

Scottish Parliament Region: North East Scotland

Case 200601424: Aberdeenshire Council

Summary of Investigation

Category

Local government: Housing; Private sector grants and loans

Overview

Mr C worked for a charity which helped disabled people to buy their own home. He complained, on behalf of Mrs A, that changes in Aberdeenshire Council (the Council)'s policy on Housing Improvement Grants were unreasonable and had disadvantaged Mrs A. Mrs A had made an application for a grant to help her build an extension to her property and Mr C also complained about the length of time it had taken the Council to progress Mrs A's application.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council's changes in their grants award policy were unreasonable (*upheld*); and
- (b) there was undue delay in processing Mrs A's grant application (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) ensure that, where significant changes to policy are being made, advice on the legal implications of those changes is appropriately taken and recorded; and
- (ii) provide Mr C and the Ombudsman with comments on their current policy on Housing Improvement Grants in the light of the applicable legislation.

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

Main Investigation Report

Introduction

1. Mr C worked for a charity that helped disabled people become home owners. He was providing support to Mrs A, who had applied for a Home Improvement Grant to help her build an extension to her home. Mrs A was disabled and the extension would provide her with downstairs bedroom and bathroom accommodation. In correspondence, Aberdeenshire Council (the Council) said that they would consider a grant for some of the improvements Mrs A wished to make but also that they had had to alter their policies because of funding problems. As a result: they had reduced the maximum grant available from £20,000 to £15,000; they would no longer consider funding for extra bedrooms; and they had established a waiting list. Mr C complained that the policy changes were unreasonable and, in particular, that the reduction of the maximum grant was in breach of the relevant legislation. He also complained about the length of time taken to process Mrs A's grant application.

2. The complaints from Mr C which I have investigated are that:
- (a) the Council's changes in their grants award policy were unreasonable; and
 - (b) there was undue delay in processing Mrs A's grant application.

Investigation

3. In investigating this complaint I considered correspondence between Mrs A, an MSP and the Council. I reviewed documentation and made enquiries of the Council. I also considered relevant Council policies, legislation and guidance. These are listed in Annex 2. Abbreviations used in this report are set out in Annex 1.

4. 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.

Legislative background

5. The Housing (Scotland) Act 1987 (the Act) provided that, depending on the circumstances, local authorities may or must provide grants for improving and repairing private housing (see paragraph 6). These provisions were amended by the Housing (Scotland) Act 2001 (the 2001 Act) and the changes came into force on 1 October 2003, along with a number of pieces of secondary

legislation. In November 2004 the Scottish Executive¹ issued guidance notes on the changes (the Guidance Notes). The Guidance Notes refer in detail to the legislation and at times set out a view on this. Funding for such grants is provided from the Scottish Executive through the Private Sector Housing Grant and the grants are administered by Communities Scotland, on behalf of the Scottish Executive.

6. Under the legislation, grants are either mandatory or discretionary. Section 244 of the Act provides that grants to provide any of the standard amenities, including additional standard amenity which is essential to the needs of the disabled occupant, are mandatory. Standard amenities are defined as a sink, fixed bath or shower, a wash hand basin, all with a satisfactory supply of hot and cold water and a water closet or waterless closet. Section 236 provides that local authorities may provide assistance by making improvement grants in relation to a house for a disabled occupant when such works are required to make it suitable for the disabled person's accommodation, welfare or employment.

7. Section 240 defines the 'approved expense'. This is the amount of expense approved by the local authority. The Guidance Notes state that in determining the approved expense the local authority will need to consider whether the work is eligible for the grant and the estimate is reasonable. Having done so, the Guidance Notes say at paragraph 9.1 that the local authority: 'may decide to fix the approved expense at an amount lower than the estimate given in the application, and lower than the statutory maximum expense. In such circumstances, they must explain to the applicant in writing the grounds for their decision'. Paragraph 3.1 of the Guidance Notes says that it is for the local authority to determine 'whether proposed works are eligible, necessary, and appropriate, having regard to the aims of the grant system'. Paragraph 3.1 continues: 'Authorities are not required to make grant available for all eligible types of work but may impose restrictions taking account of national and local priorities and the resources available for them'. The Guidance Notes also point out there is no limit within which a local authority must progress an application. Once they have approved the works as eligible, local authorities then need to consider the amount of grant they can provide in

¹ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government to replace the term Scottish Executive. The latter term is used in this report as it applied at the time of the events to which the report relates.

line with the regulations. Section 242 of the Act states that the amount payable is the greater of the approved expense minus the applicant's contribution or a percentage of the approved expense as specified in the regulations for particular cases (the minimum percentage grant). The maximum approved expense attributable to any one house or one grant application is set at £20,000. Councils can apply to the Scottish Executive to exceed this if they feel that it would be appropriate to do so.

(a) The Council's changes in their grants award policy were unreasonable and (b) there was undue delay in processing Mrs A's grant application

8. On 26 January 2006 a report was placed before the Council's Infrastructure Services Committee (the Committee) by the Director of Planning, which recommended changes to the Council's policy on grant awards under the Housing Improvement and Repairs Grants scheme. The report, prepared by an Environmental Health Specialist Officer (Officer 1), said that, although there had been an increase in the funding received from Communities Scotland, demand for assistance exceeded this. The report recommended: reducing the maximum approved expense from £20,000 to £15,000; limiting the availability of discretionary repairs grants to structural elements and making these only available to clients of Aberdeenshire Care and Repair Project (the Project) (a charity which provided services to and on behalf of the Council)²; that discretionary grants should only be awarded if the house had been occupied for 12 months prior to submission of the application³; and that grants for new bedrooms be discontinued. The report also said that further action might be required, including temporary suspension of the scheme or the operation of a waiting list. The report added that the changes were in accordance with the 2001 Act and the Council's own eligibility policy. It went on to state that:

'Officers within Law and Administration, Finance, Housing and Social Work have commented on the proposals. This issue has also been discussed by the [Project] Advisory Committee. Consultees are supportive of the changes although the Social Work Service would prefer that grants for new bedrooms for disabled persons continue to be available.'

² This change only affected one class of applicant. Others were encouraged but not required to use the Project

³ The Council policy in force had a requirement of six months occupation.

9. The Committee approved the changes which were to apply from 16 January 2006. They also delegated authority to the Director of Planning to further expand or limit the policy in consultation with relevant services and the Project Advisory Committee. The minute of the meeting said that the Committee made the decision: 'Having heard further from Officers that the proposed reductions in the breadth of the scheme would be in line with the legislation and were necessary to stay within budget'.

10. Mrs A signed an application for a grant to help her build an extension to her home to accommodate a bathroom and bedroom at ground level on 9 May 2006. An Occupational Therapy report dated 24 October 2005 supported this application on the basis of Mrs A's disability. This was submitted by the Project to the Council on 16 May 2006, with a covering letter which referred to the supporting documents also submitted. This indicated a copy of the title deeds had been sent.⁴ The acknowledgement letter from the Council on 18 May 2006 detailed the changes in policy agreed in January 2006 (see paragraph 5) and added that, in addition, a prioritised approval system had been introduced with applications approved on a monthly basis. The letter said that the application could not be processed until the title deeds had been received.

11. Meanwhile, on 10 May 2006, an MSP had written to the Council about the changes in policy and the likely impact of this on Mrs A's application. The Head of Environmental Health and Waste Services replied on 2 June 2006 saying that, based on the information supplied with the application, they could consider a grant for the en-suite shower room and access to this. He said that a grant would not be awarded for the bedroom. This specific restriction was brought in because the Council had been given insufficient funding to meet the demand for improvements and adaptations and such applications usually attracted a high grant award, which reduced the number of applications that could be approved. Other restrictions included the new approval system, which he accepted would significantly increase processing time.

12. Mrs A continued with her application and, on 26 June 2006, she was informed that she would need a more detailed breakdown of builders' costs. Mrs A sent this to the Project, who received it on 3 July and submitted it to the Council later that week. The full costs for an extension including a bedroom

⁴ In response to a draft of this report Mrs A confirmed she had sent the deeds to the Project.

were estimated to be nearly £40,000.⁵ The builders supplied a separate costing for a bathroom extension with wheelchair access and this was around £17,000.

13. On 9 August 2006 Mrs A was sent a letter by the Council saying she could commence works prior to the grant application being processed. The letter said this did not imply the approval of the application but that the fact that works had been commenced prior to approval would not be used as a reason for refusal.

14. On 6 September 2006 Mrs A sent a detailed letter of complaint to the Chief Executive. This said that she still had not been told what her grant figure would be and that the legislation did not allow a restriction of the maximum grant level to £15,000. Mrs A referred to discussions with legal advisers on this point and added that a member of Scottish Executive staff had confirmed that the Council could not do this. She also quoted legal advice that had been given to a Centre for Inclusive Living, relating to a case involving a disabled person requiring an extension in an unnamed local authority. This advice referred to local authorities' continuing obligations under the Chronically Sick and Disabled Persons (Scotland) Act 1972 (the 1972 Act).⁶ Mrs A also referred to a letter sent to another family by the Scottish Executive which she said supported the view that the scheme allowed a means test up to £20,000.

15. The Chief Executive replied on 3 October 2006. He first said that Mrs A's grant could not be fully processed until the title deeds had been provided and that these had not been received. Under the regulations the application would attract a rate of grant of 60 percent of the approved expenditure but that grant would not be awarded for the provision of the bedroom. The Chief Executive said that, although the Council could apply to the Scottish Executive to exceed the maximum approved expense, no additional funding was made available for this and there was insufficient funding to meet the level of need. The Council's current maximum approved expense was £15,000. He also explained that the Council had established a waiting list and the majority of pending applications would not be approved this financial year. They would only be able to advise on the remaining applications when the budget for next year was known. The Chief Executive added that a named person in the Scottish Executive Housing

⁵ I have seen the precise figures but only include approximations here.

⁶ The letter itself referred in error to the 1970 Act which applies to England and Wales but the Council responded based on the 1972 Act.

Division (Officer 2) had confirmed that the setting of an approved expense less than £20,000 was permissible for both mandatory and discretionary grants. He referred to the 1972 Act and said Councils had discretion when it came to funding although they were obliged to carry out an assessment. He noted that Mrs A had been told the Council would support a grant application and had also provided a stair lift as a temporary measure. The Chief Executive acknowledged that the grant would only make a small contribution to the cost of the works and that the Project might be able to identify additional sources of funding.

16. The title deeds were received by the Council on 13 October 2006 and Mrs A's grant was approved on 9 November 2006. The Council said they had approved nearly £18,000 as the amount of expenses ascribable to the improvement works. The maximum approved expense was £15,000 and Mrs A would, therefore, receive £9,000 having been assessed for a grant level of 60 percent.

17. The Council responded to my enquiries about both the delay and the background to their decision to change the policy in general.

18. On the delay, the Council said that at the time Mrs A submitted her application in 2006, the waiting time for approval was about six months. They said very few grants were approved during 2006 due to the limitations on the budget allocation received from the Scottish Executive. The Project had accepted they had failed to notice that the acknowledgement letter referred to the title deeds being missing. However, when the Council had approached them direct about this in October 2006, the title deeds had been provided in a matter of days. The Council said the failure to note the deeds were still required had caused no delay: permission was given to start work in August 2006 and the grant was approved in November 2006.

19. In my enquiries on the policy changes, I asked for details on the advice provided by the Scottish Executive referred to in the letter of 3 October 2006 (see paragraph 15). The Council said this advice had been given by telephone at the time but they asked Officer 2 to confirm the position in writing. Officer 2 set out the general background on the legislation and also said:

'It is of course for each local authority to take legal advice to ensure that their activities and policies comply with the relevant legislation, but I am happy to comment in general terms. ... I know a number of authorities

have set a ceiling on approved expense below £20,000, either as a global figure or as separate amounts for particular types of work. I am aware that some people feel that such policies may be open to challenge, but no cases have been brought to date.'

20. The Council also provided copies of an internal email sent to councillors, the Project, local housing associations and relevant departments, asking for comments on the proposed changes prior to the report to the Committee being prepared. The report had been prepared by Officer 1. Not all email correspondence had been kept but the responses available showed that the Social Work Department had raised some issues relating to the introduction of a blanket ban on certain adaptations and had queried whether a court of law would look favourably on this. The email said that in some cases an additional bedroom may be the only viable option. The email continued: 'You would need to consider whether you refuse a grant based on the assessed need and whether this would be in violation of the duty of the Act'. Officer 1 had replied and said that the Act allowed Councils to have discretion with regard to eligibility and in his opinion they could, therefore, restrict the type of works eligible for the grant.

21. Following receipt of this information, I asked the Council to comment on the written information provided by Officer 2 and, in particular, on the sentence relating to the restriction on the grant level being open to challenge (see paragraph 19). I also asked the Council to confirm that specific advice had been taken on this point prior to its being placed before the Council Committee on 16 January 2006 or to ask their Legal Services Department to comment.

22. In their response, the Council confirmed that in their view the policy introduced in January 2006 clearly conformed with the Act. They said that the restriction to certain adaptations was in line with the discretion they had under the legislation and that they had always been advised by the Scottish Executive that they could set a lower maximum grant to reflect the level of demand and the budget available.

23. They said in-house legal advice would have been available to the authors of the relevant report during its preparation and that the Law and Administrative Service would also have received papers going to the Committee as part of their statutory monitoring role. They had retained no documentary record of all comments received but had provided what they could. The Council also said

any comments would have been incorporated into the final report presented to the Committee (see paragraph 8 for details of the report itself and the discussion at paragraph 9).

(a) Conclusion

24. The Council do not dispute that they have restricted the ability of disabled people to access funds via the Housing Improvement Grant. They say they have done so in response to increasing budgetary pressures and that they consider the restrictions they have introduced are in line with the legislation. Mr C disputes this and said that he has received legal advice to the contrary. Both Mr C and the Council have said that members of staff of the Scottish Executive have supported their respective positions.

25. I accept that the Council have difficult decisions to make about how best to allocate limited resources and did not take this decision lightly. However, given the impact of this decision, I am concerned that the Council have not either provided me with evidence of legal advice taken at the time or commented further on the legal basis of their decision when asked for direct comment (see paragraph 22 to 23) The Council have provided written comment from the Scottish Executive (see paragraph 19). I have read this carefully and consider this does not clearly support their position that the Scottish Executive agrees with their view. Indeed, it is a statement which accepts that this is an area where more than one view has been expressed. No note was taken of any advice received by telephone at the time the changes to the policy were being considered and it is not possible to say whether the advice at the time was expressed in different terms.

26. The Council have also been unable to provide details of any comments made by their own in-house legal advisers prior to the report recommending the changes being placed before the Committee. The report itself does say the proposals are in line with the 2001 Act and that officers in Law and Administration commented (see paragraphs 8 and 23) but given the significance of the change in policy it would have been good practice to record the comments and the basis for them.

27. Officer 2 was correct to say that it is for each Council to take legal advice to ensure that their activities and policies comply with the relevant legislation. Ultimately, the question of the interpretation of the legislation lies with the courts and it is not the role of this office to adjudicate between competing

interpretations of the law. However, on the evidence I have seen the Council have not been able to demonstrate that they have taken appropriate legal advice on the changes to the policy. I, therefore, uphold this complaint and the Ombudsman makes the following recommendations.

(a) Recommendation

28. The Ombudsman recommends that the Council

- (i) ensure that, where significant changes to policy are being made, advice on the legal implications of those changes is appropriately taken and recorded; and
- (ii) provide Mr C and the Ombudsman with comments on their current policy on Housing Improvement Grants in the light of the applicable legislation.

(b) Conclusion

29. Neither the Guidance Notes nor the legislation set out time limits for the consideration of applications. However, all Councils should demonstrate that they are operating effective and efficient systems of administration. The Council encouraged all such applications to be made through the Project and, in considering whether there was undue delay, I have reviewed the contact between Mrs A, the Project and the Council.

30. Mrs A's application was submitted in May 2006 and she received the decision of the Council in November 2006. This was outside the average six month wait but not significantly so. The Council did ensure temporary measures were in place (a stair lift) to help with the problems her disability were causing her and they agreed she could start the work required before the application was processed. I have also seen details of the contact between the Project and Mrs A and the Project and the Council, which show that this was regular and this application was being progressed. Although it is accepted that an officer with the Project failed to note that the title deeds were missing from the initial application, this did not appear to have caused delay in the application itself. The Council provided a copy of their service level agreement with the Project which showed that their performance was monitored and they regularly provided the Council with details on work in process and completed. In the circumstances, I do not consider that there was undue delay and, therefore, do not uphold this aspect of the complaint. The Ombudsman has no recommendations to make.

31. 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.

Explanation of abbreviations used

Mr C	The complainant
Mrs A	The aggrieved
The Council	Aberdeenshire Council
The Act	The Housing (Scotland) Act 1987
The 2001 Act	The Housing (Scotland) Act 2001
The Guidance Notes	Guidance for Local Authorities on Improvements and Repairs Grants
The Committee	Aberdeenshire Council's Infrastructure Services Committee
Officer 1	Council officer who prepared the report and replied to Mrs A's MSP
The Project	Aberdeenshire Council Care and Repair Project
The 1972 Act	The Chronically Sick and Disabled Persons (Scotland) Act 1972
Officer 2	Scottish Executive Officer who provided comment on the Council's policy

List of legislation and policies considered

Housing (Scotland) Act 1987 as amended

Guidance for Local Authorities on Improvements and Repairs Grants

Care and Repair Standards and Guidance

The Council's House Improvement and Repairs Grants – eligibility policy

The Council's Criteria for the Provision of Equipment and Adaptations in the Home of People with Disabilities