

Scottish Parliament Region: South of Scotland

Case 200600900: North Ayrshire Council

Summary of Investigation

Category

Local government: Housing\Capital works; renovation, central heating, double glazing etc

Overview

The complainant (Mr C) claimed that with a replacement central heating system that was installed in his home by North Ayrshire Council (the Council) failed to meet his specific needs.

Specific complaint and conclusion

The complaint which has been investigated is that Mr C claimed that with a replacement central heating system that was installed in his home by the Council failed to meet his specific needs (*not upheld*).

Redress and Recommendation

The Ombudsman has no recommendations to make.

Main Investigation Report

Introduction

1. On 29 November 2006 the Ombudsman received a complaint from a member of the public (Mr C) against North Ayrshire Council (the Council). The Council had replaced the central heating system in Mr C's home and he claimed that it failed to meet his specific needs.

2. The complaint from Mr C which I have investigated is that Mr C claimed that with a replacement central heating system that was installed in his home by the Council failed to meet his specific needs.

Investigation

3. It is important to make clear at the outset that it has not been my role to assess the technical correctness or effectiveness of the central heating system or any of the components in Mr C's home, but to judge whether the Council fulfilled their duties and responsibilities to Mr C and whether they dealt with him in a reasonable manner.

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.

Complaint: Mr C claimed that with a replacement central heating system that was installed in his home by the Council failed to meet his specific needs

5. Mr C is a tenant of the Council. He told me that the Council installed a combination boiler central heating system in his home in 2005. However, the Council records show that:

'A new heating system was installed in the property in October 2004 as an addition to the normal central heating programme. This was instructed by [the Head of Technical Services (Officer 1)] after significant effort and expense had failed to rectify a fume spillage problem in the house.'

In response to my enquiries the Council confirmed that the heating system was installed in October 2004, and advised me that due to the problems Mr C had experienced with his previous central heating system:

'... the Council agreed to replace his heating system before the planned replacement date of 2006.'

6. Mr C was particularly concerned about the changes to radiators in his hall. Previously there had been one radiator in the downstairs hall, but this had been replaced by a different type of radiator in the downstairs hall and a new radiator was installed in the upstairs hall. He felt that this change had affected how his house was heated, and this was an issue for him as he thought that the new system was designed to be more efficient and, therefore, reduce his fuel bills. He was also concerned with the changes in temperature he reported in parts of his home as he has myalgic encephalomyelitis (see Annex 2). He was of the view that the Council had installed heating systems in other homes which were installed differently and were more efficient than the system installed in his home. As a result of all this Mr C felt that the Council should change his heating system as it did not meet his specific needs.

7. Mr C told me that he tried to complain to the Council but that he was 'rudely rejected'. He complained to the Council about the heating system on 15 January 2006 in an email to the Council's Chief Executive (The Chief Executive). He felt that Council officers were not looking at his home heating requirements from his point of view and his experience of living there, but were being 'driven by a computer' and looking at the situation as purely a technical exercise. In his email Mr C said he was:

'... not technical minded but even I see the fault but [Senior Clerk of Works, Technical Services (Officer 2)] said the computer told them I have the correct radiators ...'

On 17 January 2006 the Council's Best Value Adviser (Officer 3) asked Officer 1 to investigate, and the following day Officer 1 emailed Officer 3:

'Having considered all the circumstances of this case I can confirm that Technical Services will provide [Mr C] with a replacement radiator in his hall.'

A replacement radiator was fitted early in 2006.

8. Mr C remained dissatisfied with the heating system which he believed had been 'split', because his experience was that the first floor of his home was very warm and the ground floor was very cold. He said that the replacement hall radiator was still inadequate and, therefore, he was attempting to compensate by using a portable warm air heater. He emailed the Council on 16 June 2006 and Officer 1 responded to Mr C on 19 June 2006 advising that his heating

system had not been 'split' and that the new radiator was double the size of the previous one. Mr C disagreed with Officer 1's response and asked the Council to escalate his complaint to a higher officer. A Principal Officer from the Council's Property Services (Officer 4) prepared a brief report for the Council's Corporate Director of Property Services (Officer 5) to allow him to respond to Mr C. Officer 5 looked at this report as well as past correspondence between Mr C and the Council and wrote to Mr C on 29 June 2006 having determined that:

'... everything possible has been done to correct any faults or snagging which have been identified within your home. The heating system is now adequate for its purpose and other associated elements, such as wiring to the time clock, have been dealt with. In the circumstances I cannot identify any other work outstanding to your home.'

9. Mr C was not satisfied with Officer 5's response and so wrote to The Chief Executive on 3 July, 5 July and 11 July 2006. Officer 2 and Officer 3 visited Mr C's home on 14 July 2006 and this contributed to The Chief Executive's response to Mr C on 28 July 2006. The Chief Executive outlined the type of system that had been installed and how it operated, and concluded on the basis of advice from his technical staff that:

'The heating system which has been installed in your house has a capacity which exceeds your needs, and I am advised that the Council has provided a system which is superior to the previous one. I am satisfied that all my officers have acted in both a professional and courteous manner towards you and have previously accommodated your request to change your hall radiator. Accordingly, I have seen no reason to uphold your complaint and cannot concede to your request to replace your lower hall radiator.'

The Chief Executive then advised Mr C that if he was not satisfied he could approach the Ombudsman.

10. Mr C was not satisfied with The Chief Executive's response and on 1 August 2006 made a request to the Council for information on heating installations previously carried out by the Council and on their normal procedure for some aspects of installation. This matter was the subject of a judgement by the Scottish Information Commissioner and, therefore, I will not comment further, except to note that in response to Mr C's request, Officer 1 emailed Mr C to say that he was of the view that the system had been designed to

comply with current standards and that there was no need for further action on it.

11. Mr C emailed The Chief Executive on 7 September 2006 asking for a final reply to his complaint so that he could approach the Ombudsman. He sent a further Freedom of Information request to the Council on 12 September 2006. Officer 1 emailed Mr C on 15 September 2006 with a set of comparison heat output figures for Mr C's home and a similar home in Mr C's street, and he explained to Mr C that:

'Under the new central heating term maintenance contracts procured this year the obligation is now on the installation contractor to install radiators which meet or exceed the heat output necessary to achieve the required temperatures specified in the contracts in each part of the house.'

12. Mr C wrote to The Chief Executive on 16 September 2006 and included the comparison of the heat output that had been supplied by Officer 1. Mr C believed that the figures showed that his house was inadequately and inefficiently heated due to differences between the heat output of radiators in the two houses, and that this meant he was being victimised. The Council's Principal Performance Review Officer (Officer 6) emailed Mr C on 25 September 2006 to confirm that Mr C had completed the Council's complaints procedure with regard to his central heating complaint.

13. Following his complaint to the Ombudsman on 29 November 2006, and the decision by the Scottish Information Commissioner on 6 February 2007, Mr C emailed Officer 1 on 1 March 2007 asking for information. Officer 1 responded to him by email on 5 March 2007 as follows:

'As you know, I believe that the Council has acted properly in relation to the specification of the central heating system in your house. However, I am now faced with the prospect of valuable staff time being spent to provide you with information you have requested when, as I am sure you would also agree, they would be better employed in carrying out their normal duties to deliver a good service to the Council's tenants. That being the case I am prepared, without prejudice at this stage, to offer to replace the existing radiator in your hall with one which has greater heat output. If you are willing to settle on this basis, please confirm to me the minimum heat output you would consider acceptable. If we can agree on this it would, of course, be on the condition that you agree to withdraw

your Freedom of Information request. It would also seem logical that you would withdraw your complaint to the Ombudsman on this matter.'

Mr C telephoned me after receiving this email and told me that he was angry about it because he felt the Council should not set such a condition on getting the necessary work done as he had a right to complain, and because he was not a technical expert and so he was not in a position to tell the Council what size of radiator was needed. He rejected Officer 1's offer, again making it clear that he was 'not technically minded' and that Council staff were the technical officers. The Chief Executive's view of Officer 1's offer was that it:

'... was made to try and find an amicable solution to an issue which has continued beyond a period which both parties have found acceptable ... It would appear that we were no closer to narrowing the gap between [Mr C's] expectation of what a heating system should be capable of and what the Council and the industry believe is suitable and adequate for his house ... it is the Council's normal practice to continue to attempt to get an acceptable solution where one is practicable. The offer made by [Officer 1] on 5 March 2007 was such an offer. Although the words used were not those I would have chosen it would be unfortunate if the form of words used was being construed as anything other than this.'

14. I made enquires of the Council, to which Mr C also responded, based on the initial evidence supplied to me by Mr C. Mr C said that no-one, whether Council staff or contractors, had shown him how the heating system operated but he got his information on it from the manuals that were provided with it. There is no evidence to show whether or not Mr C asked to be shown how the system worked. The Council said that when heating systems were installed the onus was on the contractor to explain how the heating system operated. There is no evidence to show whether or not this was done. In addition, the Council told me that a Senior Clerk of Works explained to Mr C how to operate his heating system on at least two occasions.

15. Mr C told me that:

'The current system was installed due to a fault in the previous one in [20]05 but was due to be replace[d] in [20]06, however, the people who got the system installed in [20]06 had the contractors a few weeks before for specification, however, in my case they just turn[ed] up with what they had and installed it.'

The Council told me that the heating system was installed in Mr C's home in October 2004, and that Mr C had experienced some difficulties with his previous heating system and, therefore, the Council agreed to replace it before the planned replacement date of 2006 which was to be part of their rolling capital investment programme in housing stock. They also told me that they placed the onus on their contractors to design the heating system, but that the contract clearly stated that radiators fitted must be capable of achieving specified temperature levels for the rooms or areas of the house in which they were located. They went on to say that:

'any heating system installed must have the capacity to ensure that an ambient temperature of between 18 and 21 degrees centigrade can be maintained ... The heating system installed in 2004 met with the Council's specification for such work in every respect. The system installed was capable of maintaining an ambient temperature of between 18 and 21 degrees centigrade.'

Conclusion

16. It is clear that Mr C is upset about his experience with the heating system in his home as he believes that it does not meet his specific needs. Mr C also believes that because his heating system was not installed in exactly the same way and to exactly the same specifications as heating systems in neighbouring homes, his system is either flawed or faulty and the Council should repair or replace it. During my investigation it became clear that Mr C's heating system was replaced well ahead of the planned replacement date that was to be part of the Council's rolling capital investment programme. The date was brought forward by the Council to assist Mr C, because of problems with his previous central heating system. Therefore, it is reasonable that the manner in which his heating system was installed differed from how it was done in other houses. It is, therefore, also reasonable that his heating system is not identical in every physical detail to that installed in other homes. At various points in correspondence with the Council, and in correspondence and conversation with me, Mr C said that he was not technically minded and that Council staff were the technical officers. However, having said this, Mr C then went on to give his view to the Council on a number of occasions about how a heating system should work and that the heat output of his radiators was not appropriate for his home. It is clear that Council officers, as the technical experts in this area, have reached a technical and professional judgement on the heating levels in Mr C's home and I am not in a position to challenge this. Mr C has also said that his fuel bills have risen as a result of the replacement heating system. This may or

may not be the case, but it does not necessarily follow that his current heating system is less efficient than his previous one. Neither does it follow that any or all variations in his fuel bills since October 2004 have been as a result of the installation of the heating system, given that there have been well publicised fluctuations in the price of gas which have affected domestic consumers during that time.

17. One particular issue that arose during the investigation was the offer made by Officer 1 on 5 March 2007. I appreciate Mr C's view on the wording of the offer, however, taking account of the wider context I have concluded that the offer was a reasonable attempt in the circumstances to secure a resolution. The evidence shows that at least seven Council officers had tried to assist Mr C on a number of occasions since the installation of the heating system, but that Mr C was never satisfied with what was provided, claiming that his specific needs were not being met. Although I do agree that the offer could have been better expressed, as acknowledged by The Chief Executive, it was clearly a reasonable attempt to bring a protracted and resource-intensive situation to a close.

18. In terms of how the Council dealt with Mr C, I can find no evidence that he was victimised or that his complaint was 'rudely rejected'. The records show that the Council engaged fully and reasonably over a long period with Mr C's complaint and tried to respond to it at each stage of the complaints process, as well as providing an apparent remedy at the time of replacing Mr C's downstairs hall radiator in early 2006. It is clear that despite the Council's repeated efforts to respond to Mr C and explain their position, Mr C simply did not trust or believe Council officers, and, therefore, they found it increasingly difficult to deal with his requests to meet what he saw as his specific needs.

19. On the basis that the Council have provided a reasonable explanation for the manner in which Mr C's heating system was installed, and have clearly engaged with his complaint and tried to assist Mr C, I do not uphold this complaint.

Explanation of abbreviations used

Mr C	The complainant
The Council	North Ayrshire Council
Officer 1	Head of Technical Services
The Chief Executive	The Council's Chief Executive
Officer 2	A Senior Clerk of Works, Technical Services
Officer 3	Best Value Adviser
Officer 4	Principal Officer, Property Services
Officer 5	Corporate Director of Property Services
Officer 6	Principal Performance Review Officer

Glossary of terms

Combination (or combi) boiler	A compact boiler providing both heating and hot water
Myalgic encephalomyelitis	Commonly known as ME or Chronic Fatigue Syndrome (CFS), this long-term tiredness does not go away with sleep or rest and affects everyday life. Myalgia is muscle pain, and encephalomyelitis is inflammation of the brain and spinal cord