

Case 200800803: West Lothian Council

Summary of Investigation

Category

Local government: Housing; Council housing repairs and maintenance

Overview

The complainant (Mrs C) raised a number of concerns regarding the response of West Lothian Council (the Council) to problems that she had reported with regard to her home.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed satisfactorily to address persistent problems of water ingress and dampness in the house (*not upheld*);
- (b) the Council failed to take the opportunity to carry out necessary repairs when the family temporarily vacated the property (*partially upheld to the extent that the Council did not immediately let Mrs C know that repairs could not be undertaken when the family were absent*);
- (c) although dehumidifiers were supplied by the Council to dry out the house, Mrs C was not reimbursed for additional electricity consumed (*partially upheld*); and
- (d) Council workmen attending to carry out repairs, damaged Mrs C's flooring and, thereafter, misrepresented the extent of that damage to the Council's insurers (*not upheld*).

Redress and recommendations

The Ombudsman recommended that the Council:

- (i) revisit the repairs history of the particular house in comparison with similar houses in the immediate vicinity to establish whether there are recurrent problems;
- (ii) review the arrangements for carrying out repairs where there is a risk to the health of a tenant with a known medical condition; and
- (iii) review the adequacy of the advice given on the Council's policy with regard to reimbursement when they supply dehumidifiers to tenants.

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

Main Investigation Report

Introduction

1. The complainant (Mrs C) and her husband (Mr C) have tenanted a council house in a West Lothian village for ten years. The house, because it has a downstairs bedroom, was allocated to them because it suited Mr C's medical needs. Mrs C alleged that since moving in they had experienced persistent problems of dampness. They had not been satisfied with the response of West Lothian Council (the Council).

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

- (a) the Council failed satisfactorily to address persistent problems of water ingress and dampness in the house;
- (b) the Council failed to take the opportunity to carry out necessary repairs when the family temporarily vacated the property;
- (c) although dehumidifiers were supplied by the Council to dry out the house, Mrs C was not reimbursed for additional electricity consumed; and
- (d) Council workmen attending to carry out repairs, damaged Mrs C's flooring and, thereafter, misrepresented the extent of that damage to the Council's insurers.

Investigation

3. I examined the correspondence provided by Mrs C and made enquiry of the Council who supplied me with a computerised list of repairs and commented on the specific complaints. I also interviewed Mr and Mrs C in their home and officers of the Council. 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.

4. Mrs C and her family moved at the end of 1998, on medical grounds, into their present two storey semi detached council house. The front of the house faces south west, the direction of the prevailing wind. Mr C's medical condition at the time of allocation required a downstairs bedroom and toilet. Mr C had major surgery in 2005. Although he remains susceptible to bacterial infection it is no longer necessary for him to occupy the downstairs bedroom. This room is now used by the family as a utility room. Mrs C has informed me that her son has an asthmatic condition.

5. Mrs C recalled that because of the state the property was left in by the previous tenant, she and her husband received the keys some eight weeks before moving into the house in December 1998. In the course of stripping wallpaper on the ceiling and walls in bedrooms, Mr and Mrs C noted mould growth and subsequently found the walls to be wet to the touch.

6. The Council's computerised repairs file records that vents were installed in the living room wall and rear bedrooms, that the frames of the livingroom windows were pointed with sealant in December 1998, and that a leak in the pitched roof was attended to in early January 1999. Their records detail a total of 48 works orders dealt with in 1999 and a further 31 works orders in 2000. The majority of these works orders were not, however, linked to problems of water ingress or dampness. In the next four calendar years the average number of repairs requests dropped to 14 per annum but included the replacement of the central heating system on two occasions and a burst pipe in the attic space above the bedrooms in July 2004. A roof leak was reported on 28 December 2004 and a job line was issued for completion by 30 December 2004. Mrs C commented that, to her knowledge, no vent was ever installed in the livingroom and that a number of works orders were not documented or were lost by the Council.

(a) The Council failed satisfactorily to address persistent problems of water ingress and dampness in the house

7. The correspondence supplied by Mrs C with her complaint covers only the period from the Spring of 2005 to the present. According to Mrs C, the work done to the roof in December 2004 failed to resolve the problem of water ingress. She informed the Council. A further repairs request order was made in respect of the chimney head on 24 February 2005. That request order was discussed at the Council's monthly programme maintenance meeting on 28 March 2005. The repair was not implemented immediately.

8. Mrs C was dissatisfied that the same roof leak referred to in 1998 and again on 28 December 2004 had not been attended to by early May 2005. She wrote to the Council's Director of Customer and Support Services (the Director), complaining that repairs had not been undertaken, about officers failing to call back after she telephoned, and about lack of progress in dealing with her request for compensation for articles damaged by the roof leak.

9. A joint visit was made to Mr and Mrs C's home in May 2005 by the Council's Capital Programme Liaison Officer (Officer 1) and District Technical Officer (Officer 2). Their inspection resulted in a works order to re-roughcast the chimneyhead and renew/repair lead flashings and roof tiles. A further visit in June 2005 resulted in a works order to reinstate 10 square metres of roughcast on the front elevation.

10. The Director replied to Mrs C on 20 June 2005 apologising for the delay in arranging for outstanding repairs to be carried out. The Director stated that he had discussed the matter of outstanding repairs with the local Housing Manager who had assured him that arrangements for the work were underway and that scaffolding would soon be erected. Mrs C was informed that areas to the front elevation of her home also required roughcasting and that works orders had been issued for that work to proceed. The Director noted that Mrs C had submitted a claim for compensation.

11. On 30 August 2005, Mr and Mrs C wrote again to the Director about delays in completing the repairs. Officer 1 and his colleague visited Mrs C on 19 September 2005 to update her on progress. On 10 October 2005, the Director responded to Mr and Mrs C stating that the work on the chimneyhead, flashings and re-roughcasting had been complex and that there had been a long timescale in considering options. The removal of the scaffolding (following repairs to the chimney and roof) had allowed work to the roughcast to start. It was planned that this work (and work to skim ceilings and to insulate the loft) would be completed within five weeks. At that time, a serious safety problem had been discovered with a number of local electric wet central heating systems and a replacement oil fired system was also scheduled to be installed by 31 October 2005. The Director acknowledged that Mr C's health was paramount and apologised for the added anxiety and inconvenience caused by the delay in completing the repairs.

12. Mrs C maintained that these works did not prove effective. With the onset of bad weather in December 2006, problems of water ingress and mould growth recurred.

13. The Council confirmed that at the end of December 2006 Mrs C complained of dampness and maintained that rainwater was getting through the wall in her livingroom.

14. Since the roughcast of the front elevation had been renewed less than 18 months earlier, the Council say they required to carry out further investigations to ascertain the root of the problem. In January 2007, the local Housing Officer arranged for a heating and insulation specialist to carry out a survey of the front elevation of Mr and Mrs C's home using a thermal imaging camera. There is no written report of that survey but the Council have provided me with copies of five extant graphs dated 26 January 2007. They stated that the outcome of that survey concluded that the problem was the result of severe condensation, which was caused by excessive heating within the property and a lack of ventilation. Mrs C commented that the operative who called at her home commented on the height of soil in her front garden relative to ventilation grills and that she should have de-humidifiers to dry out her internal walls.

15. Mrs C requested that a further survey be carried out in her presence.

16. Officer 1 and the Officer 2 visited Mrs C's home in February 2007. The Council stated that the second survey concluded that there were no signs of any salt concentration on the surface of the walls. A moisture meter was employed to investigate particular areas. In these areas it was noted that the surface plaster reading was relatively high, but reduced further into the wall. The property had had cavity insulation installed some years earlier. A vent and external brick at the base of the wall had been removed to give access to the cavity and cavity insulation. Since the cavity was found to be dry, the Council believed this to confirm that the root of the problem was condensation and that this was further supported by the presence of a tumble dryer in the ground floor room (previously Mr C's bedroom) which was being used as a laundry room, by clothes being dried on heating radiators throughout the property, and by the extent of furniture in the upstairs bedrooms restricting air circulation. They informed me that no visible signs of dampness or mould growth were present. The officers stated that they gave appropriate oral advice to Mrs C on how to remove signs of mould growth and on combating condensation. Mrs C informed me that she was advised to apply a bleach solution to the walls as a fungicide.

17. Mrs C maintained that her tumble dryer was hardly ever used because she preferred to dry the family's clothes outside in the garden. When she did use the tumble dryer, she led the extractor hose through an open window and turned on the extractor fan in the downstairs toilet. She confirmed that she did put washing on the central heating radiators but only to complete the drying process before the clothes were stored.

18. Although they regarded the main source of the problem to be condensation, the Council decided to issue instructions to replace two concrete window sills in the livingroom, and to renew the damp proof membrane around the windows to eliminate any possibility of water ingress. That work commenced in February 2007. The Council say that once it was established that there was no ingress of water from the window area of the living room the internal wall was re-instated using an insulated plasterboard and then finished with a skim coat of plaster.

19. Following the completion of internal works on the upper front bedroom in August 2007 (see paragraph 26) Mrs C contacted a Sunday newspaper and they wrote on her behalf to the Council on several occasions between October 2007 and April 2008. After a spell of bad weather in April 2008, Mrs C reported further water ingress to her property. While an internal inspection on 23 April 2008 found the property to be dry, Mrs C reported further water ingress through the roof on 30 April 2008. Council workmen attended and stripped tiles off at the side of the chimney, cleaned the build up of dirt from the chimney, and renewed and replaced tiles where required. On 15 May 2008, Mrs C wrote to the Chief Executive of the Council stating that since her tenancy commenced in 1998, she had had four heating systems (coal, two electric systems and, most recently oil). Her hall and bedroom ceiling had been replaced because of damp on three occasions and the hall decorated seven times in total. In the past four months the same area of roof had been repaired three times. She maintained that workmen had told her that her chimneyhead was unsafe and required to be removed.

20. The Chief Executive replied to this letter on 16 June 2008 referring to works undertaken over the previous three years. He stated that, following Mrs C's letter, officers from Building Services had visited Mrs C's home on 26 May 2008 and noted that there was a very small mark with slight discoloration on the top landing of the hall, but that the area was dry and there were no visible signs of wetness or dampness.

21. In responding to this complaint, the Council maintained that they had at all times endeavoured to establish the causes and to remedy the problems reported to them by Mrs C. Due to the complexity of the issues, work took several months to complete. The Council stated that as a good will gesture

they redecorated the livingroom, bedroom, and hall after all the work was completed.

(a) Conclusion

22. At this point in time, it is not possible for me to conclude with certainty that problems of water ingress persisted over an entire decade or recurred sporadically. It may be that at times there were problems of both water ingress and condensation dampness in Mr and Mrs C's home. The considerable number of requests made and implemented suggests to me that the Council responded and undertook many repairs in an endeavour to remedy the problems Mr and Mrs C experienced. However, the sheer extent of the number of repairs (220 in total) suggests either a heightened propensity to report repairs on the part of Mrs C, fundamental problems with the house, a lack of effectiveness of the repairs undertaken, or a combination of the three factors. On balance, given the number of repairs undertaken, I am unable to uphold Mrs C's complaint that the Council either failed to respond or failed to deal satisfactorily with the matter over an extended period. I note that the Director apologised for the delays in 2005. While I empathise with the family and believe that the problems of disrepair must have been an unwelcome addition to the family's health problems, I do not uphold the complaint.

(a) Recommendation

23. Although not upholding this complaint, the Ombudsman recommends that the Council revisit the repairs history of the particular house in comparison with similar houses in the immediate vicinity to establish whether there are recurrent problems.

(b) The Council failed to take the opportunity to carry out necessary repairs when the family temporarily vacated the property

24. This complaint relates specifically to the period subsequent to December 2006. Mrs C stated that from that time her family sat in their livingroom with no wallpaper and with black mould on walls; the chimney had started leaking again; her bedroom ceiling was wet, and the hall also had mould growth and wallpaper falling off. The bacteria in the mould threatened Mr C's medical condition and led to an increased use by her son of his inhaler. In early 2007, Mr C required to spend a week away from the house in respite in the Scottish borders.

25. Mrs C confirmed that Officer 1 informed her that the Council had decided to remove downstairs windows and replace damp-proof membranes and thereafter to replace internal walls. He had stated that, since there would be a lot of dust, it would be better for Mr C not to be present for the duration of the works (estimated at three days). Mrs C had asked Officer 1 to give them forewarning and they would arrange for respite for Mr C. When Officer 2 telephoned later to say the works would be going ahead, Mrs C informed him that the keys for their house could be left with Mr C's mother who lives in the next street. In a letter of 14 February 2007 to the Area Housing Manager, Mrs C stated that she had that morning telephoned Officer 2 to tell him that workmen had arrived to put up scaffolding to replace the upper bedroom window sills. Since the family would be on holiday for a week from Monday 19 February 2007, she requested that the internal work on the livingroom walls be carried out in their absence. She also asked that the Area Housing Officer inform her before the following Monday what was to happen. No one from the Council contacted her by Friday 16 February 2007. Although the keys were left with Mr C's mother, Mrs C was concerned that the opportunity was lost to undertake disruptive internal work when the family were not in residence and returned to find that they had not started.

26. Mrs C stated that it took the intervention of their local councillor, a letter from Mr C's doctor, and the involvement of a Sunday newspaper before the internal work in the livingroom was carried out in late March and early April 2007. Work on the upstairs front bedroom commenced in July 2007 and was completed towards the end of August 2007. Mr C stayed with his parents for part of that time.

27. In response to this complaint, the Council informed me they had nothing on record to show when Mr and Mrs C had temporarily vacated their property. However, prior to work commencing, it was agreed by the Council and Mr and Mrs C that the work would start in the livingroom and that, only on completion of that work, would the Council negotiate with them about work to be carried out on the bedroom. They maintained that there was no need for the family to be removed from the house while the work was undertaken. The Council's Chief Executive informed me that when work commenced in the livingroom, it was noted that the family had cleared and stripped the bedroom, which did not help their living environment. At interview, Officer 1 informed me that he felt that the Council had been given insufficient confirmation of the family's absence to arrange the implementation of works.

(b) Conclusion

28. It is unfortunate that the internal works in the livingroom of Mr and Mrs C's home could not be accommodated when the family were absent to ensure disruption to the family was minimised. If it was impossible for the Council to arrange works at short notice following the letter of 14 February 2007, that should have been conveyed to Mrs C preferably by letter but at least by email or by telephone. I regard this complaint as centring on a breakdown of communication over whether it was possible to accommodate the works at a time that would suit the family, rather than that the works, when implemented, were more disruptive than they should have been. On balance, I partially uphold the complaint to the extent that the Council did not immediately let Mrs C know that repairs could not be undertaken when the family were absent.

(b) Recommendation

29. The Ombudsman recommends that the Council review the arrangements for carrying out repairs where there is a risk to the health of a tenant with a known medical condition.

(c) Although dehumidifiers were supplied by the Council to dry out the house, Mrs C was not reimbursed for additional electricity consumed

30. Mrs C informed me that the operative who called with the thermal imaging camera on 26 January 2007 advised her to ask for dehumidifiers (paragraph 14). Mrs C stated that she telephoned Officer 1 on 29 January 2007. She informed Officer 1 of what the operative had said, and informed me that two dehumidifiers were delivered within an hour. The person who delivered them forewarned her that the dehumidifiers consumed a lot of electricity and that it would be advisable for her to take electricity meter readings both before installation and immediately after they were removed to confirm additional consumption. Mrs C then took an immediate reading.

31. Mrs C wrote to the Area Housing Manager on 14 February 2007 seeking a cheque from the Council to cover her electricity, fuel oil and wallpaper. There had been no response. She had, therefore, informed the local Housing Manager by email of 3 April 2007 that she wished this information included in her claim for compensation to be passed on to the Council's insurers. The then local Housing Manager responded by email on 5 April 2007, apologising for not having contacted Mrs C following her letter of 14 February 2007. She confirmed that she had forwarded Mrs C's email to the Council's insurance

section. Mrs C subsequently received information from her electrical supply company of the electricity consumed during the period when the dehumidifiers were present. She submitted that direct to the Council's insurers.

32. The Council's records indicate that two dehumidifiers were provided in terms of a works order issued on Monday 29 January 2007. At interview neither Officer 1 nor Officer 2 was able to confirm the period of time the dehumidifiers were in use or the date they were uplifted from Mr and Mrs C's home.

33. The Council's Chief Executive informed me that it is not Council policy to provide reimbursement for electricity consumed when the Council install dehumidifiers at the request of tenants. Officer 1 and Officer 2, however, clarified to me at interview that if a tenant suffered major flooding, and the Council supplied dehumidifiers to assist with bringing his or her home back to a habitable state, then the Council would make a contribution to running costs. Mrs C had suggested that she wanted the cost of running the dehumidifiers considered with her claim. As such, reimbursement by the Council for these costs was not discussed nor considered appropriate. Mrs C's claim for compensation included the costs of electricity and oil used and the renewal of the laminate floor covering. This claim was referred to, and considered by, the Council's insurers.

34. A loss adjustor from the Council's insurers visited Mrs C's home. Following his visit, he made an offer of £100 on behalf of the insurers in full and final settlement of the entire claim on 31 August 2007. He stated that:

'... We have derived this figure on the basis that no fuel cost increase can be found from the information provided whilst the amount offered for the flooring is for the damaged flooring only as opposed to the whole laminate floor as claimed.'

35. This offer was subsequently declined by Mr and Mrs C.

(c) Conclusion

36. Dehumidifiers can be obtained privately by tenants and run without recourse to the Council. If the Council as landlord accepted responsibility for supplying the dehumidifiers, it is a reasonable assumption to make that they would specifically confirm their current policy with regard to responsibility for the running costs of the dehumidifiers. I have seen no evidence suggesting a prior disclaimer in this instance.

37. While the Council clearly have the discretion to supply and not to bear the running costs, that position, as a matter of good practice, should have been clearly set out in writing to their tenant. I do not consider that it was helpful for the running costs to be grouped with the claim for negligence in respect of damage to the laminate flooring, but that was Mrs C's choice. I partially uphold this complaint on the basis that there is no evidence before me to suggest that responsibility for the running costs of the dehumidifiers was clarified at the outset. However, the Council's insurers considered the information provided by Mrs C in support of her claim, including the costs of running the dehumidifiers, before making their offer of settlement.

(c) Recommendation

38. The Ombudsman recommends that the Council review the adequacy of the advice given on the Council's policy with regard to reimbursement when they supply dehumidifiers to tenants

(d) Council workmen attending to carry out repairs, extensively damaged Mrs C's flooring and, thereafter, misrepresented the extent of that damage to the Council's insurers

39. According to Mrs C, before the work on replacing the internal living room walls commenced, she and her husband removed two rows of laminated flooring which had been damaged by mould. She stated that the workmen who removed the existing plasterboard commenced doing so without dust sheets until the Council's Supervising Technical Officer (Officer 3) intervened. According to Mrs C, Officer 3 was angry with the workmen that they had not laid dust sheets and told them to put them down straight away. However, by that time, damage had been done to the unprotected remaining flooring which Mrs C maintained had been badly scratched by the plaster. Mrs C retained the damaged floorboards. She intimated to the Council on 3 April 2007 that she was holding their workmen responsible for the damage. The Council referred the matter to their insurers. On 21 August 2007, she supplied the insurers with a quote of £342 for new flooring plus fitting costs of £245.

40. At interview, Officer 1 and Officer 2 informed me that prior to the works starting, Mr and Mrs C had removed a dado rail and skirting boards in the livingroom and two rows of laminate flooring strips adjacent to the external wall. Officer 1 and Officer 2 had attended on the morning that works began on the external livingroom wall and assured me that covers were in place. Officer 2

recalled that when the livingroom window was removed from the frame to allow the new sill to be installed, the window had accidentally fallen to the floor and the cover had not prevented limited damage to a small section of flooring. For her part Mrs C said that she put covers on her furniture, and that it was the Council's responsibility to place dust sheets for the floor. She was present all the time and was adamant that no window fell on her flooring. The scratches on the flooring were not limited to one impact spot.

41. Mrs C's claim included renewal of the laminate floor covering in the livingroom which the Council referred to their insurers. One of the insurers' claims inspectors visited Mrs C and inspected the laminated flooring. The relevant part of his contemporary report, supplied in an email to Officer 1 on 24 September 2008, states:

'... During the replacement of the windows the claimant alleges that her laminate floor was damaged and she has consequently removed two strips in depth adjacent to the window. It is also claimed that the workmen damaged the said flooring by standing on works debris in the room scraping the floor. Scrapes were visible at the time of our visit although in front of the fireplace not at the window area.'

42. On 31 August 2007, the claims inspector wrote to Mrs C stating that, having reviewed the documentation in support of her claim he was prepared to offer £100 in full and final settlement. He stated that the amount offered for the flooring was for the damaged flooring only as opposed to the whole laminate floor as claimed. Mr and Mrs C declined the offer.

(d) Conclusion

43. Mrs C's case for restitution in respect of the flooring is simple. The Council's workmen failed to protect the flooring with dust sheets before the existing plasterboard was removed and replaced and the unprotected laminate flooring was damaged. The Council's insurers visited, inspected the damage, considered Mrs C's contention that workmen had been negligent, and decided to make an offer. While Mr and Mrs C were no doubt disappointed by the amount of that offer, I see no maladministration in the handling of that part of the claim by the Council or their insurers. I am unable to uphold this complaint.

44. 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
Mr C	The complainant's husband
The Council	West Lothian Council
The Director	The Council's Director of Customer and Support Services
Officer 1	The Council's Capital Programme Liaison Officer
Officer 2	The Council's District Technical Officer
Officer 3	The Council's Technical Officer