

Scottish Parliament Region: South of Scotland

Case 200600448: East Lothian Council

Summary of Investigation

Category

Local government: Building Control

Overview

The complainant (Ms C) raised a number of concerns that East Lothian Council (the Council) Building Control Department failed to provide her with an appropriate service during the construction of her home. In particular, she considers that because of poor administration, the Council failed to respond to her enquiries and mislaid documentation sent to them causing delay and additional expense.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) failed to respond to Ms C's telephone and written enquiries concerning roof trusses during January and February 2005 (*upheld*);
- (b) failed to make any specific comment on the fact that Ms C had to re-engage her builder to complete a further Completion Certificate application and Electrical Certificate when these had already been received by the Council and were on file (*upheld*);
- (c) did not properly consider Ms C's claim for compensation (*upheld*); and
- (d) failed to follow their formal complaints procedure when dealing with Ms C's complaint (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) ensure that it has suitable procedures in place to prevent documentation being overlooked in future;
- (ii) remind all relevant staff of the importance of responding to requests for compensation; and
- (iii) review its compliance with its complaints procedures to ensure that complainants are kept informed if timescales cannot be met.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. On 13 May 2006 the Scottish Public Services Ombudsman's office received a complaint from a member of the public (Ms C) against the Building Control Department of East Lothian Council (the Council). As Ms C had not completed the Council's formal complaints procedure at this stage, she was requested to do so. As she remained unsatisfied with the Council's final response to her complaint, she came back to our office on 13 September 2006.

2. From Ms C's complaint it was clear that she had a significant number of concerns about the way in which the Council's Building Control Department had dealt with her during the period when she was involved in the construction of her new home. In particular she complained that their delays were holding up the finalising of her application, that they had mislaid documentation, and that they had failed to respond to both letters and telephone calls. She felt the general standard of service fell below that which she would expect and she also stated that her subsequent complaint to the Council was not properly handled.

3. The complaints from Ms C which I have investigated are that the Council:

- (a) failed to respond to Ms C's telephone and written enquiries concerning roof trusses during January and February 2005;
- (b) failed to make any specific comment on the fact that Ms C had to re-engage her builder to complete a further Completion Certificate application and Electrical Certificate when these had already been received by the Council and were on file;
- (c) did not properly consider Ms C's claim for compensation; and
- (d) failed to follow their formal complaints procedure when dealing with Ms C's complaint.

Investigation

4. I have reviewed the correspondence provided by Ms C. I have obtained the complaints file and relevant supporting documentation from the Council. During the course of my investigation I sought to establish whether the Council took steps to ensure that they reasonably administered Ms C's building warrant application and her subsequent complaint and claim for compensation. In addition I have discussed the case with Council officers and subsequently liaised between both parties to ensure a fair outcome.

5. 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 failed to respond to Ms C's telephone and written enquiries concerning roof trusses during January and February 2005

6. Ms C has stated that the application for the second stage of the warrant was received by the Council on 1 November 2004. On 17 November 2004 the Council informed Ms C of the areas where her application failed to meet the requirements of the Building Standards (Scotland) Regulations and detailed what other information was required to enable them to assess the application. In their letter they stated that if Ms C required guidance on any structural points she should contact the Structural Engineer by telephone, fax or email.

7. During the following January and February 2005 Ms C contacted the Council a number of times to request clarification of what remained outstanding. The Council responded to some of these requests but when they did so it was simply to list the remaining requirements (some of these had already been addressed). In addition, the Council failed to update their records to ensure they had Ms C's new address.

(a) Conclusion

8. It is clear that the full roof structure information was not provided to the Council until 18 February 2005 and when it finally was, it was approved within four days. In addition, it appears that the Council wrote to Ms C on at least four occasions to request further information.

9. The letters issued to Ms C by the Council detail that if any guidance was required on any structural points contact should be made with the Structural Engineers by telephone, fax or email.

10. Ms C telephoned, sent letters and emails to the Council on a number of occasions to try and establish exactly what remained outstanding. Her telephone calls do not appear to have been returned. The Council state that they have no record of these calls. The responses provided to Ms C's enquires consist of lists of what they consider to be outstanding requirements, however, these included issues which had already been addressed and, as such, were

confusing. There was no opportunity during this period for Ms C to obtain clarification of what remained outstanding or to discuss the requirements.

11. Whilst it is clear that the Building Control Department did not have the information they required to approve the roof structure details, they did not provide a full explanation to Ms C of what remained outstanding and why the information already supplied was not acceptable. For this reason, I uphold this aspect of the complaint.

(a) Recommendation

12. As a result of the action take by the Council in respect of apologising for the delay and making an appropriate financial redress offer to Ms C (see paragraphs 16 and 17), the Ombudsman has no recommendations to make.

(b) The Council failed to make any specific comment on the fact that Ms C had to re-engage her builder to complete a further Completion Certificate application and Electrical Certificate when these had already been received by the Council and were on file

13. On 5 October 2005 Ms C sent the Completion Certificate application together with a completed Electrical Certificate to the Council. On 10 January 2006 Ms C states that she telephoned the Building Standards Surveyor and was advised that the office could find no trace of receipt of these forms and that there was no record on computer. She advises that she asked him to telephone her when he carried out a search for these documents. As no telephone call was received, Ms C telephoned again on 12 January 2006 and was advised to send in new forms as the originals had not been received.

14. Ms C arranged for her builder to complete new forms. She handed in these completed forms on 16 January 2006 only to be told that the original application was on file and had been recorded as being received on 10 October 2005.

(b) Conclusion

15. The Council have admitted that the Completion Certificate application and Electrical Certificate had been received on 10 October 2005 and that Ms C was asked to forward new forms in error. They do not give any explanation for the reasons why this information which was on file could not be located. I uphold this aspect of the complaint.

16. Since I began my investigation into this complaint the Council have proposed a number of remedies to the maladministration identified. Ms C had stated to our office that the delay in issuing the Completion Certificate meant that she was unable to reclaim the VAT as soon as she would have been able had problems not arisen. As a result of this the Council have made a payment to Ms C of a sum equivalent to the amount of lost interest she suffered as a result of their delay in issuing the Completion Certificate. In addition, the Council have made a substantial payment of £350.00 in appreciation of the time and trouble caused to Ms C during her dealings with the Council. Finally, the Council have made a payment to Ms C for £50.00 in respect of the cost of re-employing her electrician to complete a new Electrical Certificate.

17. This offer of payment was made after Ms C had complained to our office. Prior to this, however, the Council had already investigated the issue of the delay caused to Ms C. They acknowledged that Ms C did not receive an effective inspection service from the Building Control Department and apologised for this. Ms C has had to pursue her complaint vigorously until now. Effective consideration of appropriate redress should always be an integral part of good complaints handling. Whilst it would clearly have been better if the offer of financial redress had been made before the involvement of our office, we would like to take this opportunity to commend the Council for agreeing to make these payments before the conclusion of the investigation. We also fully appreciate that since these events originally took place there have been changes within the Council.

(b) Recommendation

18. The Ombudsman recommends that the Council ensures that it has suitable procedures in place to prevent documentation being overlooked in future.

(c) The Council did not properly consider Ms C's claim for compensation

19. Ms C has raised the issue of compensation for the delays and inconvenience which she considered was caused by the Council. The Council responded to her that they had considered this matter but did not feel that it was appropriate to make such a payment.

20. The Council have advised me that the Director of Environment and the Chief Executive considered the question of compensation although no records

of this discussion were retained. However, at no point was Ms C's request for a proposal for compensation addressed to her in writing.

(c) Conclusion

21. As the Council did not respond to Ms C's request for compensation I uphold the complaint.

(c) Recommendation

22. The Ombudsman recommends that the Council remind all relevant staff of the importance of responding to requests for compensation.

(d) The Council failed to follow their formal complaints procedure when dealing with Ms C's complaint

23. The Council operate a two stage complaints procedure. After initial contact with the Council, if they are unable to resolve any issues there and then, any complaint should be referred to an appropriate person to deal with it. The Council's complaints procedure details that this person may contact the complainant to ensure that they properly understand the complaint or to discuss a resolution.

24. The complaint should be acknowledged within five days with a full response provided within 28 days, if possible. If more time is required the complainant should be advised of this.

25. If the complainant remains unsatisfied with the response at this stage, they can ask the Chief Executive to review the complaint. Again, usually they would hope to provide a response within 28 days or an explanation of why they cannot.

26. Ms C raised her complaint with the Council formally on 26 April 2006. Ms C's letter was acknowledged on 30 May 2006 by the Director of Environment who apologised for the delay and advised that he had asked the Buildings Standards Manager to visit the property to discuss the issues raised and to assist in progressing matters towards the issue of the Completion Certificate. He advised that he would write again when this meeting had taken place.

27. In response to the points raised in Ms C's letter of 26 April 2006, the Building Standards Manager was asked to produce a report for the Director of

Environment. This report was then forwarded in its entirety to Ms C by the Director of Environment on 23 June 2006.

28. Ms C remained unhappy with this report and wrote to the Chief Executive on 1 July 2006. This letter was acknowledged on 4 July 2006 and a response was issued on 15 August 2006.

(d) Conclusion

29. From a review of the correspondence it is clear that the timescales detailed in the complaints procedure were not followed. Ms C did not receive an acknowledgement of her original complaint within the five day timescale, instead it took 34 days for this to be acknowledged. It is clear that substantial consideration was given to her concerns at this point and a report into some of the issues she raised was produced. This report was sent to her two months after the original complaint was made. No letters were issued to Ms C advising of when she could expect a response to her complaint.

30. Ms C's letter dated 1 July 2006 to the Chief Executive was acknowledged within the published timescales but the response was not issued until six weeks after the complaint was received. Again, no letter explaining the delay and advising of possible timescales was issued prior to the final response.

31. In his final response to the complaint the Chief Executive provided his apologies for the delays in responding to this complaint and explained that this was partly due to leave and sickness.

32. As the complaint was clearly not dealt with in line with the published complaints procedure, I uphold the complaint.

(d) Recommendation

33. The Ombudsman recommends that the Council review its compliance with its complaints procedures to ensure that complainants are kept informed if timescales cannot be met.

34. 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.

Annex 1

Explanation of abbreviations used

Ms C

The complainant

The Council

East Lothian Council