Local Government & Social Care OMBUDSMAN

Report by the Local Government and Social Care Ombudsman

Investigation into a complaint against Doncaster Metropolitan Borough Council (reference number: 17 013 347)

25 July 2018

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- apologise
- pay a financial remedy
- improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Miss X	The complainant
Y	Her son

Report summary

Children's services

Miss X complains about the Council's failure to meet her disabled son's needs by taking too long to re-house her family from a property that could not be adapted, then by delaying carrying out adaptations to their current property.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet, or other appropriately delegated committee of elected members and we will require evidence of this. ***(Local Government Act 1974, section 31(2), as amended)***

To remedy the injustice caused by fault in this case, we would normally recommend a monetary payment. This injustice is in the form of distress caused by the Council's failure to act to help the family and the physical effect on Miss X of having to lift Y repeatedly when he needs a hoist. However, Miss X has told us any monetary payment may affect the family's entitlement to benefits. Therefore, we have made an alternative recommendation in line with Miss X's request.

To remedy the injustice caused by fault, we recommend the Council, within three months of the date of this report:

- apologises to Miss X and her family for the injustice it has caused them by failing to meet Y's needs for more than three years;
- provides the family with a surfaced drive wide enough to accommodate their vehicle and to allow Y's wheelchair to pass to reach the house;
- funds a weekend break or short break for the family up to a value of £1,500. This is because the previous recommendation meets a likely need the Council might ordinarily have to consider even had the injustice caused by fault not occurred;
- starts the building work immediately to achieve a situation where Y has full wheelchair access to the ground floor of the property and can be hoisted for all transfers so that family members no longer have to lift him for these; and
- reviews its policies and procedures to ensure that it fully meets its duties to disabled children and their families under the Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970 in arranging adaptations to housing. This should ensure that it bases decisions on need rather than tenure. It should tell us within a further three months of the action it has taken as a result.

The Council has accepted these recommendations.

The complaint

1. The complainant, whom we shall call Miss X, complains the Council has taken too long to provide accommodation that meets the needs of her disabled son, Y. This was both before and since it moved her to her current address.

2. Before the house move, she says the Council gave her false and incorrect information about disabled facilities grants (DFGs). She says occupational therapists told her the Council no longer funded DFGs. She also says she was only allowed to bid on parlour-style houses.

3. After the move, she says an occupational therapist (OT) told her on 8 August 2017 she could not have a DFG to adapt her current property as it had already been adapted even though the adaptations did not meet Y's needs. She says the Council delayed offering her a DFG, delayed carrying out the work and at first offered her an extension that was smaller than the OT recommended.

Legal and administrative background

4. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. ***(Local Government Act 1974, sections 26(1) and 26A(1), as amended)***

5. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. ***(Local Government Act 1974, sections 26B and 34D, as amended)***

6. Under the information sharing agreement between the Local Government and Social Care Ombudsman and the Office for Standards in Education, Children's Services and Skills (Ofsted), we will share this report with Ofsted.

7. Councils have an underlying primary duty under the Children Act 1989 to meet the assessed eligible needs of a disabled child.

8. Section 2 of the Chronically Sick and Disabled Persons Act 1970 sets out the duties of councils to arrange for adaptations to a person's home to secure his or her greater safety, comfort or convenience.

9. Councils can arrange for adaptations to properties either via DFGs or by carrying out works themselves. This can include building, buying or converting properties. Any adaptations carried out under a DFG must be necessary and appropriate, reasonable and practical to carry out. Adaptations carried out for a child must not be means-tested.

10. Non-statutory guidance, *(Home Adaptations for Disabled People: A Good Practice Guide, 2013),* states that access to adaptations should not depend on housing tenure. The same guidance states that 95% of adaptations should be complete within 150 days. Allowing for these to be working days, this is about seven months.

How we considered this complaint

11. We have produced this report after examining relevant files and documents.

12. Although the complaint is in part historic, the difficulties Miss X has experienced in caring for Y in unsuitable accommodation are such that we feel it would have been more difficult than usual for her to complain. We have therefore decided to consider matters since 1 January 2015, which is about a year before she complained to the Council.

13. We gave Miss X and the Council a confidential draft of this report and invited their comments. The comments received have been taken into account before the report was finalised.

What we found

Background

14. Miss X and her partner together have five children. One of them, Y, has severe disabilities and has frequent hospital admissions and appointments. He is doubly incontinent, requires tube feeding, cannot walk or move himself and must be lifted or hoisted for all transfers. His family provides for all his basic needs, personal care and toileting.

Events before the family moved house: January 2015 to August 2017

15. Miss X and her family lived in private rented housing that did not meet Y's assessed needs. There were problems with lifting and bathing him. It would have needed adaptations and an extension. In March 2014, an OT assessed the family's needs. The OT decided they needed a three-bedroom parlour style house or a four/five-bedroom house. Parlour-style houses have two downstairs rooms, which increases the potential number of bedrooms if one of them is converted. Councils often use this type of house for families where a member has a disability so that person has a ground floor bedroom. It is also easier to add a bathroom to the ground floor.

16. The Council placed the family on its accessible housing register in November 2014.

17. An internal Council email noted on 17 February 2015 that Miss X had widened her areas of preference. This included 10 areas. She had rejected one. The Council provided a stair-climber device to minimise the need to carry Y upstairs. We note the family still needed to lift Y for ground floor transfers.

18. File notes record Miss X chased the Council at least twice in the autumn of 2015. An OT also asked the Council in November 2015 to consider the family for any new-built properties.

19. On 4 January 2016, an email from Miss X on the Council's files said the situation in the house was becoming tense. Emails on the files show the Council agreed to discuss the situation. The Council declined to consider a DFG application as the family did not have a secured five-year tenancy.

20. It sent a moving and handling trainer to the family on 3 February 2016.

21. A month later, on 3 March 2016 a file note stated Miss X had said she was very frustrated and the family was at breaking point.

22. On 31 May 2016, another file note stated Miss X had reported damp in the property was affecting Y's chest. The Council offered help via housing enforcement, which Miss X declined.

23. On 12 August 2016, Miss X emailed the Council, suggesting it knocked two available semi-detached properties into one. An internal email rejected the idea, stating the last time the Council had done this it had cost £70,000.

24. Three days later, an internal email recorded there were issues with damp in the property and this was now affecting an older child as well as Y.

25. According to the Council's records, a Council panel considered the family's case on 31 August 2016. It said the family needed to widen its area of choice. We checked the areas the family had already named. They covered a large part of the urban area for which the Council is responsible.

26. On 19 October 2016, the Council emailed Miss X to suggest the family moved to temporary accommodation in a private rented bungalow. Miss X emailed back to say the family could not afford the private rent. She told us the property was otherwise lovely, but the rent was well beyond their means and it was not adapted.

27. A file note the following day recorded the panel decision that the family need to widen its area of choice. It stated the panel had said there was nothing it could do. A social worker confirmed the areas the family would consider were already wide and added, "I am at a loss as to what I can do to support this family. [Y] has been hospitalised 3 times in the last 2 months because of medical issues."

28. A file note from 15 December 2016 recorded a four-bedroom property was available on general let, but the family did not bid. We have not seen any evidence either way. We asked Miss X. She said she had bid on many properties over the period of nearly three years, but it was possible she had missed one.

29. The family moved to a property rented from the Council on 9 August 2017 after their landlord began eviction proceedings.

30. We asked the Council if it could have adapted the property the family was living in while they were waiting for a suitable property. It told us it did not consider doing so via DFGs as the tenancy was not secure for five years and the property was in poor condition. We have not seen any evidence it carried out any adaptations to the property to meet the family's needs in caring for Y other than supplying the stair-climber device.

31. Miss X says an OT told her the Council no longer funded DFGs. She also says an OT told her she could not have a DFG because the new property had already been adapted for someone else. The Council does not accept anyone said these things.

32. Because of the number of children in the family, they needed four or five bedrooms. It is likely the range of houses on which Miss X could bid was limited. As stated above, parlour-style houses are often the most suitable for adaptations for families with a member with disabilities.

Events since the family moved house: August 2017 to date

33. The photographs Miss X supplied showed the ground floor room in the new property where Y was to sleep was too small to store the special equipment needed to look after him. It was not possible to move round Y's bed, which was situated across the full width of the room in front of a window. There was no hoist for transfers. Anyone lifting Y from the bed would have risked injury as it could only be accessed from one side. Miss X told us Y currently weighs 21 kilos. The property also needed work to improve bathing facilities downstairs, which was important because of Y's incontinence.

34. An OT assessed the necessary work on 9 August 2017. She recommended a ground floor extension to Y's bedroom of four metres. This was because the confined space meant a risk of unsafe manual handling and injury to Miss X, who already had back problems.

35. We have not seen any evidence that suggests the Council has carried out a carer's assessment for Miss X.

36. An email of 13 October 2017 recorded that the architect preferred three metres. We have not seen any evidence to show why.

37. A Council panel considered the OT's recommendation on 18 October 2017. It "felt the request for 4 meters [sic] was excessive". We have not seen any reason why it took this view. The panel asked the OT to provide scale drawings and to deal with the architect. The OT emailed Miss X to say the panel had agreed two metres. She later left the Council's employment and the case awaited a new OT. Meanwhile, Miss X complained to us.

38. On 23 January 2018, a new OT decided to assess again. He decided Y needed an extension of three metres, but with an extra metre of width to allow for Y's bed. We have seen sketches of this arrangement. At 10.5 square metres (three x 3.5metres) it is 0.5 square metres larger than the extension of four by 2.5 metres Miss X wanted.

39. At the time of publishing this report, more than 11 months after the OT assessment, the Council has not started to build the extension to Y's bedroom. Miss X still has to lift Y several times each day.

Conclusions

40. Apart from one opportunity to bid on a property Miss X might have missed in December 2016, she had no other opportunity to obtain housing fit for the family's needs in looking after Y between 1 January 2015 and 9 August 2017. Since then, the family has not had the adaptations they need to care for Y properly.

41. It is a matter of one person's word against another's if anyone from the Council told Miss X the Council no longer funded DFGs. The same holds true for whether anyone told her she could not have a DFG because the new property had already been adapted for someone else.

42. Y's needs and those of his family in caring for him are beyond doubt. The Council had assessed them in March 2014. However, the Council:

- took over three years to find a property that would meet the family's needs;
- failed to meet the family's needs in a temporary way while it was trying to find a permanent solution;
- considered tenure, which was irrelevant, in deciding it could not meet the needs it identified; and
- failed to explain in the panel's decision why it decided to go against the professional recommendations of the OT.

43. All this was fault and amounted to avoidable delay of over three years.

44. It was clear from the outset in August 2017 the new property would need adaptations. That the adaptations recommended more than 11 months ago are not likely to be completed for some time to come is also fault. There is an argument the guidance referred to in paragraph 10 is non-statutory and that the

time target referred to is for 95% of cases. But the current state of affairs is the result of fault by the Council and the further delay is likely to be considerable as the main building work is still to be done.

Injustice

45. The Council's delay has meant Miss X and her family have lived in accommodation unsuitable for Y's needs for over three years and will do so until all the adaptations are ready. It is clear this loss of amenity has had negative effects on the family. This is injustice.

46. We consider repeatedly lifting Y can only have worsened Miss X's back pain over more than three years while the Council should have acted. This is particularly so in the cramped conditions in Y's current bedroom, given his weight and the lack of any hoist. Any lifting in the previous property would have had at least some of the same effects. This was injustice in the form of risk of harm and some likely actual harm.

47. But the Council's failure to act has also caused the family significant distress over more than three years. Miss X repeatedly chased the Council and stated the family was being badly affected by its situation. And the Council's own recorded views acknowledge this. She told us that families with severely disabled children should not have to live like this. We note that Y's medical admissions to hospital are frequent, to the extent that some of our telephone calls to Miss X have been answered while she has been at the hospital. Miss X, and to some extent other members of the family, have had to deal with a burden they should not have had to deal with while also caring for Y. This significant distress over a long period was injustice.

48. We do not find the Council failed to deal with the reported damp in the first property. This is because the Council offered help with housing enforcement that Miss X could have taken up. Despite this, we can understand why, in hoping the family would soon move, she focussed on that rather than trying to improve an unsuitable property the Council would not adapt.

Recommendations

49. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet, or other appropriately delegated committee of elected members and we will require evidence of this. ***(Local Government Act 1974, section 31(2), as amended)***

50. To remedy the injustice caused by fault in this case, we would normally recommend a monetary payment. This injustice is in the form of distress caused by its failure to act to help the family and the physical effect on her of having to lift Y repeatedly when he needs a hoist. However, Miss X has told us any monetary payment may affect the family's entitlement to benefits. Therefore, we have made an alternative recommendation in line with Miss X's request.

51. To remedy the injustice caused by fault, we recommend the Council, within three months of the date of this report:

- apologises to Miss X and her family for the injustice it has caused them by failing to meet Y's needs for more than three years;
- provides the family with a surfaced drive wide enough to accommodate their vehicle and to allow Y's wheelchair to pass to reach the house;

- funds a weekend break or short break for the family up to a value of £1,500. This is because the previous recommendation meets a likely need the Council might ordinarily have to consider even had the injustice caused by fault not occurred;
- starts the building work immediately to achieve a situation where Y has full wheelchair access to the ground floor of the property and can be hoisted for all transfers so that family members no longer have to lift him for these; and
- reviews its policies and procedures to ensure that it fully meets its duties to disabled children and their families under the Children Act 1989 and the Chronically Sick and Disabled Persons Act 1970 in arranging adaptations to housing. This should ensure that it bases decisions on need rather than tenure. It should tell us within a further three months of the action it has taken as a result.

52. The Council has accepted these recommendations.