

## Scottish Parliament Region: Highlands and Islands

### Case 200600141: The Highland Council

#### Summary of Investigation

##### ***Category***

Local government: Private sector grants and loans

##### ***Overview***

The complainant (Mrs C) was of the view that The Highland Council (the Council)'s procedure for dealing with housing improvement grants was discriminatory against disabled people as her application for a grant was refused because she had arranged for improvement works on her home to begin before the grant was approved by the Council.

##### ***Specific complaint and conclusion***

The complaint which has been investigated is that the process for assessing Mrs C's retrospective housing grant application was neither clear nor robust (*not upheld*).

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

The Ombudsman has no recommendations to make.

## **Main Investigation Report**

### **Introduction**

1. On 12 April 2006 the Ombudsman received a complaint from a member of the public (Mrs C) against The Highland Council (the Council) alleging that the Council's procedure for dealing with housing improvement grants was discriminatory against disabled people as her application for a grant was refused because she had arranged for improvement works on her home to begin before the grant was approved by the Council.

2. The complaint from Mrs C which I have investigated is that the process for assessing her retrospective housing grant application was neither clear nor robust.

### **Investigation**

3. It is important to make clear at the outset that it has not been my role to assess the merits, or otherwise, of Mrs C's grant application or to question professional judgements of Council staff, but to judge whether the Council fulfilled their duties and responsibilities in processing Mrs C's application in a reasonable manner. In the course of my investigation I referred to the Housing (Scotland) Act 1987, as amended, and a document issued by the Scottish Executive<sup>1</sup> in November 2004 titled *Guidance for Local Authorities on Improvement and Repairs Grants* (the Guidance). I have also considered correspondence between Mrs C and Council officers, and examined reports and minutes made by the Council.

4. Section 7(1) of the Scottish Public Services Ombudsman Act 2002 states that:

'The Ombudsman is not entitled to question the merits of a decision taken without maladministration by or on behalf of a listed authority in the exercise of a discretion vested in that authority.'

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.

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<sup>1</sup> 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.

**Complaint: The process for assessing Mrs C's retrospective housing grant application was neither clear nor robust**

6. Mrs C contacted a Project Officer at her local Care and Repair office in early March 2005 regarding grant aid for improvement works to her gas central heating system. Care and Repair wrote to a Technical Officer (Officer 1) at the Council's Environmental Health Service on 11 March 2005, asking him to visit Mrs C to see if the Council would support the work. After visiting the property, Officer 1 wrote to Mrs C on 12 April 2005 asking her to agree to a schedule of works that would be submitted as her grant application. The schedule stated that Mrs C had requested:

'Provision of automatic central heating on medical grounds.'

The covering letter to Mrs C stated, in bold type:

'Please do not start grant works before the Council has given approval in writing to the application for grant. If you do so you are likely to forfeit the possibility of obtaining grant aid.'

The letter also said, again in bold type:

'I regret that it is impossible for me to indicate at this stage if and when your application may be approved. You must therefore make your application on the understanding that it may not be approved ...'

Finally, the letter concluded by saying:

'This is not an offer of grant but merely an indication that grant may be offered to carry out the above works. This letter despite its terms does not constitute an offer to contract and cannot be relied upon in any way as a valid offer or acceptance.'

7. Mrs C agreed to the schedule of works and submitted an application for an improvement grant dated 25 May 2005. Officer 1 wrote to her on 3 June 2005 having carried out an initial assessment of her application, setting out the terms and amount of the likely grant, and asking her to sign and return a tear-off slip within 14 days if she wished to proceed with her application. The letter, as with the 12 April 2005 letter, included warnings in both bold type and capital letters that work must not be started until Mrs C received formal written approval of any grant award from the Council. Officer 1 visited Mrs C on 6 June 2005 and confirmed the findings of his visit with her in a letter of 8 June 2005. In that letter, Officer 1 said that he had seen that works had already been carried out

before Mrs C had received formal approval of the grant, and said that it was most unlikely that the grant would be awarded, given the warnings in previous correspondence. Officer 1 said that Mrs C could withdraw her application, or she could proceed, but if she chose the latter then his report would recommend to the relevant Council Committee (the Committee) that her application was refused. Officer 1 also advised Mrs C that she could make representations to the Committee via a local Councillor or in writing.

8. Mrs C wrote to Officer 1 on 11 June 2005. She said that she wanted to appeal to the Committee against the likely refusal of her application on grounds that the pain she suffered as a result of her disability meant that she could not wait for formal approval. She felt that refusal would discriminate against her, saying that:

‘Because of the dictates of my disability and, to a lesser extent, my husband’s, I cannot afford the timescale that most people can employ. Because of this I have lost a possible grant of £1696.89. Disability is an expensive pastime. A refusal of a retrospective grant does seem discriminatory. It should not be an administrative impossibility.’

Officer 1 wrote to Mrs C on 16 June 2005 confirming receipt of her letter and advised that her application would be considered at the Committee in September 2005, the first meeting after the summer recess.

9. The report to Committee on 5 September 2005 outlined the work required on Mrs C’s home and that she had been rated by an Occupational Therapist as having a priority of ‘High C’ (see paragraph 15). The report also said that the works had been completed on 2 June 2005 at which time no formal approval had been received, and that because this was against Council policy Officer 1 recommended that the Committee refuse the application. The report also included a copy of Mrs C’s letter of 11 June 2005 (detailed at paragraph 8 above) explaining her reasons for having the works carried out before formal approval of any grant award. Having considered all of the relevant information, the minutes of the meeting record that the Committee agreed with the recommendation and refused the award of a grant. Officer 1 wrote to Mrs C on 6 September 2005 confirming that her retrospective application for a grant award had been refused. Officer 1 told Mrs C:

‘Committee were very sympathetic to your case and did explore all possible avenues in an attempt to help your case. Unfortunately due to the precedent it would set and the potentially disastrous consequences

this could have on the Area Grant Budget it was decided that it was not possible to approve a retrospective Grant, in this case.'

10. Mrs C wrote to Officer 1 on 31 October 2005 to say that:  
'Initially I felt I should accept the decision but, having considered for a long time, I have concluded that a precedent should be set for disabled people ... My options were to install heating or set myself back in a wheelchair. No choice really. As for bankrupting the Area Grant Budget! The grant was set aside for me. I don't understand how starting work a few days early is going to have a deleterious effect on the Grant Budget.'

Mrs C wrote to the Council's Chief Executive on 21 November 2005 to pursue her complaint, saying that:

'By the end of May we were without heat – just as the grant of £1690 was about to be rubber stamped ... People of our age and disability deteriorate rapidly in cold conditions – we cannot take that risk. Because the work was started the grant was withheld on the grounds that it would create a precedent and damage the budget. As the money was ear-marked I cannot see that the latter was true.'

Mrs C cited the Freedom of Information (Scotland) Act 2002 and asked the Chief Executive for the basis on which the refusal decision was made by the Committee, as she felt it discriminated against elderly and disabled people.

11. A Team Leader – Information/Administration (Officer 2) from the Council's Housing and Social Work Services responded on behalf of the Chief Executive to Mrs C on 12 December 2005. He advised Mrs C that the Council were governed by the rules of the Housing (Scotland) Act 1987 as amended by the Housing (Scotland) Act 2001, and the Guidance. Officer 2 said that the legislation and guidance were clear that an application should be refused if the works have already begun unless the Council were satisfied there was a good reason for this happening, and that this was the reason the grant application was refused. Mrs C wrote back to Officer 2 on 29 December 2005 to say that she:

'... would have thought that disability exacerbated to an extremely painful state causing total immobility; the trigger being cold surroundings; would be reason enough to proceed with a heating system ... If this does not constitute a good reason will you please detail ... what does.'

Officer 2 replied to Mrs C on 2 February 2006 advising that the Council had not defined what constituted a good reason as it was a matter for the relevant Committee to decide ‘... having regard to the circumstances of a particular case’. Officer 2 advised Mrs C that there was no opportunity for a review of the Committee’s decision but that she had the option of resubmitting her claim as another retrospective claim, though there was no guarantee it would be successful. Officer 2 also said that as she had applied for a discretionary grant, there was no right of appeal against the refusal decision.

12. Mrs C wrote to Officer 1 on 27 February 2006 asking to submit a second retrospective claim. She provided more detailed information about her mobility needs, and used the good reasons clause from the legislation and the Guidance in support of her claim, questioning the Council’s decision to leave an assessment of good reasons to the Committee. She said that as the Council had not defined good reasons ‘the decision to withhold this grant was purely subjective’. The Council’s Principal Environmental Health Officer (Officer 3) wrote to Mrs C on 17 March 2006 to advise that her application had already been determined by the Committee on 5 September 2005 and that it would not be reconsidered as Mrs C had not supplied any new information, but that it might be if she could supply any such information.

13. Mrs C complained to the Ombudsman on 12 April 2006, saying that she thought Officer 1’s letter of 6 September 2005 was unjust, and that as good reasons were not defined they must be purely subjective, and that, ‘It opens the way for a judgement of do we like this person or not possibly’. She also felt it was wrong of Officer 3 to dismiss her second retrospective claim. In a further letter of 19 June 2006, Mrs C explained her condition and that she had advised the Council about it:

‘I had told them clearly that my previous experience, some 4 or 5 years ago, is that coldness leads to excruciating pain and immobility. This took about two years of private physiotherapy and a lot of agonising will-power to abate. I have a constant struggle to remain mobile and continue with physiotherapy and also acupuncture if my pain levels get severe again. I told them clearly at the start of my application for a grant – some two months before my house heating dies – that I could not risk the consequences of being heatless and that the problem was urgent. I confess to being annoyingly independent for a 76 year old and I do wonder if there is a personality problem rather than a restriction of regulations.’

14. In response to my enquiries, the Council advised me that Mrs C was assisted in completing her application by Care and Repair, but that she submitted it directly to the Council rather than letting Care and Repair to do this, which the Council said was unusual in such cases. They also said that they did not know where Mrs C got the impression that improvement grant funds were 'ear-marked' for her or that her application was simply to be 'rubber-stamped', as there was no record of such advice being given to her in writing or verbally. The Council also advised me that the advice from Officer 2 to Mrs C in his 2 February 2006 letter that she could resubmit her grant application was:

'... well intentioned but misleading, as he did not emphasise that for the application to be resubmitted to Committee it required that some further or new information be available for them to consider.'

15. In terms of Mrs C's medical status, the Council confirmed that her application form was accompanied by a Social Work Services Housing Adaptation Request Form which showed her as priority C – high priority. The form shows that this is the middle category of a five-point scale, with A (very urgent) being the highest and E (low priority) being the lowest. The Council advised me that:

'The only instance where medical information may have made a difference to the Committee's consideration of this application, would have been if [Mrs C] had been assessed as a category A – high priority and had agreed in advance with Council officials, that the work required to be started prior to the application being approved in writing.'

16. The Council explained that all retrospective applications go to Committee for consideration on merit, and that less than ten cases were considered between 1996 and 2005. In Mrs C's area, hers was the only retrospective application from 2000 to 2005. They said that:

'... Committees have approved a handful of cases where works have been progressed in advance of approval but where there has been prior agreement with officers.'

The Council also explained the Area Budget for the application year was overspent, and that the budget:

'... is very much demand led and applications are not usually refused because of budget restrictions.'

Finally, the Council concluded by saying:

'If [Mrs C] had made contact with Council officials prior to agreeing a start date for the work (30 May 2006) then perhaps something could have been worked out to allow the work to start before the application was fully determined. She never however gave them that opportunity.'

17. Part XIII, Section 240(1)(b) of the Housing (Scotland) Act 1987 set out the conditions for the approval of applications for improvement grant and stated:

'(1) A local authority shall not approve an application for an improvement grant ... (b) if the improvement works specified in it have been begun, unless they are satisfied that there were good reasons for beginning the works before the application was approved.'

18. The Guidance repeated the above section from the Housing (Scotland) Act 1987, and also stated that:

'... it is for the local authority to interpret the statute and ensure that its actions comply.'

In addition, the Guidance stated:

'There is no statutory provision for review of a decision to refuse an application for grant.'

### *Conclusion*

19. It is clear that Mrs C has suffered as a result of her medical condition, that she feels strongly that she has been discriminated against, and that this was permitted due to unclear and weak Council procedure. However, having assessed the information provided by Mrs C and the Council, I am of the view that the evidence does not support her contention.

20. Mrs C said in correspondence to me and the Council that the grant had been 'ear-marked' and that her application was to be 'rubber-stamped'. This is not supported by correspondence or other documents supplied by her or the Council. There is no corroborated evidence that Mrs C was advised of this by Council staff, and the Council say that this was not done. The legislation and the Guidance are clear that a grant should not be awarded if improvement work has already commenced, and the letters to Mrs C from the Council contained repeated, clear and unambiguous warnings on this matter. In addition, Officer 1 clearly advised Mrs C after his site visit that it was likely that the grant would be refused because work had already started. The grant was a discretionary grant



so there was no automatic entitlement to it, and there was no opportunity for review or right of appeal.

21. Mrs C also contended that there would not have been serious consequences for the area budget if her retrospective application had been approved. That may be the case, although the Council have advised that the budget for that year was overspent, though they have further advised that applications are not normally refused for budgetary reasons. However, I am of the view that Officer 1, in his letter of 6 September 2005, advising Mrs C that her application had been refused, meant that if the precedent of approving all retrospective applications was accepted then there would be serious consequences for future budgets as many more applications would be made and approved. He was not simply referring to Mrs C's individual application in that budget year. Furthermore, I can see no evidence that the decision to refuse the application was taken because Council officers or Committee members did not like Mrs C or had a personality clash with her, rather that it was a decision based on the fact that Mrs C had gone ahead with the improvement works despite the warnings not to. The Council have made it clear that they took into account Mrs C's letter of 11 June 2005 and her needs and priority as assessed by the Occupational Therapist, and it is not my role in this investigation to challenge that professional assessment. Also, the fact that a small number of cases have been approved where prior agreement has been reached for work to commence demonstrates that the Council's procedure is not discriminatory, as disabled applicants with needs assessed as urgent can request the work be started before formal approval of any grant award.

22. It was unfortunate that Officer 2 suggested to Mrs C that she had the option to resubmit her application. As the Council have acknowledged, he should have explained to Mrs C that she should only resubmit if she had new evidence to present along with her application. In commenting on the draft of this report, the Council apologised that the letter did not make this clearer. However, this does not alter my view that the Council reached a decision they were entitled to reach, after considering all relevant information and after Mrs C had been given clear information about the consequences of proceeding without written approval.

23. I understand Mrs C's position as she has described it to both me and the Council. Nevertheless, despite the clear warnings in correspondence from the Council she went ahead with the work, however necessary, as she assumed

that her application would be successful and the grant awarded, rather than seeking agreement with the Council that she could go ahead before formal approval. From my reading of the information provided by Mrs C and the Council I conclude that there is no evidence of maladministration in the Council's decision making process. On this basis I do not uphold the complaint.

**Explanation of abbreviations used**

Mrs C	The complainant
The Council	The Highland Council
The Guidance	Guidance for Local Authorities on Improvement and Repairs Grants
Officer 1	A Technical Officer at the Council's Environmental Health Service
The Committee	The relevant Council Committee
Officer 2	A Team Leader – Information/Administration from the Council's Housing and Social Work Services
Officer 3	The Council's Principal Environmental Health Officer

**List of legislation and policies considered**

The Housing (Scotland) Act 1987, as amended

Guidance for Local Authorities on Improvement and Repairs Grants

The Scottish Public Services Ombudsman Act 2002