 January 2006 and the work was completed on 18 January 2006.

8. Mr C viewed the work as inadequate to deal with heat loss in his flat and was concerned that the work was not checked for compliance by a technical officer. Mr C wrote to Officer 1 in early April 2006. There was a delay in receipt of Mr C's letter but the contents of the letter were conveyed to Officer 1 by Mr C's social worker and Officer 1 responded to Mr C on 10 April 2006 with regard to the issues that had been raised with her. She advised that repairs to external rendering would not require internal access to Mr C's property and that there was evidence of condensation in Mr C's flat but not of dampness or water ingress. She supplied Mr C with a leaflet on combating condensation. With regard to Contractor A she stated that no further inspection would be done by Contractor A, and that the Council's Housing Services was 'happy with the type and standard of work that had recently been carried out to (the) windows'. Following receipt of Mr C's letter on 11 April 2006, Officer 1 wrote the next day to Mr C confirming that an inspector would call on 20 April 2006 to inspect gaps in the bedroom wall and ceiling and holes in a cupboard at the top of the internal stairs. Officer 1 confirmed that a works order had been issued to block off a vent in the pantry area of Mr C's kitchen, despite the Council's Housing Services being concerned that ventilation should be maintained. Officer 2 had agreed that the work could go ahead on the basis that Mr C open other vents to ensure good ventilation and avoid condensation problems.

9. Mr C's social worker arranged a visit by Officer 1 to Mr C's flat to check the state of the windows and address other matters on 13 September 2006. In a letter of 25 September 2006 to Mr C, Officer 1 confirmed that a vent in the living room would be renewed, the seal round the front door would be fixed, and floorboards and a seal in a bedroom cupboard attended to. She also confirmed that a full window survey would be carried out.

10. A second contractor (Contractor B) surveyed Mr C's windows in October 2006. Mr C stated that at the visit Contractor B's representative had expressed the view, which he also repeated later, that the windows in Mr C's flat should be replaced and upgraded rather than repaired.

11. The initial survey report from Contractor B was dated 20 October 2006 and stated:

'On visiting customer's house to inspect windows, I found two or three faults. This included incorrect fitting of gasket seals, this appears to be causing draughts around windows.

On opening casement windows they appeared to be hitting wooden trim around the outside angles. This is the cause of the window to drop.

Some of the internal trims need to be re-sealed, this problem is causing draughts.

The only windows which provide fire escape is the sitting room all other windows have no fire escape access, the problem being the openers are too small for escape purposes.

Casement handles were found to be loose these need to be replaced.

Windows that were installed in May of 1995, I recommend these to be replaced with a tilt and turn system throughout.'

12. The Council informed me that Contractor B was asked to inspect the windows and advise of any repairs that were required. Contractor B was not asked to provide a price for replacing the windows. They stated that Contractor B chose to submit a separate price for replacing the windows. This quotation was not kept by the Council as it was unsolicited. The Council added that in submitting quotes contractors are obliged to tell the Council when windows are in need of replacement to meet current legislation. That happened in this instance.

13. On 6 November 2006, Officer 1 wrote to Mr C asking him if he was happy with the standard of works done with regard to the vent in the living room, the

front door seal and in the bedroom cupboard (paragraph 9). With reference to the windows, Officer 1 stated that although she had received 'an initial window report' on Mr C's flat, she had asked for further information on a few matters concerning this report. Officer 1 confirmed that once she had the completed report, she would get back to Mr C with an update on the situation with his windows.

14. Mr C wrote to the Executive Assistant to the Chief Executive (Officer 3) who received his letter on 8 November 2006.

15. On 8 November 2006, Contactor B submitted a second window survey report to the Council. This stated that 'to repair windows it will require the replacement of all gaskets, handles, hinges, outside bead trim and the removal of internal trims. These will be re-sealed with foam. Internal trim will be re-installed. Material and labour costs £740 + VAT'.

16. Mr C wrote again to Officer 3 on 25 November 2006. Officer 3 replied to Mr C on 7 December 2006, with an apology for his delay in response. He stated that Contractor B's report of their inspection had lacked detail, that a more detailed report had been requested, had been received, and was being considered by the Council's Housing Services. The more detailed report referred to in that letter was dated 1 December 2006 and was received by Housing Services on 4 December 2006.

17. On 8 December 2006, Officer 1 wrote to Mr C confirming that the following work had been instructed and that Contractor B would be in touch with him to arrange access:

- Bathroom and Sitting room window replace all gaskets, handles, hinges, outside head trim and removal of internal trim. Re-seal with foam. Re-install internal trim.
- Bedroom window install new gearing and gasket. Remove outside head trim and seal. Remove internal (trim) and foam to prevent draught, install new trim.
- Kitchen window requires new gasket, handles and internal trim.
- Hall window requires new gearing and seal outside and internal trim.

18. The Council informed me that as Contractor B did not report that the windows could not be repaired and as it was the policy of the Council to replace

windows on a programmed basis, it was determined that the repairs identified by Contractor B should be carried out.

19. On 17 December 2006, Mr C wrote a letter of complaint to Officer 3. He requested that consideration be given to reimbursement of part of his fuel bill because of the Council's delays in dealing with his windows. On 21 December 2006, Officer 3 responded to Mr C stating that in terms of the Council's Talkback complaints procedures he had passed Mr C's letter to the Acting Head of Housing (Officer 4) for a response. Officer 3, while acknowledging that Mr C felt the work should be prioritised, confirmed that Contractor B would contact Mr C in the New Year to arrange access.

20. On 22 January 2007, Officer 4, as Comments and Complaints Officer for the Council's Housing Services, wrote to Mr C. Officer 4's letter detailed the history of window repairs culminating with the last repairs carried out by Contractor A in February 2006. He stated that Contractor A's survey in January 2006 had found the windows in Mr C's flat to be safe and serviceable. While Officer 4 acknowledged that some repairs had been identified, in his view the windows met the Council's obligations and he considered that it would not be appropriate for the Council to reimburse Mr C's heating costs or to make any contribution towards these costs. Officer 4 confirmed that Contractor B had been instructed to carry out the window repair works by 28 February 2007.

21. Mr C first contacted the Ombudsman's office on 25 January 2007 some four weeks prior to Contractor B completing works to the windows in his flat on 21 February 2007.

22. Mr C informed me that he discussed the condition of his windows with a representative of Contractor B when he came to his flat to carry out the repairs.

23. Mr C subsequently submitted a statement of complaint dated 29 March 2007 to the Ombudsman's office. Mr C alleged that the Council's handling of his repairs requests was unreasonable and that the representative of Contractor B confirmed faults with five windows which included foam sealing which should have been done previously by Contractor A. The representative had confirmed that Mr C's windows did not meet current building standard regulations. While the work he was doing would combat problems of draughts, the representative considered that without replacing the glazing of the window

units to an increased specification (Pilkington K Glass™) 'cold spots' would remain and Mr C would still feel cold.

24. Mr C considered that the work undertaken in February 2007 was unsatisfactory and has not resolved his problems of heat loss and cold penetration. Mr C stated that he had serious health problems, that he had suffered stress over the issue, and that he considered the Council's awareness of those problems may have discriminated against Mr C being taken seriously as a tenant with legitimate concerns.

25. Mr C continued to correspond further on the matter with the Tenants Services Manager and Officer 3.

(a) Conclusion

26. The Council have in the past two years carried out four sets of repairs to Mr C's windows together with other repairs to his flat. I see no evidence of unresponsiveness or tardiness with regard to the implementation of those repairs. While I accept that Mr C may have experienced stress I do not consider that Mr C suffered injustice from maladministration or hardship from failure of the Council to provide a service to Mr C as his landlord. I do not uphold this complaint.

(b) The Council failed to check on the adequacy of repairs carried out in February 2006

27. Mr C maintained that the fact that Contractor B carried out substantial work on his windows just over a year after the previous works carried out by Contractor A suggested that the earlier works had been inadequate and had not been properly checked for compliance by a technical officer. The Council stated that one of their technical officers had paid a visit to Mr C's flat after the completion of works by Contractor A but could not gain access. The technical officer inspected Mr C's upper-flatted property from the outside and determined that the works carried out by Contractor A were of an acceptable standard.

28. The Council informed me that it could be possible that the work specified in Contractor B's survey report of December 2006 (paragraphs 15 and 17) was the same work identified by Contractor A. However, as the particular window was not specified, this would be very unlikely as it would be difficult to fill again an already sealed cavity. The Council, therefore, assumed that different windows were involved. The Council further regarded the reference in

Contractor B's survey report of 20 October 2006 to incorrect fitting of gasket seals to refer to earlier work (possibly at the time of the original installation of the windows in 1995) and not to work completed by Contractor A.

(b) Conclusion

29. As a general principle it is not necessary for a council to inspect all works carried out on their behalf by contractors. The need for inspection will vary with the extent and nature of the work, confidence in the expertise of the contractor, and other factors. In this case, however, the nature of the works carried out by Contractor A, together with the fact that Mr C's windows are at first floor level, does not suggest to me that the Council could readily ascertain from an inspection from the ground the standard of the works Contractor A had carried out. On the evidence before me, however, I am unable to conclude that the work carried out by Contractor A was faulty and that Contractor A's work required to be re-done by Contractor B. I conclude, however, that the mode of the Council's inspection of the works could not have allowed them to determine the adequacy of Contractor A's works. While the Council were not in my view obliged to inspect the repairs, if they opted to do so, then their mode of inspection should have been appropriate. I uphold the complaint.

(b) Recommendation

30. The Ombudsman recommends that the Council should apologise to Mr C for their failing with regard to inspection.

(c) The Council failed to accept the advice of a window contractor that the windows in Mr C's flat should be replaced and upgraded

31. Mr C provided me with confirmation of what the representative of Contractor B had said to him when he visited Mr C to carry out the repairs. He stated that Contractor B had been of the view that Mr C's windows should be replaced and upgraded with a particular type of glass (Pilkington K Glass™) rather than repaired. Mr C considered that, to his detriment, the Council had overruled Contractor B by instructing repair of the windows.

32. The Council informed me that Contractor B was asked to inspect the windows and to advise of any repairs which were required. Contractor B was not asked to provide a price for replacing the windows. Contractor B chose to submit a separate price for replacing the windows. The Council said that they did not retain that quote since it was unsolicited. The Council stated that the contractor was obliged to tell the Council when windows are in need of

replacement to meet current legislation and that happened in this instance. The Council stated that it is not feasible for them to replace windows in all of their properties every time legislation changes. The Council stated that they cannot enforce legislation retrospectively. Contractor B did not identify to them that the glass in Mr C's windows required to be replaced because of 'cold spots' due to thermal bridging. As Contractor B did not report that the windows could not be repaired and since it is the Council's practice to replace windows on a programmed basis, Contractor B was instructed to carry out the repairs detailed in Contractor B's survey report of 1 December 2006 (paragraph 17). There was no on-site inspection by Technical Services following completion of the work by Contractor B as there was nothing of the repair left visible. Technical Services stated that they were not alerted by Contractor B to any issues or problems which had arisen during completion of the contract.

33. The Council also informed me that they carry out window renewal following a stock condition survey as part of a large contract in their Capital Investment Programme since this offers better value for money. Replacement of individual windows, could be carried out if it is determined that a window is not safe, not serviceable, and cannot be repaired. Should a decision be taken to replace windows the opportunity would be taken to upgrade the specification to current legislation standard. Contractor B did not inform the Council that the windows could not be repaired, accordingly no instruction was given to replace the windows in Mr C's flat.

(c) Conclusion

34. While Mr C is obviously disappointed that his windows were only repaired rather than being replaced, the Council have clearly stated that they were not informed by Contractor B that Mr C's windows should be replaced. In those circumstances, they instructed the works of repair identified by Contractor B. I do not uphold this complaint.

35. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

19 December 2007

Explanation of abbreviations used

Mr C	The complainant
The Council	Stirling Council
Officer 1	The Council's Area Housing Manager
Officer 2	The Council's Energy Officer
Contractor A	The contractor employed by the Council to carry out window repairs in February 2006
Contractor B	The contractor who carried out window repairs in February 2007
Officer 3	Executive Assistant to the Chief Executive and Corporate Complaints Officer
Officer 4	Acting Head of Housing and Complaints Officer for housing complaints

Glossary of terms

Pilkington K Glass™

A low emissivity coated glass which usually forms the inner pane of an insulating glass unit. The coating reflects heat back into the room but lets in free heat from the sun