

## Scottish Parliament Region: North East Scotland

### Case 200401636: Dundee City Council

#### Summary of Investigation

##### **Category**

Local government: Housing: Capital works

##### **Overview**

The complainant Mr C raised a complaint on behalf of his mother (Mrs A) about Dundee City Council (the Council)'s handling of refurbishment work carried out to her Council home. In particular, he was aggrieved at Mrs A being expected to return to her home when it was uninhabitable, the delay in carrying out the redecoration work and the inadequate compensation for both the period of absence and damage to carpets. He also complained that the Council did not take the particular circumstances relating to Mrs A into account in relation to her decant arrangements and that they failed to respond adequately to all issues when he raised his complaint.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the extenuating circumstances relating to Mrs A should have resulted in consideration outwith the Council's Decant Policy and the Council failed to provide adequate compensation for the period of absence from the property (*partially upheld*);
- (b) the cost of replacing damaged carpets exceeded the level of compensation provided by the Council (*not upheld*);
- (c) the property was uninhabitable on completion of the works (*upheld*); and
- (d) the Council failed to respond adequately to issues raised in correspondence by Mr C (*upheld*).

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

The Ombudsman recommends that the Council:

- (i) apologises to Mr C for their failure to provide a copy of the relevant Policy on request;
- (ii) gives consideration to the individual and particular circumstances relating to Mrs A and her decant situation;

- (iii) provides Mrs A with a decision in writing in relation to her individual and particular decant situation;
- (iv) apologises to Mr C for their failure to respond fully and appropriately to his letter of 21 December 2004; and
- (v) provides a written response to Mr C that either addresses the questions raised in his 21 December 2004 letter or explains why such a response will not be forthcoming.

## Main Investigation Report

### Introduction

1. The complainant Mr C raised a complaint on behalf of his mother (Mrs A) about Dundee City Council (the Council)'s handling of refurbishment work carried out to her Council home. In particular, he was aggrieved that Mrs A was expected to return to her home when it was uninhabitable, about the delay in carrying out the redecoration work and about the inadequate compensation for both the period of absence and damage to carpets. He also complained that the Council did not take the particular circumstances relating to Mrs A into account in relation to her decant arrangements and that they failed to respond adequately to all issues when he raised his complaint.

2. The complaints from Mr C which I have investigated are that:

- (a) the extenuating circumstances relating to Mrs A should have resulted in consideration outwith the Council's Decant Policy and the Council failed to provide adequate compensation for the period of absence from the property;
- (b) the cost of replacing damaged carpets exceeded the level of compensation provided by the Council;
- (c) the property was uninhabitable on completion of the works; and
- (d) the Council failed to respond adequately to issues raised in correspondence by Mr C.

### Investigation

3. This investigation is based on information provided by Mr C and the Council. This information included correspondence from and between Mr C and the Council and copies of relevant policy documents. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

**(a) The extenuating circumstances relating to Mrs A should have resulted in consideration outwith the Council's Decant Policy and the Council failed to provide adequate compensation for the period of absence from the property**

4. Mrs A was 88 years old and living in Council sheltered housing when the refurbishment work on her home started. On 8 October 2004 she went to live with her son, Mr C, for the duration of the works. This decision was taken to

minimise the impact of the disruption and with the understanding that Mrs A would be away from home for three weeks. In housing terms, Mrs A made her own decant arrangements. The Council subsequently contacted Mrs A to say that her home was nearly ready for reoccupation. It was agreed that Mrs A and Mr C would meet the Housing Officer at the property on 27 October 2004, by which date the work would be completed.

5. Mr C and Mrs A arrived early for the meeting and found the property to be uninhabitable. Mr C has described how workmen were still completing tasks, all the rooms and furnishings left on site were covered in grime and the carpets to the stairway and hall had not been re-laid as they were damaged on removal. Mr C and Mrs A had known that there would be work-related damage to the wallpaper, but they both found that it was greater than expected and it was apparent in every room. Mrs A had advised the Council of her replacement wallpaper choice soon after she moved out and had understood from the Housing Officer that redecoration would take place within two weeks of the completion of the works.

6. Mr C expressed his concerns that day on site to the Housing Officer. He said that Mrs A was extremely distressed by the condition of her home and that she could not be expected to return until it was decorated and fit for habitation. He also considered that Mrs A could not return to a home with bare floorboards. Mr C recalls that the Housing Officer was unable to say how long it would take to redecorate, but that it would be at least four weeks. Mr C advised the Council Project Officer of his concerns by email that day, saying that he had decided to return to his own home with Mrs A, that he was seeking assurances relating to his concerns and he asked for urgent consideration to be given to advancing the redecoration work. Mr C also stated that he expected the reimbursement for the displacement of his mother to be extended until the property was decorated and fit for habitation.

7. The Council Project Officer responded by email to Mr C the next day, advising that decoration was not something that could be brought forward, that all tenants were warned that they would be returned to their homes prior to the decorators visiting, that this was Council policy and no allowances were available to tenants once the heating and rewire was complete and that redecoration would be carried out in approximately four weeks. Mr C responded by asking for sight of the Council policy referred to and asked to whom he should direct his concerns regarding this policy and its interpretation

in this case. The emailed response from the Council Project Officer was that Mr C should contact his local Councillor or the Housing/Social Work Convenor if he wanted to question a Council Policy.

8. Mr C subsequently raised his concerns as advised and, on further Council advice, emailed the Director of Housing on 11 November 2004 setting out these concerns and asking for specific responses. Mr C said that Mrs A would not be able to return to her home until the redecoration had been completed and that, as yet, he had no fixed date for this work which was estimated sometime in December. Mr C also stated that he had medical advice that his mother should not be permitted to return to the house under these circumstances.

9. The 23 November 2004 response from the Director of Housing advised that the redecoration would start on 6 December 2004 with a view to completing works no later than 15 December. Mr C was told that the Finance Department would issue cheque for £300 which was the maximum allowance for tenants who elected to make their own decant arrangements. The Director of Housing advised that Council could not fund long-term decant arrangements as the cost annually would exceed £1.8 million which would have too great an impact on the capital programme for improvements and reduce the heating replacement programme by almost 230 homes per year. The letter also said that all other tenants had returned to their homes following the works but prior to decorators visiting.

10. Mr C again contacted his local Councillor by email on 27 November 2004, advising that he had not been given sight of the Council's Policy on Tenants' Allowances and asking whether the context of the policy envisaged a shorter period of redecoration delay than had become apparent. He also wrote to the Chief Executive of the Council on 2 December 2004, saying that he had found Council officers to be sympathetic and polite in relation to his concerns, but unyielding where they felt constrained by policy understandings. Mr C told the Chief Executive that 'I believe that our circumstances merit exceptional consideration. It is for this reason that I am referring the matter to your level, on the presumption that you have the authority to judge whether the extenuating circumstances can be treated outwith the Policy on Tenancy Allowances (March 2004)'.  
'

11. In his 2 December 2004 letter to the Chief Executive Mr C stated that Mrs A felt most strongly that the internal state of the property was not suitable

for her to inhabit in October 2004 and that any attempt to place her in that situation may have physical/medical consequences. Mr C also said that he had sought the advice of the health visitors to his mother, who had advised against reoccupation of the house in these circumstances.

12. Mr C also stated in this letter that he understood that the Council did not intentionally plan for delay between the completion of works and the start of the internal decoration and that he also understood the reasons put forward by the Council for the delay. However, delay had occurred and Mr C considered that Mrs A had suffered detriment as a consequence of the delay and the disposal of the carpets and should be awarded a compensatory allowance for the period that the property had been uninhabitable.

13. The 14 December 2004 response letter from the Chief Executive advised that the timescale given for decoration to commence was correct at the time given, that the delays were unforeseen and that a further reason for delay was a flood at the wallpaper warehouse that led to delays in wallpaper supply and affected contracts throughout Scotland. It went on to say that that 'Tenants who make their own decanting arrangements do have the option of going back to their house when the heating/rewire work is complete, or staying in their temporary accommodation if this is possible. However, an extended stay in temporary accommodation is not covered by the decant allowance for which a maximum limit of £300 covers the heating and rewire part of the contract works'.

14. The 14 December letter from the Chief Executive concluded by saying 'Whilst I appreciate this situation has been difficult for [Mrs A], the work carried out has been extensive and, therefore, the situation is bound to be disruptive to all the tenants affected. We have applied the Council policies consistently in respect of decant, decoration and floor covering costs and the amounts available to [Mrs A] are as described above, and are reviewed by Housing Committee on a yearly basis. I am afraid your circumstances do not merit exceptional consideration'.

15. Mr C responded to this letter in writing on 21 December 2004, saying that the Chief Executive had not fully answered all the issues raised by the particular circumstances of [Mrs A] and asking the Chief Executive to respond as fully as possible to the nine questions that he then went on to detail. The response letter from the Chief Executive (3 February 2005) said that: 'Our decant policy agreed by the Housing Committee clearly states that the maximum payment for

tenants making their own arrangements is £300. If a tenant wishes to stay out of their house until the decoration is complete then it is their choice but no further payment over and above the £300 agreed by Committee can be paid. The only room for manoeuvre in this instance is if the complainant is severely disabled (i.e. a wheelchair user) then a longer stay in either a hospital or respite accommodation can be arranged, however, if that tenant has made their own arrangements then the £300 maximum will still apply.'

16. It was after receiving this letter that Mr C brought his complaint to the Ombudsman. Mr C told this office that he was seeking financial compensation pro-rata for the period of enforced absence from the property. His claim was that property was uninhabitable for 10 weeks but that Mrs A only received an 'allowance' of £100 per week for the first three weeks. Mr C also expressed concern that the Council had been attempting to hide behind a blanket policy response in a situation where he believed that interpretation and discretion should prevail.

17. In response to enquiries from the Ombudsman's office, the Council advised that tenants were expected to return to their homes following heating/rewire work but prior to redecoration and that the only exceptions to this are where there was severe disability, for example, where the tenant was a wheelchair user. When asked in what circumstances the Council would give consideration to exceptional circumstances, their response was that it would be where either disability or a medical condition would render a return to the house before redecoration works as being prejudicial to the health of the tenant, for example, if the tenant was a wheelchair user or had a severe respiratory condition. The Council went on to explain that this information would generally come out during discussions with the tenant and their family prior to the commencement of work and medical evidence would normally be required. Also, that at the time of the works being planned, it was not considered that Mrs A was an exceptional case to merit special consideration on medical grounds as no evidence to this effect had come out in discussions with the Housing Officer about the works and the timing of the redecoration.

18. The Council have confirmed to the Ombudsman's office that there are no procedures in place to allow special cases to be considered outwith the Decant Policy and that the Decant Policy is not influenced by differing individual circumstances. However, if something was requested outwith the Decant Policy, a decision would be taken by senior management on the matter. Also,

that tenants or family members with severe disabilities/medical conditions would be given the highest priority for decoration following heating and rewire contracts, which unfortunately would mean that others who still have considerable needs would have to wait. In the case of Mrs A, the Council have said that there were other tenants affected by this and other contracts who merited greater priority and that they regretted any undue inconvenience to Mrs A and her family.

19. The Council have also confirmed that references to the Decant Policy and the Policy on Tenants' Allowance are references to the same document. It is noted that the 2004 version of the Policy (the one current at the time under consideration) stated that the option of tenants making their own arrangements for alternative accommodation should not be used when long term decants were anticipated and that the maximum allowance would be £300 (i.e. equivalent of 3 weeks at £100).

20. Further correspondence with Mr C in the light of the above responses from the Council resulted in the following facts and observations. Mr C advised that he had not seen a copy of the Council Policy on Tenants' Allowances, despite request, until June 2005 (this being the 2005 version of the Policy) and that it was only at this time that he became aware of the section headed 'Urgent Additional Allowance'. This section permitted a payment of up to £246 to be made if urgent rehousing was required and where genuine need existed, but was limited to tenants who were either in receipt of housing benefit or had particular medical requirements, and that each application would be considered on its own merits. Mr C remains unclear whether this exception could or should have been applied in the case of his mother.

21. Mr C also advised that he had been told by a Council worker that the wallpaper chosen by his mother had not been damaged at the warehouse as claimed by the Council and so this could not be a reason for delay. When he raised this with the Council he was told that the redecoration could not be prioritised as it had to be done in strict order of decantment. Mr C was also adamant that the likely extent of the dilapidation resulting from the works had not been made clear before the work started and that it was only at the point of return that the extent of the dilapidations could be seen and the medical consequences of his mother returning home could be envisaged.



22. Further enquiries made by the Ombudsman's Office to the Council led to written confirmation that Mr C had faxed the wallpaper choices made by Mrs A to the Council on 12 October 2004 and that a Council Works Order for the same wallpaper choices had been sent to the contractor by the Council on 24 November 2004. Mr C has subsequently advised that he did not have a fax and that wallpaper choices were confirmed to the Council by the return of a completed pro-forma to the site office before the property was vacated on 8 October 2004. The Council have confirmed that Mr C had been offered a decoration voucher in lieu of having full decoration carried out.

23. When asked whether any consideration had been given to requesting medical evidence from Mrs A following completion of the works, the Council responded that it was only in the case of tenants who may require respite care that a referral is made to the Social Work Department for a Single Shared Assessment, and the decision as to whether respite care is required is made by the Social Work Team. The Council advised that at no time was any indication by Mr C or Mrs A that Mrs A required respite care. When asked what would have happened if Mrs A had been assessed as medically unfit in October 2004, the Council responded that they could not comment on this in the absence of an assessment, but that there would not have been any increase in allowance as Mrs A had already received the maximum allowance under the Council's Tenants' Allowances Scheme.

*(a) Conclusion*

24. The complaint investigated was that the Council should have considered the extenuating circumstances relating to Mrs A outwith the Council's Decant Policy (the Tenants' Allowances Scheme) and that the Council failed to provide adequate compensation for the period of absence from the property. It is for a Council to decide the scope and content of its Policy relating to decant arrangements and tenant allowances. This investigation has established that the Council did meet provisions of its then current Tenants' Allowances Scheme. Mrs A received her rent abatement and an alternative accommodation allowance of £100 a week for the three weeks maximum permitted under the Tenants' Allowances Scheme. Mrs A was also offered a decoration voucher and received a floor covering allowance.

25. However, it is noted that Mr C had some difficulty in establishing both the nature of the Tenants' Allowances Scheme document (which, in fact, is a report to the Housing Committee) and in obtaining a copy. It is a particular concern on

two counts that Mr C was not provided with a copy after his request to the Council: firstly, that a request was not fulfilled and secondly that it is difficult for a tenant, or their representative, to question or challenge the approach or decision of a body if they have not been provided with the relevant information. For example, the Tenants' Allowances Scheme contains provision for payment of an urgent additional allowance (see paragraph 20), but Mr C only became aware of this provision in June 2005 and remains unclear whether this exception could or should have been applied in the case of Mrs A. It is noted that the Tenants' Allowances Scheme document provided to the Ombudsman's office did not contain information on how to appeal against a decision of the Council.

26. An issue considered as part of this investigation was whether or not there were any extenuating circumstances relating to Mrs A. It was apparent at the start of the refurbishment works that both the Council and Mrs A had anticipated that Mrs A would only be out of the property for three weeks. Also, Mrs A had understood that redecoration to the property would take place within two weeks of the completion of the works.

27. The refurbishment works to the property were completed within three weeks, as anticipated. It has not been possible to establish exactly why there was a delay in carrying out the redecoration to the property, but it is clear that this took considerably longer than anticipated to complete. It is also apparent that work-related damage to the property was greater than Mr C and Mrs A had anticipated and that the property had not been cleaned when they viewed it on 27 October 2004. Also, that some carpeting to the property had been damaged and removed by the contractor. Therefore, it is my opinion that there were circumstances that could not have been anticipated or considered at the start of the works.

28. There is then the question of whether these circumstances should have been considered outwith the Tenants' Allowances Scheme. The Council have advised that they have no procedures in place to allow special cases to be considered outwith the Tenants' Allowances Scheme, but that if something was requested that did not fall within the Tenants' Allowances Scheme, then a decision would be taken by senior management on the matter. When asked in what circumstances the Council would give consideration to exceptional circumstances, their response was that it would be where either disability or a medical condition would render a return to the house before redecoration works

as being prejudicial to the health of the tenant, that this information would generally come out during discussions with the tenant and their family prior to the commencement of work and that medical evidence would normally be required.

29. The Council have followed their Policy relating to Tenants' Allowances and have awarded allowances to Mrs A in line with that Policy. However, I have not been convinced that the Council have considered the individual and particular circumstances relating to Mrs A. In the absence of this consideration, it has not possible to determine whether the Council provided adequate compensation for the period of absence from the property. The individual and particular circumstances arose after the commencement of the refurbishment works, so could not have come out in discussions beforehand. Also Mr C told the Council on 11 November 2004 that he had medical advice that his mother should not be expected to return to the property under these circumstances. This was also mentioned in his letter to the Chief Executive on 2 December 2004, but it appears that the Council did not pursue this matter or request any written medical certification.

30. It is for the reasons set out above that I partially uphold the element of this complaint that relates to the consideration of extenuating circumstances.

*(a) Recommendation*

31. The Ombudsman recommends that the Council:

- (i) apologises to Mr C for their failure to provide a copy of the relevant Policy on request; and
- (ii) gives consideration to the individual and particular circumstances relating to Mrs A and her decant situation; and
- (iii) provides Mrs A with a decision in writing in relation to her individual and particular decant situation.

**(b) The cost of replacing damaged carpets exceeded the level of compensation provided by the Council**

32. Mr C has described how, when he and Mrs A met the Housing Officer on site on 27 October 2004 (see paragraph 6 above), he found the stair and hall carpets had been left out in the open and had been rain damaged as a consequence. He advised that the Housing Officer proposed £270 at the time in settlement for all damaged floor coverings and he had understood that this was the extent of the Housing Officer's authority.

33. The Council Tenants' Allowances Scheme (2004) included a floor covering allowance when floor coverings needed to be uplifted to carry out remedial or improvement work. This allowance was described as a contribution towards the cost of lifting and relaying floor coverings and at the time had a maximum limit of £273 (not £270).

34. In response to the complaint from Mr C, the Council let him know that they had interviewed the contractor responsible for uplifting the carpet. The contractor advised that the carpet backing was in a poor state and that this would have made it impossible to relay. The Council confirmed that Mrs A had been offered the maximum allowed for damaged floor coverings and any further claims should be made to the Council's insurance section.

35. Mr C agreed with the Council that there had been some deterioration to the foam backing of the carpets, which may have prevented them from being re-laid, but considered that they might still have been serviceable and that the carpets should have been preserved pending Mrs A's decision whether to keep them. Mr C has told the Ombudsman's office that he decided to delay carpeting the stair and hallway until after decoration works had been completed in order to avoid damage to the new carpets.

36. The Council advised Mr C that he could submit an insurance claim to them in respect of the carpets but, as this was unavoidable damage, there was little chance of success by going down that route. Mr C has told me that he accepted the carpet voucher, but decided to not to pursue the claim for damages to floor coverings since the Council had made it clear to him that compensation would be based on the value of the carpets damaged, not the cost of replacement.

37. The Council have already told Mr C that, as a result of his complaint, they have stressed to contractors that the decision not to relay carpets should rest with the tenant. Also, that in future, the Council will inform tenants of such findings and seek their opinion on the matter

*(b) Conclusion*

38. The complaint investigated was that the cost of replacing damaged carpets exceeded the level of compensation provided by the Council. This was obviously the position, but it is clear from the Council policy on Tenants'

Allowances (2004) that the floor covering allowance was intended to be a contribution towards the cost of lifting and relaying floor coverings. The Council applied the Policy correctly in relation to the complaint from Mr C and also advised him that he could make an insurance claim. The Council also looked into the complaint about the contractor disposing of the carpets and it is positive to see that they have made changes to their processes as a result.

39. It is for these reasons that I do not uphold this complaint and the Ombudsman has no recommendations to make.

**(c) The property was uninhabitable on completion of the works**

40. The condition of the property on the completion of works and the reasons for this condition were described earlier in this report. In addition, the Council have told Mr C that the property had not been cleaned before Mr C and Mrs A arrived on 27 October 2004 because the cleaners were busy with other tasks, but that the property could have been cleaned later that day. Mr C said that he observed the cleaners leaving on 27 October 2004 after only having made a cursory attempt to clean the property and that the property was still in the same state of uncleanliness in December 2004, at which time he made a further complaint to the Council. Mr C has further advised that after additional correspondence he wrote to the Council on 10 February 2006 for a sum of £58 for professional cleaning costs, that this was duly settled and that he has had no further dealings with the Council on this matter.

*(c) Conclusion*

41. I uphold this complaint as, for the reasons described above and earlier in this report, it is apparent that Mrs A could not have moved back into her home on the completion of the works.

*(c) Recommendation*

42. The Ombudsman has no recommendations relating to this head of complaint as Mr C has already received recompense from the Council.

**(d) The Council failed to respond adequately to issues raised in correspondence by Mr C**

43. As set out in the first head of complaint, in his letter of 21 December 2004 to the Chief Executive Mr C wrote that he had not had a full response on all the issues raised by the particular circumstances of Mrs A. He asked the Chief Executive to respond as fully as possible to the nine questions that he then

went on to detail. Mr C complained to the Ombudsman's Office that he has not received a complete reply to the questions raised in this letter.

44. The Council said that they believe that their earlier responses dealt with the complaint, that the letter of 14 December 2004 concluded the complaint from the Council's perspective and that 21 December letter from Mr C just raised the issues again in a different way. It is noted that the Chief Executive did write a further letter to Mr C, dated 3 February 2005, in which he acknowledged the 21 December 2004 letter and provided additional information about the decant policy, decoration voucher and carpet situation.

*(d) Conclusion*

45. This complaint about the failure of the Council to respond adequately to issues raised in correspondence from Mr C relates to the questions set out in his letter to the Council dated 21 December 2004. The position of the Council is that their earlier responses to Mr C dealt with these questions.

46. It is apparent from the correspondence I have seen that the Council did provide a response to some of the questions raised by Mr C, but I am critical of the fact that they did not either answer all of his questions, or tell him that they did not intend to provide a further response as they considered that all issues raised had been dealt with. Mr C was left in the position of expecting a further response from the Council, which was not forthcoming.

47. Also, it is not clear from the responses of the Council, if or when the concerns raised by Mr C were considered to be a complaint. I am concerned that I have seen no reference in correspondence with Mr C to the Council's complaints policy or to Mr C being informed of his right to bring his complaint to the Ombudsman (as required by Section 22 of the Scottish Public Services Ombudsman Act 2002).

48. I, therefore, uphold this complaint on the basis of the failure to respond appropriately to Mr C's letter of 21 December 2004.

*(d) Recommendation*

49. The Ombudsman recommends that the Council:

- (i) apologises to Mr C for their failure to respond fully and appropriately to his letter of 21 December 2004; and

- (ii) provides a written response to Mr C that either addresses the questions raised in his 21 December 2004 letter or explains why such a response will not be forthcoming.

50. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

**Explanation of abbreviations used**

Mr C	The complainant – the son of Mrs A
Mrs A	The aggrieved
The Council	Dundee City Council