

Scottish Parliament Region: South of Scotland

Case 200500394: East Lothian Council

Summary of Investigation

Category

Local government: Legal & admin: Claims for damage, injury, loss

Overview

The complainant (Mrs C) was overseeing work being carried out at her father's house by contractors employed by East Lothian Council (the Council). Her purse was stolen whilst the work was being carried out. Mrs C complained that the Council did not take adequate steps to ensure that their contractors' employees were suitable to be allowed access to the homes of vulnerable people.

Specific complaint and conclusion

The complaint which has been investigated is that the Council failed to ensure that their contractors, who had access to the homes of vulnerable people, including Mrs C's father, had sufficient procedures in place to ensure that their employees were suitable to do so (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) works with its Adult Protection Committee to establish good practice guidelines for Council and contractor employees working in the homes of vulnerable people; and
- (ii) considers including in its revised Corporate Procurement Procedures manual, guidance on the protection of vulnerable people when work is being carried out on their homes.

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

Main Investigation Report

Introduction

1. The complainant (Mrs C)'s elderly father was moved from his council house to temporary accommodation so that East Lothian Council (the Council) could upgrade the kitchen and electrical fittings in his home. At the request of the Council, Mrs C and her husband travelled up from England and attended on the day of the removal to assist with packing and preparation for the temporary move.

2. The Council employed contractors (the Contractors) to move Mrs C's father's belongings. During the move, Mrs C's purse, which had been left in her handbag in the hallway, was stolen. She alleged that it could only have been taken by one of the Contractors. Mrs C raised this in a complaint to the Council, seeking compensation, however, they advised that they could not be held responsible for any losses resulting from work carried out by their contractors and, therefore, no compensation was payable to her. When Mrs C complained further, the Head of Community Housing and Property Management referred her to the Ombudsman.

3. In her complaint to the Ombudsman, Mrs C noted that her father, being a Council tenant, had no option but to allow the contractors to enter his house.

4. Mrs C reported the theft to the police who conducted an investigation, the findings of which were inconclusive of any guilt on the part of the Contractor's staff. I have not investigated the theft itself or any claim for the return of monies stolen at the time of the move. This was explained to Mrs C early in the complaints process.

5. Section 7(6) of the Scottish Public Services Ombudsman Act 2002 states that 'The Ombudsman must not investigate action taken by or on behalf of an independent provider unless the action –

(a) was taken in relation to, or

(b) consisted of a failure in, or to provide,

a service which the independent provider was providing, or which it was the independent provider's function to provide, under arrangements with a health service body or a family health service provider'.

6. Schedule 4 paragraph 7(1) of the Act prevents the Ombudsman from investigating 'Actions taken in matters relating to contractual or other commercial transactions of a listed authority'.

7. In light of the above, when investigating this complaint I was unable to consider the terms of the agreement between the Council and the Contractor or the manner in which the Contractor's staff conducted their duties. I have, however, investigated the Council's internal guidance to staff on procurement and tendering and what consideration they give to the safety of vulnerable adults when work is being carried out in their homes.

8. The complaint from Mrs C that I have investigated is that the Council failed to ensure that their contractors, who had access to the homes of vulnerable people, including Mrs C's father, had sufficient procedures in place to ensure that their employees were suitable to do so.

Investigation

9. In order to investigate this complaint, I have reviewed all of the complaint correspondence between Mrs C, the Council and the Contractor. I have also identified relevant legislation & guidance (Annex 2) and corresponded with the Council. 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.

Complaint: The Council failed to ensure that their contractors, who had access to the homes of vulnerable people, including Mrs C's father, had sufficient procedures in place to ensure that their employees were suitable to do so

10. Mrs C's father, who was 93-years-old at the time of the incident, is a tenant of the Council. The Council intended to include his house in a refurbishment programme which involved re-wiring and the replacement of the fitted kitchen. In March 2005 the Council's Project Liaison Officer contacted Mrs C, herself a pensioner, to ask if she would be willing to help her father to pack his belongings and move to temporary accommodation while the work was carried out. Mrs C and her husband helped Mrs C's father to pack and were present at the house on 9 April 2005 when the contractors removed his furniture and carpets.

11. Mrs C said that during the move, her purse, which contained £300 in cash as well as various valued personal items, was stolen. Mrs C said that she and her husband were left with no money to pay for food, their accommodation, or petrol for their return home. She added that this was a lot of money for a pensioner to lose and that they were all distressed by the theft.

12. Mrs C reported the theft to the police on the day of the incident and an investigation was carried out. Although the police were unable to identify the culprit, they discovered during the course of their investigation, that two of the Contractor's employees had previous convictions for theft. Mrs C felt that it was inappropriate that employees with such previous convictions should be allowed into the homes of vulnerable people and that the Council should have screened any of its contractors' staff that may be put in such a position.

13. Although the Council checks the identification that will be used by their contractors' staff to gain entry to Council tenants' properties, they do not require background disclosure checks to be carried out on individuals working for their contractors. To do so would contravene the terms of the Rehabilitation of Offenders Act 1974, Section 9(2) of which makes it an offence to disclose the details of any individual's spent convictions unless at the express request of that individual.

14. The Council has a Corporate Procurement Procedures manual. This internal document offers guidance to procurement staff on best practice and considerations when tendering services out to contractors. No provisions are in place in the manual to ensure the protection of vulnerable adults, however, it does highlight the issue of child protection.

15. The Council is currently undertaking a review of their Corporate Procurement Procedures manual and is working with a number of neighbouring council's to establish a consistent procurement strategy and to improve the monitoring and enforcement of their tendering procedures.

16. The Council have a duty to ensure the safety and comfort of their residents. However, there is currently no specific guidance or legislation in place to ensure the protection of vulnerable individuals when work is being carried out in their homes by Council staff or contractors. The Protection of Vulnerable Groups (Scotland) Act 2007 requires the Council to set up an Adult Protection Committee (APC), which should give 'information or advice, or make

proposals, to any public body and office holder ... on the exercise of functions which relate to the safeguarding of adults at risk present in the council's area'.

17. The Council's APC was set up during 2006 and meets on a bi-monthly basis. The APC is chaired by the Council's Director of Community Services and consists of representatives from the Council's divisions of Children's Services, Adult Care Services, Community Wellbeing, Community Housing and Property Management, Legal Services, Criminal Justice and Child Protection. Lothian and Borders Police, the Procurator Fiscal and East Lothian Health Partnership also have representatives on the APC.

Conclusion

18. I did not investigate the issue of how Mrs C's purse was stolen or by whom. My investigations into her complaint, however, highlighted a lack of policy or procedures with regard to the protection of vulnerable individuals when work is being carried out on their homes by Council staff or their contractors.

19. The Council gathers initial information on each new contractor's existing employees and the identification that they will use. No ongoing checks are made to ensure the suitability of subsequently recruited staff, however, the Council are not under any obligation to carry out further background checks and the terms of the Rehabilitation of Offenders Act 1974 limit the extent to which they could do this.

20. Decisions as to the frequency of contract reviews and the criteria used to assess contractor performance are at the Council's discretion. I was concerned to learn that the Council's internal procurement procedures were non-specific in this regard and that their implementation is not effectively monitored by senior management. I was pleased to record, however, that the Council are proactively working to improve their procurement procedures and the information in their Corporate Procurement Procedures manual and that these issues should be addressed as a result.

21. Mrs C expressed her concern that the Council was not taking sufficient steps to ensure the safety of their vulnerable tenants when work was being carried out on their homes. Whilst I have established that no specific measures were in place to protect vulnerable groups when receiving Council services, no guidance was available to the Council to implement such measures and the approach that they took when decanting Mrs C's father from his home was in

line with the policies in place at that time. With this in mind, I do not uphold this complaint.

Recommendations

22. Although I have not upheld this complaint, it became apparent during the course of my investigations that more could be done to ensure the safety of vulnerable individuals when work is being carried out on their homes by Council staff or their contractors. Whilst there are limitations to the input that the Council can have on the staff that their contractors employ, the Corporate Procurement Procedures manual could be better used to make staff aware of the need to protect vulnerable individuals in their homes and to guide them on how best to do so.

23. The Ombudsman recommends that the Council's Procurement Department works with the APC to establish good practice guidelines for Council and contractor employees working in the homes of vulnerable people.

24. The Ombudsman also recommends that the Council considers including in its revised Corporate Procurement Procedures manual, guidance on the protection of vulnerable people when work is being carried out on their homes.

Explanation of abbreviations used

Mrs C	The complainant
The Council	East Lothian Council
The Contractor	A third-party removal company employed by the Council to move Mrs C's father's belonging to temporary accommodation
APC	Adult Protection Committee

List of legislation and policies considered

Statutory Guidance to Local Authorities on Contracting

Protection of Vulnerable Groups (Scotland) Act 2007

Scottish Procurement Directorate Goods & Services Procurement Guidance

Rehabilitation of Offenders Act 1974

East Lothian Council Corporate Procurement Procedures Manual