

North Tyneside Council Report to Cabinet 10 August 2015

ITEM 6(f)

**Report of the Local
Government
Ombudsman**

Portfolio(s): Housing and Transport	Cabinet Member(s): Councillor John Harrison
Report from Service Area: Law and Governance	
Responsible Officer: Vivienne Geary, Head of Law and Governance	Tel: 0191 643 5339
Wards affected: All	

PART 1

1.1 Purpose:

Cabinet is requested to note:

- i. the content of the report of the Local Government Ombudsman (LGO) dated 8 June 2015, and
- ii. the finding of maladministration causing injustice as a result of the Authority failing to keep proper records relating to work being carried out at a resident's property after she was granted an improvement loan,
- iii. the recommendations made by the LGO investigator, and
- iv. actions taken to address those recommendations as set out in paragraph 1.5.4 of the report

1.2 Recommendation(s):

It is recommended that Cabinet:

- (1) note the findings and recommendations of the LGO as described in this report and set out in the LGO's report at Appendix 1; and
- (2) note the actions proposed to comply with the recommendations of the LGO's report.

1.3 Forward Plan:

Twenty eight days notice of this report has been given and it first appeared on the Forward Plan that was published on 29 June 2015.

1.4 Council Plan and Policy Framework

This report relates to the following priority in the 2014/18 Our North Tyneside Plan:

- (1) Our Places will have more quality affordable homes.

1.5 Information:

1.5.1 Background

The details of this complaint and the findings of the LGO investigator are set out in Appendix 1.

By way of background the following information is provided. The Authority offers financial support to home owners to assist them in bringing their homes up to a decent standard. The purpose of the financial support is to improve the standards of housing in the Authority's area. The type of financial assistance or loan offered will depend on the circumstances of the household.

In September 2012 Ms X applied to the Authority for a home improvement loan. The loan was approved in April 2013 for the following works to be undertaken:

- New external doors;
- New windows;
- New bathroom suite and electric shower above the bath;
- Replace downstairs toilet;
- Repair any defective electrics; and
- Replace the kitchen.

Ms X has in her complaint said the Council arranged for contractors to quote for the work detailed above. However, Officers have confirmed that Ms X chose the contractors who provided quotes. The Authority approved the contractor (chosen by Ms X) who provided the cheapest quote for the work. The Authority wrote to Ms X on 9 July 2013 to say work could go ahead using the approved contractor. The letter said:

"It is your responsibility to ensure that the contractor engaged will give any necessary guarantees against future defects arising from faulty materials or poor workmanship. Inspections made by Officers of this department are to ensure that there is no departure from the Schedule upon which the approval is based; but in no circumstance should these inspections or payment of Loan be interpreted as guaranteeing the builders work."

On 22 August 2013 the plans for the kitchen were changed to include a breakfast bar, three extra wall cupboards and an extra floor level cupboard. The Authority believed in changing the plan Ms X agreed to keep her own oven, hob and extractor in order to meet the extra cost. Officers have advised that the decision was made between the contractors and Ms X. Ms X says she believed she was still getting a new hob, oven and extractor fan.

The contractor finished the work to the kitchen in early September 2013, however Ms X was unhappy as she considered that some work was still outstanding. An officer visited Ms X's property on 24 October 2013 with the contractor. The Officer's notes say "all work carried out." The Officer asked Ms X to confirm in writing that she was happy for the contractor to be paid. The Officer then wrote out a statement in his notebook and asked Ms X to sign it.

This is not normal Authority practice and the standard forms for the signing off of the works should have been completed. The Officer has indicated that he had none of the standard forms to hand and was keen to resolve the dispute between Ms X and the contractor so used his notebook instead.

The statement drafted in the notebook said: *"I am happy to pay the contractor... the full amount as shown on invoice [sic] for work carried out for kitchen"*. The Officer says the invoice shown to Ms X at the time was dated 20 August 2013. The invoice was for £4800 and read: *"Interim payment. Supply and fit new kitchen to client's choice."*

Ms X denies signing any paperwork that indicated she was happy for the contractor to be paid for the kitchen. Ms X has said that she was asked to sign a statement regarding payment for some electrical work but she did not agree to pay for works to the kitchen as some work was still outstanding.

Following this the Authority received a complaint from Ms X about work carried out at the property. Ms X said:

- Broken tiles in her kitchen had been repaired using silicone rather than replaced;
- Her fridge was broken; and
- Carpets had not been fitted correctly.

The Authority responded to Ms X on 4 November 2013 and stated that it was *"not appropriate for you to continue to complain that this work has not been carried out to your requirements when you have previously agreed it has."* Ms X replied to the letter disputing this was the case. In this response to Ms X Officers were referring to the signed statement taken on 24 October 2013 referred to above.

The Authority subsequently asked the contractor for a breakdown of costs involved in fitting the kitchen. The contractor responded on 4 December 2013 but only provided a total cost of £4448. Officers visited Ms X in January 2014 to view the work to her kitchen and then wrote to Ms X setting out outstanding works to be carried out by the contractor, and that the Authority would pay for kitchen flooring but recommended the work should be carried out once other work to the kitchen was finished.

On 27 March 2014 Officers e-mailed Ms X to advise her that a different contractor had been requested to complete the work in the kitchen. Ms X was advised that an estimate was still awaited *"but this will not be part of the loan and will be met by ourselves (if the estimate is reasonable)."*

Ms X and the contractor (who was due to provide the estimate) subsequently had a dispute and so the work was not completed.

On 18 July 2014 the Authority invited Ms X to obtain estimates from new contractors but to date has not received any further estimate.

In relation to her complaint to the LGO Ms X has said that the Authority failed to complete work on her kitchen after she was granted an improvement loan. Ms X says the outstanding issues in her kitchen are:

- a hole in a cupboard with electrical wire exposed;
- an electrical socket under sink has not been removed;
- the Boiler remains blocked in;
- she did not receive a new oven, hob and extractor fan;
- she has still not received new flooring;
- the kitchen tiles have not been fixed; and
- the kitchen worktop is still not properly supported.

1.5.2 Findings

The findings of the LGO were as follows:

“Under the terms of the loan agreement Ms X is responsible for managing contractors carrying out work at her property. The Council’s role is to release money once it is satisfied work has been completed satisfactorily and to plan. However the Council’s letter to Ms X on 9 July 2013 does not make this clear.

The relationship between Ms X, the Council and the contractor has become confused. Whilst this is in part due to the Council wishing to resolve disputes between Ms X and the contractor it has also caused confusion about each party’s responsibilities.

The contractor contacted the Council regarding amended plans to the kitchen. The Council agreed to these without checking whether Ms X agreed. This was fault. Furthermore this conversation between the Council and the contractor was never recorded. The Council says Ms X chose to keep her own appliances but there is no evidence to support this.

There is uncertainty around the piece of paper Ms X signed on 24 October 2013. The form of wording used combined with the lack of detail on the contractor’s invoice leaves uncertainty as to what Ms X was being asked to agree to. It is not clear whether it even relates to the invoice of 20 August.

The failure to use the Council’s standard form and the decision to use a handwritten note places the Ombudsman in a difficult position in reaching a view on whether Ms X understood what she was signing. At the very least it seems likely that Ms X did not understand what she was signing and believed more work would be carried out based on the fact she complained shortly after.

The Council has also failed to get a proper breakdown of costs from the contractor regarding the costs of the kitchen. The information provided by the contractors does not show a full breakdown of costs for the kitchen. Furthermore, there is a discrepancy between the amount set out in the invoice dated 20 August 2013 (£4800) and the breakdown of cost provided in December 2013 (£4448).

As a result there is uncertainty as to the actual cost of Ms X’s kitchen and this has a knock on effect on the amount of loan that was available to complete the work.

The Council has made efforts to resolve the issues Ms X has complained about and offered to pay for some work out of its own budget. In order to remedy the fault the Council should pay Ms X an amount that will allow her to have the work completed.

I must also take account of the fact that the contractor is ultimately responsible for the quality and standard of work carried out even if this was not made clear to Ms X. Therefore I cannot hold the Council responsible for delays or advice the contractor may have given Ms X about the kitchen appliances.”

1.5.3 Recommendations

The LGO investigator has found maladministration and injustice against the Authority and has made the following recommendations, as set out under paragraphs 39 to 43 of Appendix 1:

1. The Authority should pay Ms X £750. The investigator has assessed that this should be sufficient to cover the cost of the outstanding work in the kitchen. The Authority should pay this to Ms X and she should arrange for her own contractor to complete the work. This should be paid within two months of the final decision; and
2. The Authority should also take the following action to improve its processes, these changes should be completed within three months of the LGO final decision:
 - a. Consider the wording of documents sent to homeowners making it clear that the Authority is not acting as a clerk of works;
 - b. Remind staff that they must use correct paperwork when getting homeowners to approve payment for works;
 - c. Improve record keeping within the department to clearly record conversations with homeowners and contractors; and
 - d. Ensure contractors provide a detailed breakdown of costs showing materials and labour charges.

1.5.4 Actions taken in response

The following actions have been taken in response to the LGO's recommendations:

1. The wording in letters to clients has been changed emphasising that the Authority does not act as a clerk of works;
2. Officers have been instructed to only use the appropriate form when seeking confirmation that works are completed. The contractors invoice number is recorded on the form and the homeowners must sign the form to release payment;
3. Officers have been instructed to record all conversations with clients and contractors in the appropriate file; and
4. Contractors will be asked to provide a breakdown of the costs of materials and labour wherever possible.
5. A payment of £750 has been issued to Ms X to cover the outstanding works.

1.5.5 Officer Comments

The Authority has tried to work with Ms X to resolve all of the issues regarding her complaint. Although the outcome of the LGO investigations is accepted, Officers highlight that several opportunities were provided to Ms X to resolve the complaint prior to referral to the LGO. In particular these included:

- The offer to carry out snagging and remedial works.
- A financial facility for Ms X to pay for new kitchen flooring using the loan contingency fund available.

Officers consider that throughout the course of this complaint they have tried to mediate in relation to disputes arising between Ms X and the contractors working on her home. In retrospect, doing so has raised expectation and clouded responsibilities, which has given rise to the issues detailed in the Ombudsman's findings.

1.6 Decision options:

The following decision options are available for consideration by Cabinet:

Option 1

Cabinet is requested to note the findings of the report (Appendix 1), its recommendations and actions taken to address the LGO's recommendations.

Option 1 is the recommended option.

1.7 Reasons for recommended option:

Not applicable

1.8 Appendices:

Appendix 1: The Ombudsman's final decision report, date 8 June 2014 Ref 14 009 419

1.9 Contact officers:

Joanne Lee, Public Protection Manager tel. (0191) 643 6901

Colin MacDonald, Senior Manager Technical and Regulatory Services tel. (0191) 643 6620

Yvette Monaghan, Customer, Member and Governor Services Manager, tel. (0191) 643 5361

Alison Campbell, Finance Business Manager, tel. (0191) 643 7038

1.10 Background information:

The following background papers/information have been used in the compilation of this report and are available at the office of the author:

(1) Appendix 1: The Ombudsman's final decision report, date 8 June 2015

PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING

2.1 Finance and other resources

The compensation of £750, has been met from the Environment, Leisure and Housing budget and has been paid directly to the complainant as set out in the recommendations of the LGO.

2.2 Legal

Where the LGO reports that injustice has been caused to a person aggrieved in consequence of maladministration, the report must be laid before the Authority who has a duty to consider the report and, within the period of three months beginning with the date on which the report was received, or such longer period as the LGO may agree in writing, to notify the LGO of the action which the Authority has taken or proposes to take.

2.3 Consultation/community engagement

There are no consultation/community engagement implications arising from this report.

2.4 Human rights

There are no human rights implications arising as a result of this report.

2.5 Equalities and diversity

There are no equalities and diversity implications arising as a result of this report.

2.6 Risk management

There are no risk management implications arising as a result of this report.

2.7 Crime and disorder

There are no crime and disorder implications arising as a result of this report.

2.8 Environment and sustainability

There are no environment and sustainability implications arising as a result of this report.

PART 3 - SIGN OFF

- Deputy Chief Executive
- Head of Service
- Mayor/Cabinet Member(s)
- Chief Finance Officer
- Monitoring Officer
- Head of Corporate Strategy