

Scottish Parliament Region: Central Scotland

Case 200701770: North Lanarkshire Council

Summary of Investigation

Category

Local government: Housing; capital works upgrading of kitchen and electrical rewiring

Overview

The complainant (Ms C) raised concerns on behalf of her sister (Ms A) regarding kitchen unit replacement and electrical rewiring work instructed by North Lanarkshire Council (the Council) to Ms A's tenancy.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to respond appropriately to representations made about unnecessary disruption to the decoration in Ms A's home (*not upheld*); and
- (b) the Council's award of an allowance to Ms A to make good the extensively disrupted decoration in her home was inadequate (*not upheld*).

Redress and recommendation

Given that the Council formulated their policy on decoration/disturbance allowances some 11 years ago when they brought together the policies of the three predecessor housing authorities, the Ombudsman recommended that the Council give consideration as to whether a review of that policy should be undertaken.

The Council accepted the recommendation and stated that they intend to review decoration/disturbance allowances and to report to a future meeting of the appropriate committee.

Main Investigation Report

Introduction

1. The complainant (Ms C) is the sister of the aggrieved (Ms A). Ms A is a secure tenant of North Lanarkshire Council (the Council). Ms A has resided in her home at 6 X Road all her life. Her late mother and latterly Ms A have been tenants for 54 years. Ms C, who does not reside with Ms A, states that throughout her family's long tenancy the house was maintained in excellent decorative order. The complaint arises from the Council's administration of works to replace and upgrade kitchen units and to provide new electrical wiring. Ms C complained on behalf of Ms A that the rewiring works caused unnecessary damage to the decoration and that the Council had failed to respond to representations or to award adequate recompense to make good the damage.

2. The complaints from Ms C which I have investigated are that:
- (a) the Council failed to respond appropriately to representations made about unnecessary disruption to the decoration in Ms A's home; and
 - (b) the Council's award of an allowance to Ms A to make good the extensively disrupted decoration in her home was inadequate.

Investigation

3. Ms C provided me with copies of her correspondence with the Council. I made enquiry of the Council and obtained Ms C's comments on the Council's response. 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.

4. In implementation of the Council's Kitchen Replacement Programme 2004/2006, the Council proposed to undertake replacement of kitchen fittings in houses in the immediate area of Ms A's home at 6 X Road. The Council forewarned Ms A of the works and on 8 November 2006 the Council's Head of Design Services wrote to inform Ms A that the contractor (the Contractor) had established an office in Motherwell. That letter gave Ms A the mobile telephone number of the Contractor's Customer Care Manager. The letter went on to inform Ms A that the work to 6 X Road would consist of the renewal or upgrading of her kitchen units to the agreed design, any asbestos removal work, lead water main renewal, new wall tiling and whole house electrical rewiring as required. The letter relayed the Contractor's advice that the works

should not take longer than ten days to complete and detailed specific matters for which the Contractor would be responsible. Ms A was given the name and mobile telephone number of a Council clerk of works (Officer 1) should problems arise during the works or for 12 months after completion. She was also advised that, as part of the contract, a decoration/disturbance allowance was payable and that arrangements would be made to release payment on completion of the work.

5. Ms C recalled that a previous rewiring of Ms A's house took place 25 years ago with no apparent problems of feeding cables. Additionally, the house had twice had windows replaced and gas central heating installed without major disruption. Ms C accepted that Ms A was given advance warning of the kitchen unit replacement works, but the electrical rewiring was very much an 'add on'. The works were planned to commence on Monday 22 January 2007. Boxes were delivered for Ms A to store personal effects and, on 22 January 2007, Ms A's effects and her furniture were removed off site.

6. Ms A took five days of her holiday entitlement in order to be present when the upgrading works were done. The works were not completed by the end of the first week and, according to Ms C, Ms A's home was left in a complete state of disrepair on 26 January 2007. Only the bathroom was relatively unscathed.

7. Ms C visited Ms A on Sunday 28 January 2007 and saw the condition of the property at that time. The works resumed on 29 January 2007. Ms A had to return to work and, therefore, left a key with her neighbours to allow access to workmen. Her boxes and furniture were returned.

8. On 2 February 2007 Ms C wrote to the Council's then Director of Housing and Property Services on behalf of Ms A. In her letter Ms C listed works that were unfinished and the problems that had arisen. Ms C stated that a radiator in the dining area in the kitchen had not been repositioned, and that Ms A's washing machine door would not open. Ms C maintained that substantial redecoration of Ms A's house was required and she believed that the redecoration allowance previously quoted to Ms A (£175) was grossly inadequate. Ms C maintained that bare wires had been left unattended in Ms A's house and required re-covering. No photographs were taken of the state of disrepair.

9. A Council housing officer (Officer 2) discussed Ms C's letter with her by telephone. Officer 2 also met with Ms A in her home. He wrote to Ms C on 16 February 2007 setting out the position with regard to the matters Ms C had raised. That letter indicated that an error had been made in the calculation of redecoration allowance and that Ms A was due a further £100. Officer 2 explained that the contract works took longer than anticipated due to labour problems encountered by the Contractor. The Council and the Contractor had taken steps to remedy outstanding matters. It was expected that works would be completed within a few days. Officer 2 apologised on behalf of the Council for the inconvenience caused to Ms A. Ms C acknowledges that the works were completed to Ms A's home on 16 February 2007.

10. On 2 March 2007, Ms C wrote again to the Council's Director of Housing and Property Services referring to the Council's obligations under Schedule 4 paragraph 3(b) of the Housing (Scotland) Act 2001 (the 2001 Act) and the inadequacy of the abatement of £275 for making good the substantial damage caused to Ms A's decoration. This had been caused by cables being ragged into the walls and by the enlargement and repositioning of light switches and sockets.

11. No immediate reply was sent and Ms C telephoned the Council on 23 March 2007 to be updated. On 4 April 2007, the Council's Investment Manager (Officer 3) acknowledged receipt of Ms C's letter of 2 March 2007 and apologised for the delay in response.

12. On 1 June 2007 the Council's Head of Housing (Officer 4) replied to Ms C's letter of 2 March 2007. She apologised for the delay. Officer 4 clarified that Ms A had transferred to a Scottish Secure Tenancy with the implementation of the 2001 Act (on 30 September 2002). Officer 4 stated that Schedule 4 of the 2001 Act related to the Council's repairing obligations. She stated:

'With regard to the 2001 Act, Schedule 4 relates to the Council's repairing obligations stating that the Council as a landlord has an obligation to ensure its houses are kept wind and watertight and reasonably fit for human habitation throughout the period of any tenancy. Paragraph 3(b) also relates to this repairing obligation. In terms of kitchen and rewiring works carried out by the Council as part of its Capital Programme, such works relate to the upgrading of properties and are therefore outwith the scope of the repairing obligations placed on the Council by the Housing

(Scotland) Act 2001. The issue of abatement under the 2001 Act does not therefore apply.'

13. Officer 4 explained that the Council had to strike a balance between works and the level of redecoration allowances. She confirmed that the figure of £275 in respect of Ms A was made up of a standard payment of £79 plus £96 for three bedroom houses plus £100 for ragging. Officer 4 repeated the apology previously given for the level of inconvenience recently suffered by Ms A. She concluded her letter by repeating that the Council's obligations in relation to the 2001 Act are to ensure that properties are wind and watertight and fit for human habitation and that decoration is the tenant's responsibility as outlined in the tenancy agreement.

14. On 27 September 2007 Ms C wrote to the Ombudsman. She complained that Ms A had been extremely inconvenienced and that the Council had not addressed the complaint in terms of Schedule 4 paragraph 3(b) of the 2001 Act and that the Council had not complied with their obligations.

(a) The Council failed to respond appropriately to representations made about unnecessary disruption to the decoration in Ms A's home

15. Ms C maintained that there had been excessive and unnecessary disruption to the excellent state of decoration which existed in Ms A's home prior to the works. She understood that the subcontractor engaged by the Contractor for the rewiring was removed prior to the end of the contract and that negligence or professional carelessness might, therefore, have been involved.

16. The Council's Executive Director of Housing and Property (the Director) provided comments on the complaint. She referred to the Council's Head of Design Services' letter of 8 November 2006, which had given Ms A prior information on the works and the mobile telephone numbers of Officer 1 and the Contractor's Customer Care Manager. She maintained that prior to works starting, detailed surveys of the kitchen were undertaken and a drawing was produced detailing the kitchen design, taking into account white goods, and determining the position of electrical sockets within the kitchen. Proposed designs are signed off by the tenant who was then advised by the Contractor of the proposed installation date. The Director stated that all tenants are advised of the rewiring work required to be undertaken within their homes and what this would entail. The Director stated that in undertaking the electrical works, the Contractor is instructed to minimise damage by using existing cable routes

(conduits), to rewire lighting points from above and socket outlets from below where ever possible, thereby minimising the disturbance to the existing decoration.

17. The Director stated that in Ms A's house, the Contractor did manage to rewire the lighting points from above and the socket outlets from below, although this was complicated by the presence of steel beams supporting the ground floor. The house lacked existing cable routes and the wiring to power outlets and light switches had to be ragged into the existing brickwork or fed through the existing stud partitions. This resulted in unavoidable disturbance to decoration which attracted the higher decoration allowance. The Director stated that the Council employs an electrical clerk of works and a building clerk of works to supervise the kitchen/rewire installations. In terms of the work carried out within Ms A's house, the Council employed clerks of works did not consider the level of damage which occurred was excessive.

(a) Conclusion

18. I have not been provided with evidence that Ms A contacted Officer 1 or the Contractor's Customer Care Manager (paragraph 4) to complain about an excessive or unnecessary disruption of decoration. While Ms C appeared in correspondence to believe that the work should have taken five days, the letter of 8 November 2006 said that it should not take longer than ten days. At the end of the first week, when works were not complete, it is not surprising that upon visiting Ms A, Ms C witnessed what appeared to be a complete state of disrepair. I am unable to comment on Ms C's statement about the works carried out by the Council's predecessor 25 years ago. The problems encountered in the recent rewiring were clearly not of the Council's making and derive from the building having been constructed with steel beams and a lack of conduits to facilitate the threading of new cables. In those circumstances, disruption to the decoration was inevitable. In the absence of contemporary photographic and other evidence, I am unable to uphold a complaint that avoidable or unnecessary damage was caused or that the Council or the Contractor failed to take heed of representations made which could have curtailed or significantly averted the level of any subsequent damage. I note that the Council's own clerks of works did not regard the extent of damage as excessive. I do not, therefore, uphold this complaint.

(b) The Council's award of an allowance to Ms A to make good the extensively disrupted decoration in her home was inadequate

19. Ms C stated that with the exception of Ms A's bathroom, following the completion of works, Ms A's entire home was in need of full decoration and that the redecoration allowance made was grossly inadequate to cover the costs of redecoration. Ms C believed that the Council were required under Schedule 4 paragraph 3(b) of the 2001 Act to make good any damage caused by the carrying out of the work. She considered also that the Council's classification of redecoration allowances was now over ten years old. While it might have been adjusted in line with inflation, it did not result in the provision of an adequate allowance for Ms A.

20. The Council stated that the award of decoration/disturbance allowances for upgrading works were approved by the Council in 1997 based on the previous levels of allowances paid by predecessor authorities prior to the reorganisation of local government on 1 April 1996. The level is based on the size of the house plus an amount for ragging. The levels per size of house have been updated every year in line with inflation. While an error was made initially, this was subsequently amended to the maximum level of allowance due to the ragging work and an apology was issued. The Council stated that their clerks of works did not consider the level of damage to be such that an additional payment in excess of the standard allowance was appropriate. Had that been the case the situation would have been reviewed by Council officers and, if deemed necessary, a report would have been submitted to the Council's Housing and Social Work Services Committee seeking approval for an additional payment to be made to the affected tenant(s).

(b) Conclusion

21. Ms C's primary contention is that the Council are obliged in terms of Schedule 4 paragraph 3(b) of the 2001 Act to make good any damage caused by the carrying out of this type of work. While it is not for the Ombudsman's office to provide a legal ruling, an alternative interpretation of Schedule 4 of the 2001 Act (Annex 2) would restrict the instances where damage requires to be made good to more specific circumstances, such as damage resulting from wind and water repairs or restoring a house to a state fit for human habitation. Whether the Council had a statutory obligation to meet all Ms A's costs in restoring the state of decoration as a result of kitchen unit replacement and electrical rewiring is properly a matter for the courts. That might be achieved by Ms A making a claim against her household contents insurers.

22. Ms C's second argument is that the classification of allowances set in 1997 and adjusted for inflation since then does not afford a sufficient award of decoration/disturbance. That is essentially a challenge to the merits of the Council's discretionary policy. In terms of subsection 7(1) of the Scottish Public Services Ombudsman Act 2002, 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. On the face of it, Ms C has not provided evidence that the formulation of the policy or its updating in line with inflation is flawed, notwithstanding the shortfall between the level of that allowance and the actual costs incurred in making good decoration in a property.

23. Although sympathetic to the disruption the works undoubtedly caused Ms A, I am unable to uphold the complaint.

(b) Recommendation

24. Given that the Council formulated their policy on decoration/disturbance allowances some 11 years ago when they brought together the policies of the three predecessor housing authorities, the Ombudsman recommended that the Council give consideration as to whether a review of that policy should now be undertaken.

25. The Council accepted the recommendation and stated that they intend to review decoration/disturbance allowances and to report to a future meeting of the appropriate committee. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

Explanation of abbreviations used

Ms C	The complainant
Ms A	The aggrieved, Ms C's sister
The Council	North Lanarkshire Council
6 X Road	Ms A's home
The Contractor	The main contractor for the kitchen unit replacement and rewiring project
Officer 1	A Council clerk of works
Officer 2	A Council housing officer
The 2001 Act	The Housing (Scotland) Act 2001
Officer 3	The Council's Investment Manager
Officer 4	The Council's Head of Housing
The Director	The Council's Executive Director of Housing and Property

The Housing (Scotland) Act 2001

Schedule 4: Scottish Secure Tenancy: Landlord's Repairing Obligations

- 1 The landlord in a Scottish secure tenancy must -
 - a) ensure that the house is, at the commencement of the tenancy, wind and watertight and in all other respects reasonably fit for human habitation, and
 - b) keep the house in such condition throughout the tenancy.

...

- 3 The landlord must -
 - a) ensure that any work necessary to comply with the duty in paragraph 1(b) is carried out within a reasonable time of the tenant notifying the landlord, or the landlord otherwise becoming aware, that it is required, and
 - b) make good any damage caused by the carrying out of the work.