

## Scottish Parliament Region: North East Scotland

### Case 200602628: Aberdeenshire Council

#### Summary of Investigation

##### **Category**

Housing: Repairs and improvements

##### **Overview**

The complainant (Mrs C) raised a number of concerns regarding her new tenancy, in relation to the internal and external condition of the home and garden. She also said that the central heating system (the System) in place on taking tenancy was not fit for purpose and the new central heating system (the Replacement System) installed by Aberdeenshire Council (the Council) was inadequate. Finally, she complained about the Council's failure to connect a mains water supply to her home.

##### **Specific complaints and conclusions**

The complaints which have been investigated are:

- (a) the failure of the Council to repair or modernise the house and garden, prior to and since taking up tenancy, and to make the house wind and watertight (*upheld*);
- (b) the System in place when Mrs C took up tenancy was not fit for the purpose intended and the Replacement System was inadequate (*upheld*); and
- (c) the failure of the Council to connect a mains water supply to the home (*upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) meet with Mrs C to identify and agree the repairs still required to the house, taking account of the issues identified in paragraphs 13 and 16, together with any other outstanding repairs, and their decision to upgrade all Cruden homes as reported in paragraph 38;
- (ii) provide him with an action plan detailing timescales to complete the outstanding works;
- (iii) reconsider Mrs C's claim for compensation for damage caused to her property from the flood;

- (iv) take action to insulate and draught proof Mrs C's property adequately;
- (v) re-assess the effectiveness of the Replacement System in relation to Mrs C's property, following action to insulate and draught proof Mrs C's home; and
- (vi) provide a full formal apology for the delay in connecting Mrs C to a mains water supply and for the failings identified in this report.

The Council have accepted the recommendations and will act on them accordingly.

## **Main Investigation Report**

### **Introduction**

1. On taking up tenancy of her new home in October 2005, Mrs C raised concerns with Aberdeenshire Council (the Council) regarding the state of the property and garden. Her concerns were wide ranging and included defects to the external walls; the garden being in a state of disrepair; damage to the external doors; damage to internal woodwork and plaster; smoke alarms hanging off the ceiling with exposed wires; leaks in the bathroom; dampness in the kitchen; faulty radiators which did not generate the required heat; and the absence of effective insulation, which meant the house was cold and draughty. Mrs C also complained that, soon after moving in to the house, she found boiling water running down her bedroom walls from the central heating system (the System)'s storage tank in her bedroom. Attempts to properly resolve this issue were unsuccessful, resulting in her home being flooded on 27 October 2006, with consequential damage to property and possessions. In January 2006 Mrs C's water supply, which was provided by a neighbouring farm, was contaminated following a break in the supply pipe when the Council were repairing a fence. The Council supplied drinking water and an ultraviolet filtration unit, however, problems in arranging the connection of a mains water supply, in relation to land ownership, resulted in delays to the water supply being reconnected. In bringing her complaint to the Ombudsman, Mrs C said 'the aggravation and stress of repeated attempts to be treated decently, financial loss, and physical disruption of family life due to the mud, access interference, and repeated broken promises cannot be over estimated'. She was of the belief that she had received a 'less than satisfactory service' and asked the Ombudsman to consider her complaints.

2. The complaints from Mrs C which I have investigated are:

- (a) the failure of the Council to repair or modernise the house and garden, prior to and since taking up tenancy, and to make the house wind and watertight;
- (b) the System in place when Mrs C took up tenancy was not fit for the purpose intended and the new central heating system (the Replacement System) was inadequate; and
- (c) the failure of the Council to connect a mains water supply to the home.

## **Investigation**

3. In considering Mrs C's complaints and the action taken by the Council, I examined correspondence between Mrs C (and her neighbours) and the Council. I also requested and considered additional documentation from the Council, including the complaints correspondence, the void report for the property, the tenancy agreement and work repair orders. In addition, I considered the Scottish Secure Tenants (Right to Repair) Regulations 2002. In considering the Replacement System, I examined the proposal document (Proposal for Aberdeenshire 'Hard to Heat Homes Heat Pump Pilot Project) and background correspondence, together with documentation from the Energy Saving Trust, the European Commission Directorate General for energy and transport, and two local authorities (one in England) who had implemented similar pilots. I also examined the Scottish Government's Evaluation of the Scottish Renewables Heating Pilot and I visited Mrs C at her home.

4. Between October 2005 and June 2008, Mrs C continued to correspond regularly with the Council in relation to the improvements required to her home and garden. Many of the enquiries from Mrs C to the Council related to either querying when work would commence or be completed, or complaining about the quality of work on completion. It was during this time, however, that Mrs C experienced a flood from the System tank, causing damage to the property and her possessions, and the Council embarked on a pilot programme to upgrade the central heating facilities in certain hard to heat homes. Therefore, much of the correspondence examined in relation to this complaint included Mrs C's subsequent concerns regarding work required as a result of these two events and, where appropriate, has been included in section (a) of the report.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

### **(a) The failure of the Council to repair or modernise the house and garden, prior to and since taking up tenancy, and to make the house wind and watertight**

6. Mrs C advised me that on accepting tenancy of her home, the Council advised her that she could not move in for three weeks. This was to allow for upgrading of the property. On receiving the keys to move in, however, Mrs C found that the only upgrading to have occurred was the replacement of some internal doors which had been fitted into existing inferior woodwork.

7. Between the previous tenant leaving and Mrs C moving in, two 'change of tenancy' inspection forms were completed. The first was dated 8 September 2005 and the second was dated 4 October 2005.

8. The first inspection report indicated an internal assessment of 'G' (for good) for all internal areas in relation to décor, cleanliness, doors, windows, walls, electrical safety and heating, with the hall and stair landing assessed as 'Fair'. The front and back doors were assessed as 'ok'. The report did not reflect that there was any insulation in the house, insofar as the questions about insulation had not been answered.

9. In the second inspection form, the 'condition report' for the living areas was assessed as 'ok' throughout the house and the front and back doors were assessed as 'ok'. In terms of insulation, however, it contained a tick next to the insulation section in respect of the water tank, cylinder, and walls, with the attic being assessed as 'poor'. The reverse of the report recorded the need to 'carry out electrical safety check, fit washing machine spike, upgrade loft insulation, renew all internal doors and remove sky dish.'

10. Both reports indicated UPVC double glazed windows in 'ok' or 'good' condition. The smoke detector was noted as mains but there was no comment about it needing re-fixed, or of exposed wiring.

11. One of Mrs C's main concerns on moving in was the condition of the external doors, which she said was very poor. The rear door had a section cut out from it to form a 'dog flap'. She said the flap was broken, causing wind to blow into her house, and the area of access was big enough for a person to gain access to the house. She said she had to nail a wooden board to the back door to stop wind coming through and to make the door secure. The front door was damaged by dog scratches and the letter box was broken, again causing a draught in the house. She provided me with photographs to verify the condition of the doors when she moved in.

12. She said that she considered that the Council had not fulfilled the terms of the tenancy agreement in relation to providing her with a property which was wind and watertight and reasonably fit for human habitation.

13. She wrote to the Council on 31 October 2005 identifying a range of issues where she considered the tenancy to be defective. These included:

- the external walls had cracks and other defects, some of which had been filled with silicone; other cracks in the structure of the house had been left open to the elements, allowing for water penetration and damp;
- the garden area and boundary fence was overgrown and was subject to flooding due to poor drainage. Furthermore, the garden was littered with old mattresses, bicycles and a thick pile carpet, making it impossible for Mrs C to maintain;
- damage to the front and back doors, resulting in wind getting into the house;
- the woodwork and plaster in the hall and stairs was in 'very poor condition full of cracks and holes';
- two smoke alarms remained inoperable, hanging from the ceiling with exposed wires;
- the bathroom had holes in the walls with plasterboard hanging off;
- the wall below the bathroom sink moved and the bath leaked when it was emptied, causing water to run from the bathroom floor to the hall;
- the kitchen walls had holes and signs of dampness in the plasterboard;
- the previous tenant had removed some kitchen units, leaving Mrs C with only one and a half wall units which had been spray painted;
- the house had four faulty windows, one of which was open to the elements;
- the radiators in the house were in very poor condition. They were all single radiators and did not generate enough warmth to heat the house. Mrs C said that, despite the Clerk of Works telling her these radiators would be replaced, he subsequently advised her that they would not be replaced.

14. On receipt of Mrs C's complaint in October 2005, the Housing Manager asked the Clerk of Works to make further enquiries, stating 'it may be that she has an unrealistic impression of what she should be getting but please go with an open mind'. In his response the Clerk of Works said that he had visited the address, however, unfortunately Mrs C was not at home. He said 'as one of our joiners was completing some work, I was able to check the house from top to bottom and in my opinion the house is above what I would consider an acceptable Council standard'.

15. Mrs C told me that she was very angry that an officer from the Council had taken it upon himself to enter her house in her absence and proceed to inspect all the rooms in her home.

16. My examination of the Council's repairs records indicate that, between October 2005 and June 2008, various repair activities were planned or completed at Mrs C's home, these included:

- fitting of new front and back doors, with the original doors being noted as 'Doors in Poor Condition' (this contradicted the change of tenancy inspection report forms to which I refer in paragraph 7, both of which stated the doors were in 'ok' condition);
- renew chimney pot;
- skim kitchen wall;
- repair windows to close in living room and bedroom;
- repair seals on living room window;
- fit new pipe box in kitchen and hall;
- secure window facings in living room and bedroom;
- renew skirting in bedroom;
- renew door facings and skirting in hall and kitchen;
- erect boundary fence;
- repair smoke detector;
- carry out electrical safety check;
- upgrade loft insulation;
- renew all internal doors;
- replace fence at side of the house;
- repair bathroom wall, 'bathroom wall in poor condition';
- rake out silicone and point windows.

17. Following Mrs C's representations, the Council agreed to replace the external doors. In March 2006, in an internal exchange of correspondence, the Senior Housing Officer asked for this work to be expedited. By August 2006 the doors had not been replaced, however at that time the Council advised Mrs C that they would replace the doors before winter.

18. By December 2006 the doors had still not been replaced and Mrs C again raised her concerns. An internal email dated 20 December 2006 from the Principal Housing Officer addressed this issue by stating:

'We have to hold up our hands and accept that there has been a breakdown in communication with regard to the failure to replace the front and back doors at Mrs C's dwelling. In August of this year we agreed to replace the doors before winter. In the intervening period an instruction had gone out to halt any major repairs to 'Cruden' type properties [see paragraph 38] which only the Clerk of Works picked up would include Mrs C's home and the replacement works were cancelled.'

19. Nevertheless, the property repairs record for Mrs C's address indicated that on 13 February 2007 new front and back doors were fitted. Mrs C said that initially the back door was not fitted properly and was, as a result, unusable. In May 2007, while the Council joiner was working at a neighbour's house, she emailed the Council stating 'there is a joiner at No 2 today. He tells me he has no instructions to fix my back door which as you will recall has been unusable since installation approximately 3 months ago. Would it be possible for you to issue the necessary instructions whilst he is here?' She told me that the joiner had to return three times to fix the back door properly.

20. In a letter dated 18 April 2007 the Council wrote to Mrs C stating 'the new external doors recently installed will also reduce draughts, improve the thermal efficiency and contribute to your comfort and reduced running costs'.

21. The replacement front door, however, remained an ongoing issue. Mrs C said that it did not lock properly and Council workmen have returned four or five times to try and fix it. I visited Mrs C in March 2009. At that time she told me that she was unable to lock the new front door, as it appears that the lock mechanism was not lined up to the lock housing correctly. While there, I tried to lock the door but could not. Mrs C said that the Council have told her to use her back door when entering or leaving the house, she also said that they told her that no more can be done in respect of the front door.

22. In addition to the doors, Mrs C complained about the fabric of the building, stating that there were external cracks to the building and to the window surrounds and sills which exposed the cavity. She said that in response to these complaints, in April 2007, the Council instructed a private insulation firm to upgrade the loft insulation in her home and to examine her windows.

23. This was verified in a letter from the Council to Mrs C dated 18 April 2007, which acknowledged that Mrs C's house was considered to be a 'hard to heat



property'. The letter explained that a private company had been instructed to upgrade the loft insulation from existing and to check draught proofing for all double glazed windows and upgrade any that needed attention.

24. Mrs C said that the insulation company told her that the window sills should be replaced as they showed gaps into the cavity of the house and that they would report this finding to the Council. She said that initially the Council told her that, as the reinforcement metal in the window sills had been exposed for such a long time, the sills would have to be replaced.

25. An internal email dated 30 April 2007 by the Principal Policy Officer confirmed that the private company had visited to determine the extent of the works required and were due to return to the site that day, however, due to illness they did not have the staff. The email noted that they had been in touch with all the tenants and arranged another suitable date to attend.

26. Mrs C said, however, that she had no further contact from the Council regarding this matter until January 2008, when Council advised her that the window sills would not be replaced but would be repaired. A Council workman arrived to cement the exposed areas of the window sills. She said that she expressed concern to the workman that the cold January weather was not conducive to this work, however, work proceeded. She said that the repairs only lasted a couple of months before the new cement cracked again, exposing new gaps to the cavity. She said that her windows remain draughty and the Council told her that it would be summer 2009 before they would be repaired again.

27. When I visited Mrs C's home in March 2009, I noted that areas of the outside walls show cracks from ground to roof. These cracks appear to be filled with clear mastic and, therefore, the cavity was not exposed. I also noted a hole in the wall on the front upper of the building which exposed the cavity through to the upstairs bedroom. Internally, the bedroom wall has movement adjacent to where the hole is on the outside wall. Mrs C told me the hole had been there since she moved in.

28. As mentioned in paragraphs 4 and 13, Mrs C asked the Council to address various aspects of repair and maintenance in her home and between October 2005 and June 2008 the Council sought to address these concerns. My examination of the paperwork revealed numerous 'Building Maintenance

Job Sheets' detailing work orders for Mrs C's house in response to her concerns. For example, I examined a 'Building Maintenance Job Sheet' which indicated that on 28 October 2005 work to 'renew door facings and skirting in hall kitchen and bathroom, repair all windows to close, repair seals on living room window fit new window handle, fit bead round kitchen bathroom & hall' was completed. The repairs record also indicated that in March 2006 a repair was undertaken to Mrs C's bathroom wall, with the wall being reported as in 'poor condition'. However, I have also seen a number of representations made by Mrs C in relation to the standard of work completed or requesting updates where, for example, work did not progress as planned.

29. Mrs C also complained that the garden area was overgrown and was subject to flooding due to poor drainage. She said the garden was littered with old mattresses, bicycles and a thick pile carpet, making it impossible for her to maintain. At the time of my visit to Mrs C her gardens were well maintained and presentable. She told me that she had brought the gardens to this standard herself without help from the Council. The Council, on the other hand, told me that Mrs C's garden area was cleared by them during ground drainage repairs, and this included the removal of domestic items. I have not, however, seen anything in the paperwork to confirm the state of the gardens one way or the other, at the time Mrs C took tenancy of the property.

30. However, I noted from the repairs record that in March 2007 there was damage to Mrs C's garden where a narrow trench had been dug to provide access for heating pipes from the ground loop system. The Council, however, made arrangements for the area concerned to be grassed following the implementation of new water and electrical supplies, and drainage works.

31. In reviewing the evidence presented to me by the Council, I was concerned by the tone and use of language expressed in some of the internal emails I examined by the Clerk of Works and the Senior Housing Repairs Officer, in relation to Mrs C (and her neighbour). It was apparent from these emails that there had been a breakdown in the professional relationship between these Council officials and Mrs C. When, however, this correspondence was viewed by the Head of Housing Operations, he left the staff in no doubt that their comments were inappropriate and not acceptable. He reminded them that 'there are two sides to every story, or sometimes even three, and the bottom line is that our customers need to be treated as such'.

32. I examined Mrs C's tenancy agreement. Section 5 dealt with repairs. The agreement stated that before the start of the tenancy the Council would inspect the house to ensure that it was wind and watertight, habitable and in all other respects reasonable for human habitation. Where repairs or other work needed to be done to bring the house up to that standard, the Council would do so before the tenancy began. Any other repairs may be carried out after the tenancy began.

33. The agreement also stated that during the course of the tenancy the Council would carry out repairs or other work necessary to put the house in a condition which is tenantable, wind and watertight, and in all other respects reasonably fit for human habitation. All repairs would be done to the standard of a reasonably competent contractor using good quality material. It went on to commit the Council to provide and maintain the house so that the tenant could heat the house to a reasonable temperature at a reasonable cost, so as to avoid condensation, dampness and mould.

34. Finally, the tenancy agreement reflected that the Council's duty of repair included a duty to take into account the extent to which the house fell short of the current building regulations by reason of disrepair or sanitary defects. This included the requirement to keep in repair the structure and exterior of the house, security, including external door and window locks.

35. The Council also advertised their responsibilities as a landlord and the tenant's responsibilities on their website. For example, they stated that they were responsible for repairs and other work necessary to ensure the house was wind and watertight, and for maintaining the structure and external fabric of the house. They were also responsible for repairs to and replacement of the internal fabric and structure of the house, including woodwork, plaster-work and electrical wiring circuits and installations. In relation to security, the Council were responsible for external door and window locks.

36. The tenant was responsible for any fixtures and fittings not belonging to the Council and for the repair and maintenance of anything installed by or belonging to the tenant which the tenant would be entitled to remove from the house at the end of the tenancy.

37. I asked the Council if, prior to a tenancy being awarded, they carry out accompanied visits with the prospective tenant to identify and agree the repair

work required for the property prior to the tenancy commencing. The Council told me that at the time the tenancy was allocated to Mrs C they did not carry out accompanied inspections, however, it is now the Council's practice to do so.

38. I mentioned in paragraph 18 that towards the end of 2006, the Council had issued an instruction to halt any major repairs to 'Cruden' type properties. In response to my further enquiries in April 2009, the Council advised me that Cruden houses were not a 'defective house type' in terms of the legislation (Housing (Scotland) Act 1987), however, it was discovered that most of their Cruden houses had defects in their steel frames. The Council carried out 'detailed investigations' to identify the extent of the problem, repair costs and life expectancy following repairs. The Council went on to say that, following these enquiries, they had now agreed to remedial structural repairs to all Cruden properties, including providing external insulation and roughcast and any internal upgrading required by the age of the fittings.

*(a) Conclusion*

39. I have concerns regarding the validity of the Change of Tenancy inspection reports completed on 8 September 2005 and 4 October 2005, in that they both indicated that the external doors and the windows were in 'ok' or 'good' condition, when photographs provided by Mrs C and subsequent work orders indicate their condition to be poor and in need of repair or replacement. I also noted that the second inspection report indicated that the walls of the house were insulated, when in fact this is not the case. A repair to Mrs C's bathroom wall in March 2006 with the wall noted as being in poor condition supports Mrs C's complaint that the bathroom wall required repair, yet both reports assessed the bathroom walls as 'ok' or 'good'. These discrepancies lead me to view these reports as unreliable.

40. It took the Council 16 months to replace Mrs C's external doors, despite assurances that the work would be completed sooner. The Council, by their own admission, acknowledge a breakdown in communication with regard to the failure to replace the front and back doors at Mrs C's dwelling. Even when the doors were replaced, neither was fitted properly; Mrs C continues to experience problems with the front door.

41. In writing to Mrs C, the Council stated 'the new external doors recently installed will also reduce draughts, improve the thermal efficiency and contribute to your comfort and reduced running costs'. While the problems experienced

with the external doors would have been a significant contributory factor to the problem of draughts, the fact that the house walls are not insulated, together with cracks and holes on the external fabric of the building and poorly maintained windows which did not close properly, as well as external windows sill cracked open and exposed to the elements, would all have contributed to this.

42. In addition, although I have noted that the Council continued to carry out some repairs to Mrs C's property, after halting major repairs to Cruden type houses in 2006, the Council told me that a programme for the upgrading of the non traditional Cruden houses has now been confirmed after detailed inspection across Aberdeenshire and the identification of significant finance.

43. From my examination of the paperwork, I have noted concerns about the tone and language used. I noted also, however, that this has been confirmed as unacceptable by the Head of Housing. Nevertheless, I am satisfied that the Council treated Mrs C's concerns seriously and sought to deal with the issues she raised, yet the extensive programme of repair work at Mrs C's home, much of it scheduled after she had taken tenancy indicates that the property was not properly repaired for her moving in, or the work effectively completed since she took tenancy.

44. While I have not seen evidence to support Mrs C's concerns about the state of her garden, I am satisfied that the Council have not achieved their own standards as set out in the tenancy agreement and advertised on their web site, to ensure the property was wind and watertight or that the structure and external fabric of the house was maintained to an acceptable standard and, for this reason, I uphold this aspect of Mrs C's complaint. The Ombudsman has the following recommendations to make:

*(a) Recommendations*

45. The Ombudsman recommends that the Council:

- (i) meet with Mrs C to identify and agree the repairs still required to the house, taking account of the issues identified in paragraphs 13 and 16, together with any other outstanding repairs, and their decision to upgrade all Cruden homes as reported in paragraph 38; and
- (ii) provide him with an action plan detailing timescales to complete the outstanding works.

**(b) The System in place when Mrs C took up tenancy was not fit for the purpose intended and the Replacement System was inadequate**

46. Mrs C told me that she had complained about the System from the time that she took up tenancy on 17 October 2005. She said that, from the moment she moved in, she noted that the single radiators in the house were in very poor condition and were unable to heat her rooms adequately. She also said that the System's thermostat was faulty. She further complained that the hot water storage tank, situated in her loft, was faulty as, on occasions, boiling water would leak from the attic and run down her bedroom walls. She complained that a flood from the storage tank had caused damage to personal belongings, for which she had not been compensated.

47. Mrs C told me that repair work was required on the System in March and April 2006. She also said that in October 2006 the Council had to repair a leak from the System's tank in the attic and that the day following this repair, the tank again overflowed, flooding her home.

48. The Council's repairs records indicated that on 31 October 2005 work was completed to check all radiators and fix the faulty thermostat. Mrs C said that following this visit, and despite the Clerk of Works telling her that her radiators would be replaced, he subsequently advised her that they would not be replaced.

49. In March 2006 a work order was issued by the Council to 'check and repair heating system, pipes making noise'. This job was completed on 27 March 2006. In April 2006 the Council's repair records indicate that a repair was required to the System's tank in the attic. The repair record indicates that the overflow was 'broken due to water boiling into the tank'. The worksheet identified the need to 'repair overflow'. The work sheet which should have been signed by Mrs C on completion of this work was not signed.

50. I mentioned in paragraph 1 that Mrs C told me that the System tank in the attic overflowed, resulting in water leaking into her bedroom. The Council's repairs record verified that on 25 October 2006 action was taken to 'check and repair leak into bedroom'. The records also showed, however, that on 27 October 2006, the tank in that attic overflowed again, flooding the house and causing damage to ceilings, walls and to Mrs C's personal belongings.

51. Regarding this flood, Mrs C said 'the plumber had been out the day before and told me that he had fixed the problem and the water would no longer be running onto the electrical sockets in my bedroom. The following morning at 11:00 the water started pouring through the lounge ceiling. To date I have lost my carpets, mattresses and bedding, personal items (pictures etc) and we had to vacate the house while loft lagging was again removed ruining additional carpets and decoration in the process as the workmen dragged the black and soaking lagging down the walls across my carpet and threw it out of the upstairs windows.'

52. Following an inspection of the damage, the Council wrote to Mrs C on 2 November 2006 outlining the repairs that they had agreed to. This included the removal of damp insulation from the loft; repairs to the ceilings in two bedrooms and the lounge; the fitting of new double radiators in the kitchen and lounge; and the confirmation that dehumidifiers had already been provided by the Council.

53. The letter also said 'as I mentioned on my last visit, due to the fact that you do not have insurance I would see how I could help in relation to the damage. Can you please send me in writing a list of damages to your belongings (this does not mean we accept liability) under the circumstances I am sure we will try and be as sympathetic as possible.'

54. Mrs C was subsequently contacted by the Council's insurers in March 2007. They said 'Our insured report that there was no fault with the heating system. The mains power was off due to storm. They have advised it was explained to you on various occasions what measures to take. We cannot say that the damage can be said to have been due to any fault or negligence on the part of the Council'. Mrs C's insurance claim was therefore declined.

55. I asked the Council to provide me with a technical specification of the System in Mrs C's property when the tenancy commenced. The Council responded by telling me that 'the heating system in place when [Mrs C] took occupancy was what was for the Council a 'standard' solid fuel small bore (not micro bore) open fired system using a Grant Triple Pass boiler, radiators were fitted in each room. The hot water storage was an indirect cylinder the system utilized a circulation pump and a pipe stat to ensure the pump comes on at and above a preset temperature.'

56. I also asked the Council for a copy of the record of any checks conducted on the System prior to the tenancy commencing. The Council told me that a full visual inspection was conducted on the solid fuel heating system during the change of tenancy and that this was evidenced from the void report dated 4 October 2005.

57. My examination of the void report provided by the Council indicated that in relation to the System the report only identified the type of heating system. It contained no assessment of functionality in terms of how effective or not the System was.

58. In complaining that the System was not fit for the purpose intended, Mrs C also said that she was aware that the previous tenant had also experienced problems with the heating system and flooding from the tank in the attic, prior to moving out.

59. I examined the change of tenancy inspection form dated 8 September 2005. It noted the need for new loft insulation stating 'all removed last year when loft flooded last year'. This supported Mrs C's contention that flooding was also a problem for the previous tenant.

60. The Council's repairs records also verified previous problems with the System prior to Mrs C taking up tenancy. For example, in 2000 a leak was repaired; and on 12 November 2004 a work order was issued to 'check and repair leak in attic' which had caused the carpets in the two bedrooms to become wet. On 16 November 2004 the repairs record indicates 'check and repair heating pumps, still has problem with heating. The pump is not coming on. Thermostat is faulty, check all radiators.' This work was completed on 3 December 2004.

61. I referred in paragraph 7 to the two change of tenancy inspection records which were completed between the previous tenant giving up tenancy and Mrs C moving in. Both called for a 'condition report' in relation to various aspects of the tenancy. Both reports scored most aspects of the tenancy as 'ok' or 'G' (for good), however, neither report assessed the condition of the System. Rather, they recorded that heating was by way of a radiator in all rooms.

62. The 'signing up checklist' completed on 17 October 2005 when Mrs C took up tenancy contained a section for 'tenant responsibility' which included



'Heating'; however, it did not specify whether or not any particular advice was provided in relation to running the System. The tenancy agreement, however, recorded the Council's responsibility to maintain the house 'so that any tenant who we might reasonably expect to live in the house can heat the house to a reasonable temperature at a reasonable cost so as to avoid condensation dampness and mould.'

63. The Council said that Mrs C was informed on two occasions prior to the (major) flooding incident of the need to be careful of the size of fire she was putting on and to run off hot water if there was a problem of overheating. They said that both visits by their plumber were required as a result of the system overheating, even with the pump operating.

64. They went on to say that on the first two visits in response to leaks 'there was no real damage just hot water coming from the system overflow. The damage to the home occurred when the heating system was overheated and boiled for a third time; the overflow pipe melted causing water damage to the attic and ceilings.

65. Finally, in relation to the System, the Council said that:

'The Senior Housing Officer stated in an email that [Mrs C] was using anthracite rather than house coal, she had been advised against this. [Mrs C], following the flood made an insurance claim for her losses against the Council's insurers which was not upheld. She had no private insurance for personal goods despite being strongly advised to do so in her tenancy agreement.'

66. Mrs C's tenancy agreement did advise her that she was strongly recommended to insure her personal possessions against loss or damage 'caused by fire, flood, theft, accident etc', it also advised her that the Council operate such a scheme. The tenancy agreement also, however, stated 'If we cause damage to your property in connection with inspections, repairs or improvements, we will reinstate the damage or compensate you for your losses.'

67. Turning now to the Replacement System: as part of a programme to pilot new innovative energy efficient heating systems, the Council installed a new heating system to Mrs C's home in March 2007. The Council decided to install ground source heat pumps to provide the heating. Ground source heat pumps

are used to extract heat from the ground to provide space and water heating. The theory is that the ground retains solar energy throughout the year which allows heat pumps on a horizontal loop to take in heat at a certain temperature and release it at higher temperature. Buried pipes absorb heat contained in the ground and carry it to the heat pump.

68. Mrs C said that she had to move out of her property during the installation period as it was impossible to live there during the works. She also said that she found the Replacement System very expensive to operate and even when running it at full output it did not heat her home properly.

69. In an email to the Council on 27 March 2007, Mrs C said:

'I am emailing you to inform you that I moved out of my property on Wednesday 21 March 2007 and will not be returning until I have a heating system up and running. The reason we have had to move out is because it is impossible to live in the property or indeed gain access for the ongoing works. I find it incomprehensible that we were expected to live in these conditions by yourselves. I ask that my rent for this period be void. I would also request the time schedule for the remainder of the upgrading. As it appears no one else within the Council can inform us.'

70. In their response the Council said:

'I would be very concerned and surprised if you and your neighbours were being expected to live without heating or necessary services. Consideration will be given to any compensation once I have the necessary details from officers. I apologise if any inconvenience has been experienced and trust that the new systems will be a marked improvement.'

71. On 23 May 2007, following internal enquiries, the Council wrote to Mrs C to explain the advice they had received from the contractors in relation to Mrs C moving out of the house. The contractors advised the Council that while they were working at number 3 they were approached by Mrs C to ask when the Replacement System would be installed in her property. They advised her that they had planned to go to number 2 but due to it being Thursday they did not want to start work with the weekend approaching, especially as number 2 had young children in the household. Mrs C then advised the contractor that she was going to stay with a friend and if they'd like she would be happy if they started in her property on the Friday while she was away. The contractor

started work on the Friday laying the pipes; everything was back in order by Friday night. The contractor considered that Mrs C could easily have remained in the property. The work was completed the following week. At no point was Mrs C asked, or put in a position where she had to leave. The Council went on to advise 'as you can hopefully understand, there seems to be no reason why you should be provided with compensation'.

72. While waiting on a response to her request for compensation, Mrs C continued to make representations to the Council regarding the efficiency and running costs of the Replacement System. In response to her concerns the Council wrote to her on 18 April 2007 stating they were surprised to note her comments regarding running costs. They said that the Council pursued these heating systems because they were very efficient, environmentally friendly and the running costs even on peak rate should be considerably lower than previous solid fuel system. Even if the pump had been running continuously for 24 hours per day the running costs should not have been as high as Mrs C had quoted.

73. In this letter the Council also said 'the Replacement System was specified and designed taking account the current condition of the property the performance will only be enhanced as improvements are made to the insulation and draught proofing'.

74. I visited Mrs C in March 2009. She told me that the Replacement System went off completely when someone had a bath. She said that this was normal for this type of heating system, as it did not supply hot water and heat at the same time. Mrs C said that if both her sons had a bath one after another, the tank was emptied and it took three hours for the heating to come back on. If a shallow bath was taken it took one hour for the heating to come on again. She said that this was not acceptable, particularly in winter. She told me that she had purchased a Calor gas heating system to address this problem; however, this cost her £26.79 per week to run.

75. At the time of my visit to Mrs C, she had the Replacement System on and turned up to full capacity. During my visit, the radiators, which had no valve controls, did not get hotter than warm to the touch. Mrs C said that this was as hot as they ever got and, of course, in running the system to full capacity in an effort to remain warm her heating costs increased.

76. Mrs C told me that her electricity costs were £120 per quarter, however, when she used her heating on full her bills rose to £400 to £500 per quarter. This had caused her to fall into arrears with her payments. Mrs C showed me her electricity bill for the period 29 January 2008 to 14 July 2008. The total bill was £1410, representing 4180.49 off peak units and 5428.22 standard units. She explained that despite using the system as instructed, her house was still very cold, the thermometer in the bathroom always indicated 'cool', as it did for the hall. She said that in the evenings they had to watch television while using sleeping bags to remain warm.

77. During my visit to Mrs C, her immediate neighbour asked to speak with me to express his concerns about their heating bills. He expressed similar concerns to those of Mrs C regarding the efficiency and running costs of the Replacement System.

78. In a fact sheet prepared by the Energy Saving Trust and issued to householders by the Council, Mrs C was advised 'based on current fuel prices, a ground source heat pump should provide significantly cheaper heating than coal, oil, LPG and electric storage systems. The running costs will depend on the size of the property, heating demands and electricity costs. Typical running costs for a typical Scottish 2 bedroom terraced property are approximately £270 per year.'

79. In considering how best to pilot a new heating scheme, the Council asked a private company to present proposals and budget costs to install ground/air source pump based heating systems in 27 'hard to heat' homes across the Council's area. The company's proposal document dated 28 October 2006 indicated that 'the existing level of insulation in these properties is variable and none of the properties are believed to be insulated to current standards'. The proposal went on to say that 'none of the properties so far visited are ideally suited to the installation of a horizontal ground loop. For these reasons the properties are not ideal situations for heating by heat pumps. However as long as the radiator distribution systems are correctly sized for heat pump flow temperatures, then the requirement can be satisfied by a combination of ground source and external/internal air source heat pumps'. The proposal document indicated that 'heat pumps can supply both space heating and domestic hot water'. It was also noted that 'compared to direct electrical heating they will achieve the same results for as little as 25% of the running costs and carbon dioxide emissions'.

80. The proposal document also noted that the annual fuel cost for a ground source heat pump system was £215, whereas a smokeless solid fuel and back boiler system cost £745 per annum. The proposal document went on to say 'It is important to recognise that the final running costs may not reflect the whole of this saving simply because residents are likely to increase their level of heating and comfort as a result of the reduced costs.'

81. The annex to the proposal document described the four properties in Mrs C's terrace as 'four identical two bedroom, two storey semi detached properties of approximately 108m<sup>2</sup> living area with coal cellars and gardens' and recommended 'this row of properties appears to present the opportunity to install the 3 different types of system into identical buildings which could then provide comparative data on the running costs of each type of system'. Mrs C's property is, however, a three bedroom property.

82. I asked the Council if they had undertaken an evaluation of the Replacement System in Mrs C's home. The Council said that their own evaluation was limited as they had considered the 'Evaluation of the Scottish Renewables Heating Pilot' published by the Scottish Government<sup>1</sup>.

83. The Government's evaluation report was one of two outputs from a two year pilot study into the viability of including renewable technologies in future fuel poverty programmes. In its summary of key findings it reported that 'nearly nine in ten householders were very or fairly satisfied with their new renewables system and there were good satisfaction levels across a range of areas. A number of other householder benefits were also identified, including self-reported improved health status and energy efficiency behaviours'.

*(b) Conclusion*

84. In considering the first part of this complaint in relation to the System in place when Mrs C took up tenancy, my first consideration was that neither of the two change of tenancy inspection records highlighted any problems with the System. However, I do not consider that a visual inspection of the System was sufficient to provide assurance that it was fit for purpose.

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<sup>1</sup> <http://www.scotland.gov.uk/Publications/2008/11/17115604/0>

85. I have seen evidence of repairs to the System in the house dating back to the year 2000 and this includes the Council responding to the previous tenant's request for repairs following a flood from the attic. This supports Mrs C's assertion that there were longstanding problems with the System.

86. Mrs C experienced problems with the System from the time she moved in and the Council's own records indicate that several visits were made in connection with repairs to the System prior to the flood in October 2006. Indeed, only one day before this flood a Council plumber had attended the house to 'check and repair leak into bedroom'.

87. I saw no evidence of Mrs C being advised against using anthracite as a source of fuel and, in any event, she told me that she did not use anthracite for her fire. I was not convinced that it was in any way acceptable for Mrs C to have experienced ongoing leaks from the System's tank in the attic which eventually resulted in a flood, without earlier effective action being taken to ensure no reoccurrence of the problem.

88. I have seen nothing in the evidence to suggest that Mrs C could be held responsible for the System overheating and resulting in a flood with the consequential damage caused to the property and her personal belongings (see paragraph 49).

89. Based on the evidence I have examined, I am of the view that the System was not adequately checked prior to Mrs C taking up tenancy. The Council's own repair records indicate previous problems with the System and these continued for Mrs C after she moved in. I therefore accept that the System in place when Mrs C took up tenancy was not fit for the purpose intended and I uphold this part of the complaint.

90. In considering the Replacement System I had concerns when I noted that the private company which proposed it stated 'none of the properties so far visited are ideally suited to the installation of a horizontal ground loop. For these reasons the properties are not ideal situations for heating by heat pumps'. I accept, however that this concern was addressed in noting that if the radiator distribution systems are correctly sized for heat pump flow temperatures, then the heating requirement could be satisfied by a combination of ground source and external/internal air source heat pumps.

91. I was also concerned that the proposal document described Mrs C's house as a two bedroom property when in fact it is a three bedroom house. This caused me to question if her heating requirements had been properly established.

92. I noted also that the Council advised Mrs C that the heating performance would only be enhanced as improvements were made to the insulation and draught proofing. I also took account of the Council's view, as referred to in paragraph 73, that 'the Replacement System was specified and designed taking account of the current condition of the property the performance will only be enhanced as improvements are made to the insulation and draught proofing'. Mrs C was already involved in the complaints process, specifically relating to her home not being wind and watertight, when the Replacement System was installed. It appears to me, therefore, that the Council were acknowledging problems existed in relation to insulation and draught proofing and that the Replacement System would not be fully effective until these issues had been resolved.

93. I have noted that the Council relied on the Government's evaluation of this type of system; however, I have also noted that this report was not published until November 2008 while Mrs C had raised concerns about the Replacement System from April 2007.

94. It is reasonable for the Council to take account of the evaluation already published by the Scottish Government when considering the overall effectiveness of the project, however, where specific problems have been raised by a tenant regarding the effectiveness and efficiency of their particular system, the Council should have commissioned further work to fully address the issues raised.

95. A further consideration I have taken in reaching my conclusion is the actual running costs as experienced by Mrs C and articulated by her neighbour, which bear no comparison to the estimated costs advised by the Council. That, together with my comments in paragraph 91 and 92 and Mrs C's experience of space heating not being available after a bath is run, and the inability of the Replacement System to heat the house, even when being run at full capacity, persuaded me that the Replacement System, as installed in Mrs C's home was inadequate. For these reasons, I uphold this aspect of the complaint.

*(b) Recommendations*

96. The Ombudsman recommends that the Council:

- (i) reconsider Mrs C's claim for compensation for damage caused to her property from the flood;
- (ii) take action to insulate and draught proof Mrs C's property adequately; and
- (iii) re-assess the effectiveness of the Replacement System in relation to Mrs C's property, following action to insulate and draught proof Mrs C's home.

**(c) The failure of the Council to connect a mains water supply to the home**

97. Mrs C also complained about a delay in supplying a mains water supply to her home. When her tenancy commenced, the property was supplied with water from a private water supply routed through an adjacent farm. It was unfortunate that this water supply was disconnected and subsequently disrupted, due to a burst pipe, prior to the introduction of a mains supply. This caused Mrs C (and her neighbours) a degree of inconvenience, as subsequent water tests indicated the water supply was not of a potable quality. The Council responded to these problems by supplying bottled drinking water and in response to the water quality tests the Council installed ultra violet drinking water filters. Tests following the introduction of these filters indicated the water quality to be potable.

98. In June 2006 the Council submitted an application to Scottish Water to connect Mrs C's house (and those of her neighbours) to the public water supply. Scottish Water responded by advising that 'due to volumes of work the application will take marginally longer to process than normal'. In September 2006 Scottish Water sent the Council 'Water Connection Advanced Payment Request'.

99. The Council wrote to Mrs C on 2 November 2006 advising:

'I have once again contacted Scottish Water for an update; due to volumes of work they have just recently processed the application. Within the next two weeks they will carry out a track inspection to finalise design and planning requirements and mobilise their contractor to undertake the work.'

100. On 2 February 2007 the Council again wrote to Mrs C stating:



'a new water supply is to be installed which, as you know was agreed some time ago. This work has taken much longer than expected to organise as a result of a dispute between our legal section and the water services regarding the proposed route of the pipe. It was originally planned to cross over private land but owing to disagreements on this issue this plan of action has now been abandoned to enable us to proceed with the work. I am pleased to inform you that after discussions with the Road Department a preferred route has been agreed that is acceptable to all parties. I am unable to inform you of when the work should commence although it is anticipated that this should be before the end of March. On behalf of the Council I can only offer my sincere apologies for this delay and appreciate the patience you have shown in this matter.'

101. The next correspondence in relation to the mains water supply was on 18 April 2007 when the Council wrote to Mrs C to advise her that the mains water supply pipe route had been complicated by unforeseen land ownership legalities but that these issues had now been resolved. The letter went on to confirm that the contractor would be on site week commencing 23 April 2007 to complete the new water supply. Mrs C said that the work did not commence as advised by the Council.

102. The Council wrote again to Mrs C again on 11 May 2007 to advise her that the new mains water supply work would now commence on 15 May 2007 and would be completed within approximately one week, weather permitting. However, the mains water supply was not installed in May 2007 as previously indicated by the Council.

103. As part of my enquiries I wrote to the Council asking them to provide me with a copy of the Council's plan and timeline for implementing the mains water supply. The Council told me 'there is no formal plan of the works at Mrs C's home available'. They acknowledged, however, that the supply of mains water had been problematic; they had experienced problems in accessing private land and sub-contractors had performed poorly. The mains water supply was connected by mid-October 2007.

104. Both the Council's website and Mrs C's tenancy agreement noted that the Council were responsible for the supply of water to the property.

*(c) Conclusion*

105. The Council's priority is to ensure a water supply to the accommodation. When the private water supply was disrupted the Council met their responsibility by initially providing bottled drinking water and subsequently water filters. It was around this time that the Council decided to install a mains water supply; however, this work was not categorised as urgent as tests had confirmed that the newly installed filtered water supply was potable.

106. The Council acknowledged that the work to provide the new mains water supply, from an existing main approximately three quarters of a mile away, had been problematic. They experienced delays in negotiating a supply route across private land and had to manage poor performing sub-contractors.

107. The question I have asked myself is one of reasonableness. In meeting their responsibility to provide water following the disruption of the private supply, I accept that the Council acted reasonably. The main issue I have to consider, however, is the action taken to provide a mains water supply to the home(s).

108. In June 2006 the Council submitted an application for a mains water supply. Following delays and other problems as reported in paragraph 103, the final completion date was estimated as October 2007, some 18 months later. During this period the Council advised Mrs C that the work would be completed on at least three occasions, when in fact it was not. I accept that the Council experienced problems which impacted on their ability to complete the work as intended; however, I was surprised by the lack of formal planning in connection with this matter and consider that with a different approach the project could have been more effectively managed.

109. I would have expected the Council to prepare a project plan listing the main tasks required, identifying the stakeholders and detailing the risks to success. Such a plan could have saved time and helped the Council to foresee and manage many of the problems encountered, not least of all in identifying contingencies and managing the needs of the stakeholders involved.

110. Based on the evidence I have examined, I am satisfied that with a different approach the Council could have introduced a mains water supply earlier than they did. For that reason, I uphold this complaint.

*(c) Recommendation*

111. The Ombudsman recommends that the Council provide a full formal apology for the delay in connecting Mrs C to a mains water supply and for the failings identified in this report.

112. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the council notify him when the recommendations have been implemented.

**Explanation of abbreviations used**

Mrs C	The complainant
The Council	Aberdeenshire Council
The System	The central heating system in place at the time Mrs C took up tenancy
The Replacement System	The central heating installed to replace the original one

**List of legislation and policies considered**

The Scottish Secure Tenants (Right to Repair) Regulations 2002