

Scottish Parliament Region: Central Scotland

Case 200600950: South Lanarkshire Council

Summary of Investigation

Category

Local government: common repairs

Overview

An MSP complained on behalf of his constituent, Mrs C, about the replacement of a mutual path. In particular, Mrs C alleged that there was no proper consultation in advance of the works being carried out; her suggested alternative was not taken into account; works were inadequately completed; neighbours had similar works completed more cheaply; and South Lanarkshire Council (the Council) failed to adhere to an agreement to resolve her complaint.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to consult properly with Mrs C in advance of the works being carried out (*not upheld*);
- (b) the Council disregarded Mrs C's alternative suggestion (*no finding*);
- (c) works were completed inadequately (*not upheld*);
- (d) neighbours had similar works completed more cheaply (*not upheld*); and
- (e) the Council failed to adhere to an agreement to resolve Mrs C's complaint (*not upheld*).

Redress and recommendations

The Ombudsman has no recommendations to make

Main Investigation Report

Introduction

1. On 21 June 2006, the Ombudsman received a complaint from Mrs C's MSP (the MSP). He said that Mrs C was the owner of number 39 X Street, a lower flat in a small group of four. Her upstairs neighbour at number 37, a Council tenant, requested that South Lanarkshire Council (the Council) replace the footpath, which was mutual to the two properties, because of its condition. The MSP complained that, in reaching the decision to replace the path, the Council did not properly consult with Mrs C. He said that Mrs C told housing inspectors that she could not afford the works and suggested an alternative and that they agreed to look into the matter but she was then surprised to find that works had been carried out on 8 October 2004. The MSP said that Mrs C believed that the work had been carried out inadequately and was further aggrieved because her neighbour at number 35 X Street, whose circumstances were almost identical, had had her path replaced for £200 less. The MSP said that Mrs C then pursued the matter with the Executive Director, Housing and Technical Resources (the Executive Director), and she was of the view that they had reached agreement on a resolution to the complaint but that the Executive Director failed to comply with the agreement.

2. The complaints from Mrs C which I have investigated are that:
- (a) the Council failed to consult properly with Mrs C in advance of the works being carried out;
 - (b) the Council disregarded Mrs C's alternative suggestion;
 - (c) works were completed inadequately;
 - (d) neighbours had similar works completed more cheaply; and
 - (e) the Council failed to adhere to an agreement to resolve Mrs C's complaint.

Investigation

3. The investigation of this complaint involved obtaining and reading all the relevant documentation, including correspondence between the MSP, Mrs C and the Council. I have also had sight of the Council's procedures for the administration of common repairs; an extract from the Common Repair Statute in the title deeds of houses sold by the Council (the Extract); a specification for the works completed; and photographs provided by both the Council and Mrs C. On 4 October 2006 a written enquiry was made of the Council and their reply was received on 16 November 2006.

4. While I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. The MSP who made the complaint and the Council were given an opportunity to comment on a draft of this report.

(a) The Council failed to consult properly with Mrs C in advance of the works being carried out and (b) the Council disregarded Mrs C's alternative suggestion

5. Mrs C said that when the Council wrote to her about their plans to replace the path she shared with the tenant at number 37 X Street, they failed to consult with her properly. She was aggrieved that she was obliged to contribute to the cost when she said that decisions were made without reference to her.

6. From the evidence available to me, I am aware that on 18 June 2004 the Council wrote to Mrs C, advising that works to the mutual footpath were necessary for the proper maintenance of the property. They provided details of the works they intended to carry out and the associated costs (and Mrs C's share). They pointed out that, while the rates applicable were taken from a contract won in competitive tender, Mrs C had the opportunity to obtain an alternative quote within 15 days but that, if they did not hear further from her, the work would be carried out. Mrs C said that after receiving this letter she spoke with two housing inspectors and told them that she could not afford the work and that she did not want the path. Mrs C maintained that she suggested an alternative of slabs and chips (as opposed to the bitumen cover proposed) which, she said she was told, would be considered. However, when she went out on the morning of 8 October 2004, she came back to find that the work had been done.

7. In their response to me of 16 November 2006, the Council said that after they had written to Mrs C on 18 June 2004, they heard nothing further. They said that Mrs C did not provide an alternative quotation as invited, nor did she question the necessity for the work. They, therefore, instructed the work to be carried out and a further letter was sent on 20 July 2004 advising her of this and of her share of the costs. (I have been provided with a copy of this letter.) After my enquiry of the Council was made (paragraph 3), on 8 October 2006, Mrs C provided me with a copy of a letter dated 22 July 2004 addressed to the Council saying that as she had insufficient funds, she did not accept the Council's proposal. The Council advised me that they had no record of receiving this letter, despite re-checking during the process of this investigation. Nor did they

have a record of any conversation or telephone call between Mrs C and any of their inspectors regarding alternative work. Neither of the inspectors mentioned by Mrs C recalled such a conversation.

(a) Conclusion

8. The Council advised me (in their response of 16 November 2006) that in accordance with the Extract contained in their Title Deeds, owner occupiers have an obligation to meet a proportion of the costs associated with any repairs to common areas. Furthermore, it is at the Council's sole discretion whether works are deemed to be necessary. Mrs C does not dispute this. The Council maintained that the condition of the path concerned was such that works were necessary. I have seen copies of photographs of the path (paragraph 3) both before and after the works and I do not dispute their view. I have also had sight of the Extract giving the Council authority to complete such work they believe is required and the responsibility of owners, like Mrs C, to bear a proportion of the costs. The Council wrote to Mrs C advising her that work was required (paragraph 6) and of her opportunity to provide another quotation. Whilst I do not doubt that Mrs C wrote on 22 July 2004 (paragraph 7), there is no evidence that the Council received this letter. This letter referred to her inability to pay, it did not suggest an alternative tender and although Mrs C maintained that she discussed alternatives with housing inspectors, those named by her have no record or recollection of such a conversation.

9. In all the circumstances, while I am unable to reconcile the varying recollections and information presented to me, it is clear that Mrs C was consulted in advance of the works by letter of 18 June 2004 and given the opportunity to provide an alternative tender. She did not do so. Furthermore, it was at the Council's sole discretion to determine whether such works were required and it was Mrs C's responsibility to contribute to part of the costs. She does not dispute this and, this being the case, I am unable to uphold this aspect of the complaint.

(b) Conclusion

10. Although Mrs C said that the Council disregarded her alternative suggestion (paragraph 6), and while I do not doubt her view that such a conversation took place, or that she sent a letter on 22 July 2004, I can find no corroboration. In the circumstances, I am unable to make a finding on this aspect of the complaint.

(c) Works were completed inadequately

11. It was Mrs C's view that the works to the path were substandard and she said that it began to break up within six months. She provided photographs which she believed supported her view. In relation to this the Council advised me, in their response of 16 November 2006, that after the completion of the work they received no report of unsatisfactory workmanship. However, on 22 January 2006 Mrs C had written making such a complaint and, as a result, an inspection of the path was carried out and two 'minor patch repairs' were completed. The Council said they were satisfied with the quality of the work and they provided photographs in support of their contention.

(c) Conclusion

12. There is no evidence that Mrs C complained about the standard of workmanship after the path was completed in October 2004 (paragraph 6). A complaint was made over a year later and the Council attended to her concerns. Accordingly I do not uphold this complaint.

(d) Neighbours had similar works completed more cheaply

13. Mrs C's share of the costs of the work was £551.51. This was money Mrs C said she could ill afford and which she struggled to pay. However, she learned later that her neighbour at number 35 X Street had been in much the same situation with a path, only she was an owner living above a council tenant, but, in that case, works were to cost about £200 less. She considered this to be an unfair anomaly. In replying to this aspect of the complaint, the Council said that the works to the neighbour's path have not been carried out and that Mrs C's concerns are based on an estimate provided by the neighbour. The Council maintained their opinion that Mrs C's costs were reasonable and that if and when works are carried out at the neighbour's path, the costs will undoubtedly be comparable, pro rata, with the cost charged to Mrs C.

(d) Conclusion

14. I am unable to uphold this complaint as work to Mrs C's neighbour's path, which she has used as a comparison, have not been carried out.

(e) The Council failed to adhere to an agreement to resolve Mrs C's complaint

15. Mrs C said that it was a struggle for her to pay the £550.51 and, therefore, she made one payment of £455.51, with the balance to be paid in instalments. However, on 7 June 2006 the Executive Director and Mrs C spoke on the

telephone and Mrs C said that it was agreed that the Council would waive the £100 balance due; re-instate her gate which she said had been damaged during the work and refund approximately £79 so that she could repair another path which was in her ownership.

16. In their response (paragraph 3) the Council said that, while they had no contemporaneous note of the conversation referred to above (paragraph 15), the Executive Director concerned had written to Mrs C on 14 June 2006 confirming his recollection of the conversation. Amongst other things, the letter, which I have seen, said that he had instructed the balance of her bill to be waived and that if her gate had been damaged as a consequence of the Council's negligence, it would be repaired. There was no reference to the sum of £79 being refunded to Mrs C. The Council said that it is their view that they have kept their agreement with Mrs C.

(e) Conclusion

17. Mrs C feels that the Council have reneged on their agreement with her but the evidence does not bear this out. In all the circumstances, I am unable to uphold the complaint.

20 June 2007

Explanation of abbreviations used

Mrs C	The complainant
The MSP	The complainant's MSP
The Council	South Lanarkshire Council
The Executive Director	Executive Director, Housing and Technical Resources
The Extract	An extract from the Common Repair Statute in the title deeds of houses sold by the Council