

Case 200601406: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Roads & Transport; Maintenance and repair of roads

Overview

Ms C said that she had to replace the shock absorbers on her car following a journey around Edinburgh when she had to negotiate a number of bumps and potholes. She raised a claim for compensation with The City of Edinburgh Council (the Council) and also raised the general issue of the condition of the city's roads with them. Ms C was unhappy that her claim was refused and with the response she had received to her concerns about road maintenance.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) did not correctly handle Ms C's claim for compensation (*upheld*); and
- (b) did not respond appropriately to her concerns (*upheld*).

Redress and recommendation

The Ombudsman recommends that the Council:

- (i) pass a copy of this report and the information provided by them relating to location X and location Y to their Claims Handlers for re-consideration of the claim;
- (ii) apologise to Ms C for the delays in processing her claim;
- (iii) ensure that all organisations working on their behalf are aware of the Council's complaints procedure, and the Ombudsman's role within this, and are given guidance on how to respond if complaints are made relating to work undertaken for the Council;
- (iv) review actions taken in response to previous reports and ensure that these would also remedy the problems identified in this report or undertake appropriate action to do so; and
- (v) apologise to Ms C for the faults in the complaint handling identified in this report.

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

Main Investigation Report

Introduction

1. On 17 November 2005 Ms C wrote to The City of Edinburgh Council (the Council) to say that she felt the shock absorbers in her car had failed as a result of the state of the city's roads and, in particular, directly caused by negotiating a series of holes and speed bumps on 16 November 2005. On 19 January 2006 Ms C was sent an acknowledgement and a claim form. A response to her general concern about road maintenance and the position of speed bumps was sent to her on 24 January 2006 and on 30 January 2006 a letter confirmed that the Council had received a completed claim form and a report would be sent to their Claims Handling Agent (the Claims Handlers).¹

2. Ms C wrote again about road maintenance on 13 April 2006 and received a letter dated 20 April 2006 informing her that her claim form had been sent to the Claims Handlers and all further correspondence about this aspect of her complaint should be with them. The Council wrote in more detail on 4 July 2006 about her concerns on road maintenance generally. On 24 July 2006 the Claims Handlers wrote to say they were unable to offer her compensation, as they considered the Council operated a reasonable inspection system to identify defects and none had been seen at the last inspection of the location.

3. Ms C responded to the Claims Handlers on 30 July 2006 and asked for details of the relevant Ombudsman. On 10 August 2006 the Claims Handlers said they remained unable to offer her compensation and advised her that the Council was regulated by the 'Local Authority's Ombudsman' and all details were in the public domain (see paragraph 29).

4. I informed Ms C that I would not be able to adjudicate on the question of liability as this was a legal issue which ultimately only the courts could rule on but that I could consider the Council's administration of her claim and their response to her concerns. The complaints from Ms C which I have investigated are that the Council:

- (a) did not correctly handle Ms C's claim for compensation; and
- (b) did not respond appropriately to her concerns.

¹ The Council use an external firm to process accident claims.

Investigation

5. In investigating this complaint I obtained the correspondence between Ms C and the Council and had sight of documentation relating to the claim for compensation. I also made specific enquiries of the Council relating to their roads policies and inspections of the locations involved.

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

(a) The Council did not correctly handle Ms C's claim for compensation

7. In her letter of 17 November 2005, Ms C described a journey through a number of locations in Edinburgh. She said that, throughout the journey, she negotiated a series of bumps and potholes and, in particular, she named three separate locations (X, Y and Z). At location Z she said the car 'finally gave in'. She was later informed that the shock absorbers were damaged beyond repair. As stated in paragraph 2, Ms C also complained in general about the state of the roads and referred to difficulty negotiating speed bumps².

8. In her claim form of 20 January 2006, next to 'detail of location of incident', Ms C listed locations X, Y and Z. Under description of incident, Ms C referred to driving through all three locations and next to the heading 'detail of loss or damage' she wrote:

'Shock absorbers had to be replaced as dreadful clanging ensued after the [location Z] encounter with the badly inverted (drain?) covers.'

9. An accident inspection report was completed by a Council officer (Officer 1) on 9 February 2006. The typed locations given at the top of the report were locations X and Y but these had been deleted and location Z entered on the form. The report said that location Z had been last inspected on foot on 27 April 2005 and had had a mobile³ inspection on 14 November 2005. Officer 1 described a pothole in the gully and said that this was potholed regularly and had been infilled many times.

10. On 20 April 2006 the Council wrote to Ms C informing her that the report and correspondence would be passed to the Claims Handlers, who would

² These matters are dealt with under heading (b).

³ By an officer in a car

respond to her within 21 days. The report was forwarded to the Claims Handlers on 25 April 2006. On 13 June 2006 the Claims Handlers asked for further information about the 'repeated infilling' and when this was last undertaken prior to the accident. Officer 1 faxed a response on 17 July 2006, which said that there were no records of temporary repairs prior to the date of the accident. Officer 1 also faxed to the Claims Handlers a copy of a defects report that had been completed for location Z following Ms C's letter of 17 November 2005 (see paragraph 1). This said that a potholed manhole surround had been made safe on 21 November 2005 and a permanent repair made on 8 March 2006.

11. On 24 July 2006 the Claims Handlers wrote to inform Ms C that the Council would only offer compensation if legally obliged to and that Ms C had to demonstrate fault. As at the last inspection before this incident no defects were discovered and it was not known that a defect had since developed, they did not consider that the Council were legally responsible.

12. In response to a further letter of enquiry from Ms C, the Claims Handlers wrote on 10 August 2006 and said that the last scheduled inspection had been carried out on 14 November 2005. No defects had been reported.

13. In response to my questions, the Council provided copies of their roads' inspection and assessments procedures. According to this, major routes received a weekly mobile inspection and a standard form was completed every week. Locations Z and Y were on such a route but not location X. They also provided copies of the weekly mobile inspection route, which included location Z, taken between 17 April 2005 and 14 November 2005. For location Y they provided copies of walkabout inspections, on 19 April and 1 June 2005, and a log of repairs that had been noted on the Clarence system on 10 November 2005. The Council confirmed that, following internal discussions in April 2005, they had decided to concentrate their inspection resources on identifying all hazardous defects over a short period of time. As a result of this, mobile inspections were suspended in the city centre and north areas, in favour of an intensive programme of walking inspections. Mobile inspections continued elsewhere. Location Y was in the area where mobile inspections had been suspended.

14. For location Z, the last three reports prior to the incident indicated that resurfacing work was being undertaken in the area. There was no note of a

pothole in the gully. The report of 14 November 2005 stated: 'work ongoing, resurfacing'. According to the defects reporting system, potholes were subsequently reported by Officer 1 on 8 February 2006, 29 March 2006 and 18 April 2006.

15. Location X had received an annual walking inspection on 27 October 2005 and a defect noted. This had been repaired on 3 November 2005.

16. The walkabout inspections covering location Y showed that on 19 April 2005 the roadway was said to be in a category 3 'fair' condition. The inspection of 1 June 2005 noted a category 2 'good'. The daily order form for the defects response team of 10 November 2005 showed a number of defects requiring to be made safe in the vicinity of location Y. An accompanying road inspection report said that this had been rated as category 4 'poor'.

17. The Council accepted that only location Z was inspected as a result of Ms C's claims for compensation on 9 February 2006 and said that was because it was the location identified where damage had been caused. They said that the other locations were copied to Officer 1 and, as stated to Ms C on 24 January 2006, repairs were carried out as necessary.

(a) Conclusion

18. It is not the role of this office to decide on questions of liability. The Council correctly provided a claims form and forwarded Ms C's form to the Claims Handlers. However, I am concerned at the length of time it took to provide Ms C with a form; she was only sent one on 19 January 2006, despite having made her initial concerns known in mid-November (see paragraph 1). Although an inspection of location Z quickly followed the receipt of Ms C's completed complaint because of the initial delay, this occurred nearly three months after the incident. Also, no explanation has been given for the delay between 9 February 2006 and the brief report being sent to the Claims Handlers on 25 April 2006.

19. I am also concerned at the quality of the information sent to the Claims Handlers. This only included information about one of the locations. Ms C had stated clearly she felt that potholes on all three locations had contributed to the damage caused. Whether this would have been accepted by the Claims Handlers is not known but this information and the relevant reports should have

been passed to them for consideration. In the circumstances, I uphold this complaint.

(a) *Recommendation*

20. The Ombudsman recommends that the Council:

- (i) pass a copy of this report and the information provided by them relating to location X and location Y to their Claims Handlers for re-consideration of the claim; and
- (ii) apologise to Ms C for the delays in processing her claim.

(b) The Council did not respond appropriately to her concerns

21. Ms C's letter of 17 November 2005 raised general concerns about road maintenance throughout the city of Edinburgh. The Head of Transport replied to this on 24 January 2006. He accepted that there had been 'a backlog of essential maintenance' as a result of 'funding cutbacks'. However, the letter continued:

'Our roads are regularly inspected, and those found to be in the poorest condition are assessed for inclusion in a prioritised list for major renewal or reconstructive work. The defects found in the remaining roads are added to a programme of routine repairs. Any defect which comes to our attention and which could be considered to compromise public safety is made safe as a matter of top priority.'

22. The Head of Transport said that speed bumps were constructed in line with Scottish Executive⁴ Guidance. This had changed and newer bumps were lower. The Council had remedied some bumps which had not been in line with their specifications and he said if Ms C informed him of any speed bumps which caused her particular concern he would have these tested.

23. In her letter of 13 April 2006 Ms C reiterated her concerns about road maintenance. She gave details of some locations where she felt speed bumps were of concern and noted she had had no response to her claim form.

24. An area road manager wrote to Ms C on 4 July 2006. He apologised for the delay in response and replied to her particular concerns about the condition

⁴ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

of location Z and the speed bumps, giving details of resurfacing work. Ms C was given the name of a Council officer and a number to telephone if she had any further concerns. She was informed that her claim form had been forwarded to the Claims Handlers in January 2006. In their response to my enquiries, the Council said this appeared to be an error.

25. Following their decision not to award her compensation, Ms C wrote to the Claims Handlers on 30 July 2006 and asked for information for the relevant Ombudsman. She was informed in their letter of 10 August 2006 that this request had been noted and that the details for the 'Local Authority's Ombudsman' was in the public domain.

(b) Conclusion

26. The replies to Ms C of 24 January 2006 and 4 July 2006 did seek to respond to her concerns about the road network and the Council were correct to treat these as matters raised separately from her claim for compensation. However, there was considerable delay in both responses. The first letter did contain an apology and an explanation for this (a backlog over the winter period) but no explanation or apology was given in the second letter nor did the Council say what action had been taken to prevent such a delay re-occurring. I was also concerned to note that Ms C was informed the department had passed her claim to the Claims Handlers in January 2006 which the Council accept was not the case (see paragraph 24).

27. I have noted that the Council's current complaint procedure provides that the final response should be from the Head of Service. This would suggest that, following the response of 24 January 2006, Ms C should have been directed to the Ombudsman's office and it is also not clear why her concerns of 13 April were dealt with by someone less senior in the Council. It is also not clear from that letter why the named Council officer would have been an appropriate person to contact next. Ms C should, at least, have been informed of this individual's role and why they were being given as a point of contact. I was also concerned at the adequacy of the response Ms C received to her request for information about the Ombudsman's office: little information was provided and that which was provided was incorrect. The Local Authority Ombudsman was replaced by the Scottish Public Services Ombudsman in 2002.

28. Given the significant delays in both responses, the lack of clarity in the way Ms C's complaint was being handled and progressed, the inadequate response to her request for information about the Ombudsman and the incorrect information given to her, I uphold this complaint.

(b) Recommendation

29. Since the events described in this report, issues surrounding complaints handling at the Council were dealt with in report number 200503141 and delays in responding to correspondence in report number 200501259. The Council have accepted the recommendations in these reports and that is reflected in the recommendations made here.

30. The Ombudsman recommends that the Council:

- (i) ensure that all organisations working on their behalf are aware of the Council's complaints procedure, and the Ombudsman's role within this, and are given guidance on how to respond if complaints are made relating to work undertaken for the Council;
- (ii) review actions taken in response to previous reports and ensure that these would also remedy the problems identified in this report or undertake appropriate action to do so; and
- (iii) apologise to Ms C for the faults in the complaint handling identified in this report.

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

24 October 2007

Explanation of abbreviations used

Ms C	The complainant
The Council	The City of Edinburgh Council
The Claims Handlers	The external company used by the Council to handle claims for compensation
Location X,Y and Z	The three locations identified by Ms C as causing the shock absorbers on her car to fail
Officer 1	The Council officer who visited location Z and completed the report for the Claims Handlers