

Scottish Parliament Region: South of Scotland

Case 200602104: Dumfries and Galloway Council

Summary of Investigation

Category

Local government: Needs assessment, adaptation of housing for a disabled person, grants, carer's/children's assessments; delays and communication

Overview

The complainant (Mr C) raised a number of concerns that Dumfries and Galloway Council (the Council) failed to arrange the provision of appropriate housing to meet the needs of Mr C and his family from September 2004 to date (the needs arising as a result of Mr C being disabled in a traffic accident in September 2004).

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to undertake the appropriate assessments, identify the family's needs and provide for the necessary housing adaptations in a timely manner (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) introduce a detailed assessment framework for identifying the needs of each individual entitled to be so assessed and what adaptations might be required to meet those needs. This assessment should include input from all professionals involved including (but not limited to) Occupational Therapists, Social Workers and Health Professionals;
- (ii) review the current policy with respect to Private Sector Housing Improvement Grants and ensure that the policy is clear as to its limitations (both of funding and which needs will be met) and what adaptations might constitute an exception to the usual limit. Action should also be taken to ensure that relevant staff are fully aware of this policy, these limits and exceptions;
- (iii) introduce a procedure for dealing with adaptation cases where no agreement can be reached;

- (iv) as a matter of urgency produce a statement of needs for Mr C and his family, the adaptations needed to meet these needs and a plan for how these adaptations might be achieved; and
- (v) in recognition of the avoidable delays which have occurred in meeting Mr C's long term needs and the distress caused by this, make a payment to Mr C of £5,000.

The Council have already accepted the recommendations and have already enacted recommendation (iv) and is the process of taking action that will achieve (iii).

Main Investigation Report

Introduction

1. On 12 October 2006 the Ombudsman received a complaint from the complainant (Mr C) supported by a councillor (Councillor 1) about alleged maladministration and service failure by Dumfries and Galloway Council (the Council) Social Services department. Mr C had been disabled by a motor-cycle accident in September 2004 and required assistance from the Council in obtaining housing suitable to his changed needs.

2. The complaint from Mr C which I have investigated is that the Council failed to undertake the appropriate assessments, identify the family's needs and provide for the necessary housing adaptations in a timely manner.

3. Investigation of this case was suspended in early 2008 to allow the Council to undertake a comprehensive assessment of the family's needs in the hope of achieving a swifter resolution to the outstanding issues. In September 2008 the investigation recommenced due to lack of sufficient progress in the assessments needed.

Investigation

4. Investigation of this complaint involved reviewing all Mr C's records as held by the Council Social Services department up to the end of February 2008 and several relevant Council policies. I have also met with Mr C and his family, Councillor 1 and Council staff on a number of occasions. I have also considered relevant statutory provisions and Scottish Government guidance.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C, Councillor 1 and the Council were given an opportunity to comment on a draft of this report.

Complaint: The Council failed to undertake the appropriate assessments, identify the family's needs and provide for the necessary housing adaptations in a timely manner

6. There are a number of different types of policy which are of direct relevance to this case. I note these briefly below.

Legal and Administrative Background

7. Social Work (Scotland) Act 1968 (the 1968 Act), section 12 and 12A. The Council is under a duty to provide advice, guidance and assistance to people in need and to assess the need for services.

8. The 1968 Act, section 12AA. A carer is entitled to request an assessment of their ability to provide care.

9. Children (Scotland) Act 1995, section 23. A child affected by disability is entitled to an assessment of their needs as a child affected by disability (this includes disability of a parent).

10. Chronically Sick and Disabled Persons (Scotland) Act 1970 (the 1970 Act), section 2. Council duty to assess whether a disabled person has certain needs, including the need for assistance in carrying out works of adaptation in his or her home (assessed under the 1968 Act and the 1970 Act).

11. Housing (Scotland) Act 1987 (as amended by Housing (Scotland) Act 2001) (the 1987 Act). Section 236; the Council may award an improvement grant in relation to making accommodation suitable for occupation by a disabled occupant. Section 244; the Council must award an improvement grant to provide one or more 'standard amenities' (generally washing/toilet facilities) needed by a disabled occupant. Any grant in excess of £20,000 must be referred to the Scottish Government for approval.

Council Policy

12. On 15 September 2005 the Council introduced a revised 'eligibility and priority framework (the Framework) for access to Adult and Housing Support services'. This replaced the previous framework introduced in 1997 but was described by the Council at the time as 'essentially the same' as the 1997 document (changes were needed to reflect legal developments since 1997 not directly relevant here). The Framework sets out the Council's priorities for meeting identified needs by categorising such needs on a scale of Critical, Substantial, Moderate or Low. The expectation is that Council funds will only permit Critical and Substantial needs to be met, and the purpose of it is to support staff undertaking assessments in identifying those needs which the Council considers it will meet, as well as identifying those needs that cannot currently be met within Council resources.

13. The Framework contains the following statements:

'The service [adult and housing] will identify with the person [being assessed] the most cost-effective services that will meet the identified needs, but without compromising on meeting the need or the quality of the service.'

'People that have needs that fall outside the eligibility policy will be offered advice and information to assist them.'

14. The Council fund payments for adaptations to (non-council owned) homes required by a disabled person and as assessed under the 1968 Act and the 1970 Act, through Private Sector Housing Improvement Grants (PSHIG). Application for PSHIG requires an Occupational Therapist (OT) assessment of the disabled person's needs. The OT would make a recommendation for the most appropriate solution to meet the needs using the Framework. Prior to April 2006 if the solution required housing adaptation and a PSHIG was needed, a building plan was submitted to the Council for approval and a grant application with a costed plan was submitted to the Council Planning and Environment department for approval. Applications over £20,000 needed to be approved by the Scottish Government.

15. In April 2006 the Planning and Environment Services Committee of the Council revised this policy and a PSHIG could then only be given where an application related exclusively to provision of standard amenities under the 1987 Act. The revised policy noted specifically that the provision of such amenities did not include the costs of an extension to accommodate such amenities. The revised policy set the maximum amount for such 'mandatory' grants at £10,000, with anything between £10,000 and £20,000 only being considered on an exceptional basis. As before anything over £20,000 required Government approval.

16. At a Committee meeting in early September 2006 it was further agreed by the Council that the exceptional grants could only be approved by the Council Planning and Environment Services Committee. It was noted in the meeting papers that the grant no longer covered the costs of extensions to existing properties and that there was a potential shortfall of £244,800 between the mandatory grant amount and the projected costs of the seven cases where an extension had been proposed as the solution prior to April 2006 (this included Mr C's family home). It was further noted that there were 11 cases which included extensions and where the projected costs were in excess of £20,000.

It was noted that extensions were sometimes the only way to meet a person's needs if there was no suitable alternative property available.

17. In late September 2006 the Planning and Environment Service Committee of the Council agreed that where a person was assessed under the Framework as having substantial and/or critical needs and the cost of the adaptation/extension required would exceed £10,000, the person assessed **must** (emphasis is mine) accept other options for service provision if these are considered suitable to meet their needs. Amongst the suggested alternatives were residential care, alternative accommodation and increased homecare services. With respect to those applications pending (identified prior to April 2006) it was decided these should be reviewed under these revised terms and any funding necessary would need to come from the Council Adult Services.

Background and History of Complaint

18. Mr C and his wife (Mrs C) are owner occupiers, living in a two bedroom home with their two sons (now aged 12-years-old and 7-years-old). In September 2004 Mr C was involved in a motor-cycle accident which left him permanently wheelchair bound. Immediate contact was made with the Council Social Services who undertook a prompt assessment of Mr C's current housing situation and identified that his current house would probably not be suitable for adaptation, and a full needs assessment was needed when Mr C was ready for discharge. It was also noted on 5 October 2004 that Mr C would need to be transferred to a more local hospital when his rehabilitation was completed until such times as suitable housing could be identified. While Mr C underwent rehabilitation and treatment in hospital (Hospital 1) he and Mrs C were assigned an OT (OT 1) and Social Worker (SW 1) to manage these assessments etc. A number of conversations took place in October and November 2004 with Mrs C about the various housing options and the need for OT approval of any purchase (in order to make a PSHIG application). Mrs C put the family home on the market with an expectation of moving out in February 2005. Among the options considered was the purchase of a plot of land to build a house. Discussions at this point were mainly about the possible Council funding of the difference in cost between a standard shower installation and a wet room – this representing the Council's statutory duty under the 1987 Act.

19. No housing option could be immediately identified and in December 2004 Mrs C withdrew her house from the market until they had found an alternative.

In January 2005 a discharge date of end of February was proposed by an NHS OT (NHS OT) and a number of visits to properties were made by Mrs C and OT 1. OT 1 and SW 1 continued to review the housing situation and explore numerous options including Housing Association options. In early February 2005 a property (the Property) was identified as suitable for adaptation requiring a ramp, door widening and bathroom changes. It was noted by OT 1 in her notes that a grant application for this work could not be made until the purchase of the house had gone through and a financial assessment of Mr and Mrs C had occurred. Mr C's discharge was set for 4 March 2005 but as the current house was deemed unsuitable even for a temporary stay he was to transfer to a community hospital (Hospital 2) until such time as the Property was available. After some initial concerns about raising a mortgage in late February 2005, it was anticipated that Mr and Mrs C would take possession of the Property on 16 April 2005 at which time (SW 1 notes) Mr C could move in.

20. The NHS OT undertook a housing needs assessment in February 2005 which was forwarded to SW 1 and OT 1. This assessment identified a number of adaptations which were required specifically to meet Mr C's changed health needs and a number which were recommended, as well as items that were preferred. The assessment indicated (among a number of other things) Mr C needed a three quarter or double bed, adequate space in his bedroom for a hoist, a wet floor shower area (an en-suite was recommended) and a number of adaptations to plugs/work surfaces and taps in the kitchen. The report runs to four pages in total.

21. In late February 2005 Mr C's case was transferred to another OT (OT 2). There are no OT records between 7 March 2005 and 4 April 2005, the time between exchange of contracts and immediately prior to completion (prior to that entries were at least three or four a week). On 4 April 2005 it was noted that Mrs C would advise once contracts were exchanged on the Property and then a work request for a ramp could be processed. This was duly advised and a work application was made on 13 April 2005. On 21 April 2005 a visit was made to the Property and discussions took place about the placing and finish of the ramp and concerns were raised about the space in the bathroom. At this meeting Mrs C raised the question of a starting date for an en-suite extension. OT 2 noted she was unaware of this as an option but would discuss this with the senior supervisory OT (OT 3) who had been aware of the situation throughout. It is noted in the OT records that during their discussion the

following day OT 3 indicated to OT 2 that she was of the view that a bedroom extension to accommodate the boys as they grew older was a possibility but not a bathroom. I note that the Council OT records I have seen make no reference to either a bedroom or a bathroom extension prior to this date.

22. At this point there was a clear disagreement between Council staff and Mr and Mrs C as to what had been previously agreed. SW 1 summarised this in his record of 27 April 2005, noting that the NHS housing assessments and the referrals to Social Housing Landlords had both mentioned a need for three bedrooms and an en-suite bathroom but Council OTs were of the view that an adaptation to the existing bathroom and ramp were all that was required. SW 1 noted that Mr and Mrs C were seeking an urgent review of the Council's assessment. SW 1 also expressed the view that it might be possible to seek a discretionary variation to the current OT recommendation given the NHS OT view. SW 1 also asked whether the Property was suitable now for Mr C's immediate needs and questioned why he had not yet moved in. The work order for adaptations to the bathroom was made on 10 June 2005.

23. In late June 2005 there was a proposal by Council staff that the existing integral garage be adapted to create a third bedroom and en-suite. Early July 2005, OT 3 took over Mr C's case and following a telephone call between OT 3 and the NHS OT to discuss the February 2005 OT housing assessment, a further amended 'garage conversion' proposal was suggested. Mr and Mrs C did not think this was feasible or would be sufficient to meet the needs due to a lack of space. Their overall view was supported by a letter from a Hospital 1 consultant and the NHS OT dated 11 July 2005. Throughout this time Mr C remained in the Hospital 2 with occasional home leave apparently (there is no specific note on this point) while he awaited the adaptations to the existing bathroom. It is clear from the records that the family were under considerable stress at this time dealing with a number of uncertainties and the financial burden they had undertaken in purchasing the Property. Towards the end of July 2005 SW 1 was on long term sick leave and a temporary SW (SW 2) was put in place to cover his casework. SW 2 transferred to a new post in August 2005 and further temporary cover was put in place.

24. A protracted period of exchanges of views and ideas followed which I will not detail. However, over the following months, plans were drawn up for adaptation/extension of the Property but Mr and Mrs C did not consider any of these met Mr C's needs and were anxious about the funding of all of this as

their own resources were limited. A number of statements are contained in the record from both Mr C and OT 3 which refer to a maximum possible grant application of £20,000, although all these discussions preceded the changes in policy in April and September 2006 referred to in paragraphs 15 to 17.

25. At the same time the family raised a formal complaint supported by Councillor 1 which ultimately led to a Complaints Review Committee (CRC) on 5 April 2006. The CRC made a number of recommendations which were accepted, with only the recommendation relating to a payment of compensation being rejected by the Council Education and Services Committee in June 2006.

26. The Council complaints process did not, however, achieve any resolution or clarity to the disagreement between the parties about what adaptations were needed and how these might be funded. The compensation payment recommended was deemed to be the difference between the costs of the extension and the grant amount, but no grant had been applied for as yet as no proposed scheme suitable for an application was yet supported by both the Council OT services and Mr C. In their comments to the Council Education and Services Committee on the CRC report, the Council Social Services department noted (amongst a number of other points) that:

- (i) OTs are required to comply with the Framework;
- (ii) 'there is no doubt that Mr C has needs which fall within the priority areas for service' (under the Framework);
- (iii) In July 2005 it was still possible to obtain discretionary agreement from the Planning and Environment Committee for a grant in excess of £20,000 on an exceptional basis but OT services were advised at that time that this discretion was being removed making £20,000 the maximum.

27. At that point there was a further issue relating to the legal ownership of land surrounding Mr C's house. Since this land affected where any possible extension might be built, any proposed scheme might not be able to be acted on until the legal dispute with neighbours was resolved. This caused a complete halt to proceedings and nothing was done to agree the family needs or identify possible solutions during this time. Mr C brought his complaint to this office in October 2006 as he felt nothing was being done to progress matters.

Conclusion

28. I visited Mr and Mrs C and Council staff in February 2008. At that point (as now) no further work or adaptation had been carried out or was planned beyond that which had been achieved by the end of July 2005. In this regard I am very conscious that the complaints process has done little to assist matters as no practical solution has yet been found which meets Mr C's Critical or Substantial needs, although it is agreed by all that such needs exist. As such there has been a clear failure to provide Mr C with either the support required under the 1970 Act or as indicated in the Framework. However, there are a number of areas within this self evident failure which need to be considered before a final conclusion can be reached; namely what assistance was Mr C entitled to, what processes were in place to achieve this and were they adequate to achieve their goal. I must also consider the impact of changes in policy over the time as far as this impacts on Mr C's current position. Finally consideration of the assistance provided to Mrs C and their two children is also relevant.

29. The statutory and Council framework in place in 2004/2005 was such that Mr C was entitled to assistance from the Council in carrying out adaptations. He was also entitled to adaptations to his home to provide him with statutory amenities. Beyond this the Framework priorities targeted Council assistance for his other Critical or Substantial needs. There has never been a statutory maximum amount of grant for these adaptations (although Government approval is required for grants in excess of £20,000 the funding stills comes from the Council) and at the outset of these events there was no constraint placed on the grant amount by Council policy. This last point is often misunderstood by all sides and frequently misrepresented. It is suggested that there was an informal awareness of the intention to limit such grants in the future.

30. Changes to Council policy made in 2006 are also relevant here as these have a direct impact on Mr C, since any future application that is made falls to be considered under the revised policy. As matters stand the wording introduced in April and early September 2006 suggests that Mr C is only entitled to funding for the provision of Standard Amenities and that such facilities cannot be met by means of an extension, and alternatives must be accepted; although confusingly it agrees that sometimes an extension is the only solution. However, while any applications over £10,000 must be approved on an exceptional basis the policy does not explicitly prohibit such applications for any

amount. The policy revision in late September 2006 is in respect to the Critical and Substantial needs and make clear that the building of an extension to meet these needs is only where no alternative provision can be secured. Again if an alternative is available the client must accept the alternative. Where no alternative can be found then grant applications in excess of £10,000 for an extension are subject to Committee (and Government as necessary) approval. In Mr C's case it is apparently agreed that some form of extension is needed but not the exact form of this, nor is it clear if this is to meet only Standard Amenities or other Critical or Substantial needs (or both).

31. All of this suggests that there has never been any prohibition on an application being made for a grant to fund the costs of an extension even if this is in excess of £10,000. Such applications can, even now, be considered under Council policies on an exceptional basis and can be submitted for provision of both 'standard amenities' and an extension needed to meet Critical or Substantial needs where no alternative can be found. I am concerned that this point has not always been clear to staff and that there is an apparent discrepancy between the policy as written and as staff are being expected to deliver it. It appears to me that the identification of needs is being driven by the knowledge that there are limited finances available to meet possible needs rather than the actual assessment of needs. This does not comply with the provisions for assessment in the 1968 Act which put the need for assessment of needs before any financial considerations (which can then be made at a later stage).

32. In support of these concerns Councillor 1 has provided me with figures which demonstrate that in 2004/2005 there were 94 applications submitted for grants in excess of £10,000, in 2005/2006 there were 170 applications but that since the policy change in 2006 there have been none to end of October 2008.

33. I have considered what assistance Mr C is entitled to and the financial processes in place to achieve this. I have also mentioned the process of assessment needed to identify the needs and will expand on this point further. The Framework seeks to classify needs according to degree but is not a mechanism for identifying needs. While the NHS OT prepared an assessment of housing needs in her February 2005 report I can find no evidence of an equivalent assessment by Council OTs until 17 May 2005 when OT 2 carried out an assessment using a standard assessment form but which is incomplete and only in note form. Of course the housing situation was an uncertain and

developing one until the Property was secured but I note that while the NHS OT was able to make a statement of Mr C's needs prior to his hospital discharge, this was not used as the basis for forward planning by OT 1 and nor was any alternative assessment done once the Property was identified. I also note that it was some weeks after the family took possession of the Property that a work order was submitted for the bathroom adaptations and while the expectation had originally been that Mr C could move in immediately this did not happen. I can see no evidence in the file for why either the initial view was incorrect or why there was a change in plan. Mr and Mrs C have expressed the view to me that they were ill advised about the suitability of the Property to meet both their immediate needs and their ongoing needs, as the only assessment they were aware of at the time of the purchase was that of the NHS OT, and their expectation was that the recommendations of that could be fulfilled by adaptation/extension to the Property. There is a lack of clarity about Mr C's needs prior to and following the purchase of the Property which has given rise to much of the subsequent disagreement. I consider that the Framework is insufficient to provide such an assessment of need as it only seeks to prioritise needs not identify them. I am concerned that the lack of formal joined-up assessment tools is a product of the unofficial financial policy apparently in operation. I consider that this created a situation where OT 1 and her colleagues only felt able to achieve the minimum statutory requirements for Mr C (i.e. toilet/washing facilities) rather than comprehensively assess the family needs, make a recommendation to meet these needs and only finally consider how these could be met, including funding of any adaptations required. In further support of my view I note that no formal assessment of Mrs C, as a carer, or the two boys, as children affected by a disability, was undertaken in 2004 or 2005.

34. Had there been an early formal assessment and set of recommendations (along the lines of the NHS OT assessment) this would have identified the differing views of the OT staff and Mr and Mrs C as to what Mr C needed and in turn what the Council would support through grant application. This could also have allowed for appropriate review of the OT assessment where the disagreement continued and ultimately a clear statement of what the Council considered Mr C's needs to be, to what extent they were committed to meet those needs and the extent of any application. If Mr and Mrs C disputed this they could then have progressed their disagreement through the complaints process as appropriate with a clear set of issues in dispute. In the event what has actually happened is that despite a lot of effort on the part of Council staff in

trying to devise different solutions there was no agreement and no clear process for review, which led to a stalemate that the complaints process was not empowered to resolve.

35. With the benefit of hindsight it is apparent that Mr and Mrs C's view of the family's needs and the view of Council staff are different. This is a situation that will arise from time to time and it is important that any process allows for the early identification and resolution of such disagreements. Where disagreements can't be resolved there is also the need for a clear process to determine the issue and move forward. While the lack of a comprehensive needs assessment gave rise to many of the delays and uncertainties in this case, I am of the view that it was the pre-eminence given to the financial implications of adaptations that was the principal flaw in the early stages of this case. I am especially concerned that despite further time allowed for assessment, a plan for meeting Mr C's needs is still to be agreed and consequently there are still unmet needs.

36. One of the specific concerns raised by Mr and Mrs C was that they were not provided with adequate support from Council Social Services staff. While there were a number of staff changes and absences over time in this case which gave rise to short term difficulties in providing cover and passing on information, I am struck by the volume of telephone call notes, meeting notes, letters and emails that are contained in the records. I can see no evidence in the file that Council Social Services staff were not aware of the need to provide assistance to Mr C and his family throughout but I do consider that they were severely hampered in their ability to do this by a lack of clear processes for assessment, misinformation about the grant system and no system to review cases where an agreement couldn't be reached beyond referral to the complaints process.

37. It is very clear from the volume of records that a number of Council staff have committed a considerable amount of time and energy to Mr C's case over the years and especially in late 2004 and throughout 2005. Beyond Mr C's own physical impairment the tragedy in this case is that all this time and effort has been substantially without result. I find that there have been failures to undertake adequate assessments of the family's needs in a timely manner, failures to properly apply the Council's PSHIG policy (because of informal policy operating over and above the official policy) and a failure to resolve

matters (caused by the lack of proper dispute identification and resolution mechanisms). All these failures mean that I uphold this complaint.

38. Following sight of a draft of this report the Council advised me that a review of OT services by the College of Occupational Therapy had already been commissioned by the Council's Director of Social Services. The review had reported and this report and all its recommendations had been accepted and were being taken forward by the Council. A number of these recommendations address elements of the concerns identified in this report. In particular a clear procedure to deal with adaptation cases where no agreement can be reached is being developed.

Recommendations

39. The Ombudsman recommends that the Council:

- (i) introduce a detailed assessment framework for identifying the needs of each individual entitled to be so assessed and what adaptations might be required to meet those needs. This assessment should include input from all professionals involved including (but not limited to) OTs, Social Workers and Health Professionals;
- (ii) review the current policy with respect to PSHIG and ensure that the policy is clear as to its limitations (both of funding and which needs will be met) and what adaptations might constitute an exception to the usual limit. Action should also be taken to ensure that relevant staff are fully aware of these limits and exceptions;
- (iii) introduce a procedure for dealing with adaptation cases where no agreement can be reached;
- (iv) as a matter of urgency produce a statement of Mr C's family needs, the adaptations needed to meet these needs and a plan for how these adaptations might be achieved; and
- (v) in recognition of the avoidable delays which have occurred in meeting Mr C's long term needs and the distress caused by this, make a payment to Mr C of £5,000.

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

Explanation of abbreviations used

Mr C	The complainant
Councillor 1	A councillor who supported Mr C in making his complaint
The Council	Dumfries and Galloway Council
The 1968 Act	Social Work (Scotland) Act 1968
The 1970 Act	Chronically Sick and Disabled Persons (Scotland) Act 1970
The 1987 Act	Housing (Scotland) Act 1987 (as amended by Housing (Scotland) Act 2001)
The Framework	The 2005 revised Council 'eligibility and priority framework for access to Adult and Housing Support services' that replaced the previous framework introduced in 1997
PSHIG	Private Sector Housing Improvement Grants
OT	Occupational Therapist
Mrs C	Mr C's wife
Hospital 1	The hospital where Mr C underwent rehabilitation and treatment
OT 1	The OT assigned to manage Mr C's rehabilitation and treatment

SW 1	The Social Worker assigned to manage Mr C's rehabilitation and treatment
NHS OT	An NHS OT
The Property	The property identified as suitable for adaptation in 2005
Hospital 2	The community hospital Mr C was transferred to in March 2005
OT 2	The OT that took over Mr C's case in late February 2005
OT 3	The senior supervisory OT
SW 2	The temporary Social Worker put in place to cover SW 1's casework
CRC	Complaints Review Committee