

Report

on an investigation into complaint nos
07/C/01269 against
Lincolnshire County Council and
07/C/09724 against
West Lindsey District Council

14 October 2009

Investigation into complaint nos 07/C/01269 against Lincolnshire County Council & 07/C/09724 against West Lindsey District Council

Table of contents	Page
Report summary	1
Introduction	3
Legislation and Government guidance on housing adaptations for disabled people	3
Main events	5
The occupational therapy assessments	6
Findings	9
West Lindsey District Council	9
Lincolnshire County Council	9
Both Councils	10
Injustice	11
Recommended remedy	11

Key to names used

- Mr J - the Complainant
- Mrs J - the Complainant's mother
- Mr F - Mr J's representative

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.

This report has been produced following the examination of relevant documents and interviews with the complainant and relevant employees of the Council.

The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Report summary

Housing and social services

Mr J has severe haemophilia and severe arthritis. Knocks and bumps cause internal bleeding into his muscles and joints that are often swollen and painful. His medical consultant from a regional specialist centre said the result of bleeding is that *“it is often very difficult for professionals to appreciate the disability associated with acute haemophilia.....the result is severe restriction of mobility and severe pain”*.

Mr J first asked in May 2004 for his small bathroom to be extended so he could move around in his wheelchair without knocking against the fittings, shower during a bleed when he could not safely get into his bath and keep the bath so that he could, at other times, soak his joints to relieve pain. A scheme was not agreed until June 2007.

Mr J complained about the way that Lincolnshire County Council and West Lindsey District Council dealt with this application for a Disabled Facilities Grant (DFG) and the way that Lincolnshire County Council assessed his needs.

The District Council has a duty to provide a Disabled Facilities Grant for works that are *“...necessary and appropriate...”* to meet a disabled persons needs and has to consult with the County Council as the Social Services Authority. The County Council has a duty to assess needs and provide assistance that can include the cost of adaptations.

A Good Practice Guide on DFGs issued by the Government says the starting point should be the needs experienced and identified by the disabled person. The views of the disabled person should combine with those of professionals to *“enable an inclusive and sustainable solution to be developed”*. The Guide sets out timescales and stresses that good communication is needed throughout the process.

Mr J's medical consultants supported his request. One explained that treating a single bleeding episode cost the NHS in the region of £5,000 and anything that would avoid knocks would be beneficial.

The County Council's Occupational Therapists recommended schemes to extend Mr J's bathroom by taking space from a small dining room. Mr J used that room for taking the extensive medication that he needed and to get to the garden through the French doors. Taking space for the bathroom would have made the dining room too small to use for any practical purpose and prevented Mr J from accessing the garden.

The Local Government Ombudsman found that Lincolnshire County Council:

- failed to make comprehensive and accurate assessments that could translate into appropriate recommendations for adaptations;

- recommended adaptations that could not meet Mr J's needs;
- failed to treat Mr J in accordance with the Good Practice Guide;
- failed to objectively and impartially review its position and take account of relevant information;
- made inadequate attempts to resolve the complaint Mr J made to it; and
- delayed in providing an independent occupational therapist.

West Lindsey District Council:

- was slow to identify that it had allocated insufficient funds for DFGs and delayed transferring funds into that budget.

Both Councils failed to:

- fulfil their responsibilities in reasonable timescales; and
- communicate effectively with Mr J and each other.

As a consequence of the Council's maladministration Mr J was without improved bathroom facilities for three years longer than he should have been. He almost certainly experienced more bleeds and more pain as a result and had to fight for a bathroom extension that would meet his needs.

Finding

Maladministration causing injustice.

Recommended remedy

The Ombudsman recommends that the Councils should apologise to Mr J and pay him a total of £4,500. The Council's should also provide me with copies of new joint policies and procedures for dealing with disputes about DFG provision and details of how staff are trained.

Introduction

1. Mr J is in his thirties, has severe haemophilia and haemophilic arthropathy (a form of severe arthritis) and is registered disabled. His condition involves internal bleeding particularly into his joints and muscles. His joints are often swollen and painful and do not have a normal range of movement. During a bleed Mr J's mobility is reduced and he must use a wheelchair.
2. Mr J lives independently in a bungalow with some support from his mother who lives nearby. In May 2004 the family contacted Lincolnshire County Council's Social Services and requested a Disabled Facilities Grant (DFG) to extend and adapt the bathroom. The adaptation was completed in May 2008.
3. Mr J complains:
 - that Lincolnshire County Council failed to properly assess his needs in respect of his application to adapt and extend his bathroom;
 - that West Lindsey District Council was not efficient in handling his application for a Disabled Facilities Grant;
 - that both Councils failed to communicate with him appropriately and were not efficient in handling his complaints.

Legislation and Government guidance on housing adaptations for disabled people

4. The Housing Grants, Construction and Regeneration Act 1996 places a duty on local housing authorities to provide Disabled Facilities Grants (DFGs) for a range of adaptations within the home including:
 - providing the disabled occupant with a room in which there is a lavatory or enabling access to or the use of such a facility;
 - providing a room in which there is a bath or shower (or both) or enabling the use of such a facility;
 - providing a room in which there is a hand basin or enabling the use of such a facility.
5. Under Section 24 of the Act the housing authority can only approve a DFG if satisfied that '*...the relevant works are necessary and appropriate to meet the needs of the disabled occupant*'. The housing authority must consult with social services.

6. The Chronically Sick and Disabled Persons Act 1970, as subsequently amended, and the NHS and Community Care Act 1990 requires Social Services authorities to carry out a needs assessment of any disabled person. Social Services authorities have a duty to ensure that the assistance required by disabled people is secured. This includes those cases where the help needed goes beyond what is available through DFG, or where a DFG is not available for any reason, or where a disabled person cannot raise their assessed contribution.
7. The Government has produced 'Delivering Housing Adaptations for Disabled People: A Good Practice Guide' (published in November 2004 and revised in June 2006). This includes:

'...The starting point and continuing focus of those seeking to provide an adaptation service should be the needs experienced and identified by the disabled person and his or her carers... The process that delivers an adaptation should be one of partnership in which the person and carer experiencing the disabling environment are the key partners. The appropriateness and acceptability of the adaptation outcome should be measured by the extent to which it meets the needs identified by that disabled person sensitively, efficiently and cost-effectively.' (para 1.8)

'... There should be a corporate responsibility, binding on all partners to ensure that the adaptation is delivered sensitively, is fit for the purpose identified by the end user and within a time-frame that is made explicit from the outset.' (para 1.9)

8. The Good Practice Guide describes the approach to assessment:

'It has long been recognized as crucial to involve disabled people in the assessment of their own needs and today it is appropriate...to argue for the primacy of the disabled persons perspective above all others. This is because the disabled person is the expert on his/her needs and should be carefully listened to by the relevant professionals...' (para 5.3)

'The experience and expertise of professionals is clearly also of great importance but combining these with the views of the disabled person should enable an inclusive and sustainable solution to be developed within the constraints of time, funding and other resources.' (para 5.5)

9. On keeping people informed, the Guide says:

'It is important to keep the disabled person and his carers informed about progress (and problems) at all stages in the provision of service. Lack of information is widely recognized as one of the main sources of client...dissatisfaction.' An authority should: *'ensure that there is regular contact with the disabled person and their representatives rather than waiting to be approached [and] ...provide accurate and clear information on timescales, waiting lists and other sources of help.'* (para 3.20)

10. The Good Practice Guide includes indicative time targets for completing an adaptation. Medium priority cases can take seven months with an extra one month where extensive works require the maximum grant of £25,000.
11. Lincolnshire County Council Complaints policy for staff (October 2001) says that for a complaint under the Community Care Act 1990:

Stage 1 Representations will be responded to within the statutory timescale of 28 days. *“Every attempt should be made to come to an agreeable solution through conciliation, negotiation and discussion at the local area/unit.” (page 9)*

Stage 2 – a complaint will be acknowledged within 2 days and a full response within 28 days. The investigating officer will not have been involved in the case. Where it is not possible to keep to the timescale an interim response must be given within 28 days and a full response within 3 months. *“It should be noted that because a complaint has proceeded to stage 2 it does not prevent local managers attempting to resolve the complaint” (page 11/12).*

Main events

12. In May 2004 Mr J’s mother asked the County Council to “extend” her son’s bathroom because of his chronic physical needs. It wrote to Mr J to say he was on a waiting list due to high demand. The Council says that at the time it did not have a formal waiting list policy. An Occupational Therapist (1) was allocated to the case and she visited Mr J on 12 August to assess the situation. The Council then wrote to the Sheffield Haemophilia and Thrombosis Centre, seeking opinions from Mr J’s medical consultants.
13. The Council received two letters from Mr J’s consultants supporting an adaptation to his bathroom. One said that Mr J has a condition with rare complications *“...it is often very difficult for professionals to appreciate the disability associated with acute bleeds in haemophilia...the result is severe restriction of mobility and severe pain. The main issue in your letter is whether he requires a bath and a shower, which is not normal practice...I would definitely support...he needs a shower to wash when he has bleeds, because it will be virtually impossible for him to get in and out of a bath when he has a bad bleed. The need for a separate bath is that he finds soaking his joints in a bath to be beneficial in terms of pain relief...soaking his joints in a bath would, I feel, have a beneficial medical effect on his condition.”*
14. The other letter says: *“I understand that he will be applying for modifications to be made to his washing facilities and I would strongly support his application. Treatment of his haemophilia costs in the region of £5000 per single bleeding episode. Consequently, the modifications that would allow him to avoid even a single bleeding episode are likely to prove extremely cost effective”.*

15. In early November 2004 the County Council referred Mr J to West Lindsey District Council recommending a DFG to: *“extend bathroom to create more space to include both a bath and level access shower.”* It did not say how the bathroom should be enlarged and provided no information on the amount of space Mr J needed. The application was classed as a “moderate” priority.
16. The District Council put this DFG request on a “waiting list”. It has also said that: *“there was no specific policy basis for the operation of the... “waiting list” for the period 2004/5”*. It did not tell Mr J about the “waiting list” or the likely timescale for dealing with his application.
17. In late November 2004 one of the County Council’s Adaption Co-ordinators wrote to Mr J informing him that she would be his contact and *“...Unfortunately these things [adaptations] can take several months or more as the housing authorities are working under considerable pressure.”*
18. In January and April 2005 Mrs J telephoned the Adaption Co-ordinator asking about progress. The officer recorded: *“explained process and time scale”*. Mrs J was advised to contact the District Council. There is no record of contact being made by the Adaptation Co-coordinator.
19. The first recorded action taken by West Lindsey District Council was over six months after the County Council made the referral when a Senior Housing Officer visited Mr J’s home on 31 May 2005. The Officer recorded *“is extension necessary?”*
20. A report in July 2005 to the District Council’s Community Committee said: *“The Council is now in a position whereby it is unable to approve any further [DFG] applications unless additional funding can be secured. Already there are 44 valid applications awaiting approval totaling around £300,000 in requested grant aid and around 86 further clients either waiting for visits or are part way through the application process. Some of these clients have been waiting for over two years for their adaptations.”* The Committee approved transfer of funds between budgets.

The occupational therapy assessments

21. A County Occupational Therapist (2) and the District Senior Housing Officer made a joint home visit in October 2005. The Occupational Therapists report says they assessed extending the bathroom into the adjoining dining room (which was 9’8” by 9’ 5”). Mr J disagreed because he would not have enough remaining space in the dining room. He wanted to keep space inside the bungalow because he hoped to marry and have children. Mr J said he used the dining room to look into the garden and hoped to have level access from there into the garden. It was agreed that scale drawings showing the options should be produced.

22. An Occupational Therapist (2) visited Mr J on 28 October and took full measurements of the rooms. On 21 November the County Council decided that the space for the bathroom adaptation should be taken from the dining room and informed the District Council.
23. In mid December the District Council produced two drawings showing the possible bathroom adaptations: Layout 1 – an external extension as favoured by Mr J, and Layout 2 – extending the bathroom internally into the adjacent dining room.
24. In January and March 2006 Mr F, Mr J's representative (who happened to be a qualified occupational therapist), wrote to the County Council and suggested that Layout 2 would not meet Mr J's current or future needs because:
 - Mr J would not be able to reach the wash basin from his wheelchair;
 - it would be virtually impossible for Mr J to safely transfer into his bath during a bleeding episode;
 - wheelchair turns in the reduced dining room would be difficult and maneuvering it could exacerbate Mr J's condition during bleed episodes;
 - the dining room was used as a home treatment area for Mr J's intravenous treatment.
25. Mr F said that, in contrast, Layout 1 would give more space and reduce the prospects of minor trauma that could cause bleeding.
26. Mr J made a formal complaint to the County Council and told the District Council that he was considering his options and would get back to it. The District Council says it understood that Mr J had put his application "on hold". The Councils say they did not have contact with each other between June 2006 and June 2007.
27. The County Council maintained its position of recommending the bathroom should be extended into the dining room. It had "reviewed" the decision on 1 February and 12 April but the details of the discussion are not recorded. The record shows that the Partnership Manager and Service Manager, reviewing the decision, did not speak to Mr J or visit his home. The Council replied to Mr J in April 2006 that:
 - the wash basin could be relocated;
 - the bath was satisfactory because Mr J only used it when fully mobile, otherwise he would use the shower.
 - the bathroom could be made larger but it had tried to keep the adjoining dining room as usable space.
 - layout 1 favoured by Mr J was problematic for a number of reasons.

28. The letter does not respond to Mr J's concerns that Layout 2 with a reduced sized dining room would increase the risk of injury to Mr J or that he used the room for his treatment. The letter says the Council had taken medical advice but the record shows this was in October 2004.
29. Mr J wrote to the County Council in late June 2006 requesting "*an independent assessment of the property*". The Council did not provide an independent assessment but met Mr J and decided to deal with his complaint at stage 2 of the complaints procedure.
30. The Independent Investigating Officer (IIO) reported in November 2006 upholding Mr J's complaints that the Council had recommended a scheme that did not meet his needs and that there had been a lack of communication. The IIO commented that senior officers appeared to be "*...more about justifying the department's position rather than objectively considering all the issues raised*" and recommended that an independent occupational therapist should be commissioned to reassess Mr J's needs and review the proposed schemes.
31. In March 2007 (after further dispute and correspondence about whether an occupational therapist employed by the County Council could be considered to be 'independent') the County Council commissioned a NHS occupational therapist and received a report on 25 May.
32. The report was based on discussion with Mr J, a home visit, and updated medical information and recommended both a slight extension into the dining room and an external extension (different to Mr J's Layout 1) making the bathroom square and reducing the risk of knocks that would cause bleeding into his joints. The report commented on Layout 2 (extension into the dining room recommended by the County Council) saying:
 - it would not meet Mr J's current or future needs;
 - when Mr J was in his wheelchair he would not be able to reach the wash basin or access the toilet from one side;
 - there was not enough space to turn the wheelchair without a high risk of Mr J knocking his joints against walls and fittings.
33. In June 2007 the County Council recommended a proposal based on the Independent Occupational Therapist assessment. The Council had already told Mr J that it would implement the outcome of the further OT assessment. Mr J accepted that proposal. A survey was done in August, final drawings were sent out to the parties on 23 October, tenders were issued on 22 November, the contractor selected in early January 2008 and building work was completed on 8 May 2008. In reviewing the District Council's files my investigator noted that its records of its contacts with Mr J, his representatives and the Council are poor.

Findings

West Lindsey District Council

34. The District Council had not allocated enough funding to meet the demand for DFGs. It should have identified the problem and considered transferring money into the DFG budget sooner than it did. Mr J was one of many disabled service users who waited many months due to inadequate funding.
35. For eleven months the only evidence of action on Mr J's application is a home visit on 31 May 2005. The failure to progress Mr J's application for a DFG was maladministration.
36. The District Council was entitled to question whether an external extension was '*...necessary and appropriate...*' to meet Mr J's needs; it had a duty to consult the County Council and to consider the advice that it received; it was entitled to place considerable weight on the advice but not to follow it "blindly"; and was entitled to agree with the County Council's recommendations.

Lincolnshire County Council

37. The County Council took six months to deal with Mr J's request for a DFG and send its recommendation to the housing authority. I consider that there was three months of unreasonable delay that was maladministration.
38. The County Council's first occupational therapy assessment in November 2004 was not clear about the space Mr J needed in the bathroom, the risks to him of knocks, or the type of extension required.
39. The County Council's second occupational therapy assessment was also inadequate and the decisions to recommend extending the bathroom into the dining room and subsequent decisions to maintain that position were taken on the basis of inadequate information.
40. During the time that Mr J was disputing its recommendation, the County Council did not:
 - undertake a proper review of its position;
 - ensure that the reviewing officers spoke to Mr J or his representative;
 - address all the issues put to it by Mr J and his representative;
 - assess the risks to Mr J of a lack of space;
 - discuss Mr J's case with his medical consultants;
 - assemble and consider all the information needed for the decisions it was making or consider the full range of Mr J's needs.

41. It took from October 2005 to April 2007 for the County Council to obtain an adequate assessment of Mr J's situation as, eventually, provided by the Independent Occupational Therapist. This provided the necessary detail missing from its own assessments and identified that neither the scheme proposed by the County Council or that proposed by Mr J would meet his needs.
42. The County Council acted with maladministration in:
- failing to make comprehensive and accurate assessments of Mr J's needs that could be translated into appropriate recommendations for adapting his property;
 - recommending adaptations that would not meet his needs;
 - failing to start with and continue to focus on the needs experienced and identified by Mr J, to treat him as a partner in the process, and to give primacy to his views as recommended in the Good Practice Guide;
 - failing to objectively and impartially review its position in light of information provided by Mr J; and
 - making inadequate attempts to resolve Mr J's complaint.
43. It is highly regrettable that, having accepted the IIO's recommendations on Mr J's complaint, the County Council then sought to use one of its own Occupational Therapists for the 'independent' assessment thereby creating another dispute with Mr J and further delay. The IIO's recommendation was clear and, in the circumstances, the attempt to avoid obtaining an independent OT and the further delay was maladministration.

Both Councils

44. The County Council knew of long delays caused by the District Council's inadequate budget for DFGs but the Adaptation Co-coordinator, who was Mr J's contact point, did not keep in regular contact with him or give clear information when for almost a year (early November 2004 to mid October 2005) the District Council took no meaningful action on his application. The District Council did not write to Mr J to explain the delay or when it might deal with his application. These failings are maladministration.
45. For almost eighteen months (November 2005 to May 2007 when the Independent Occupational Therapist reported) there was no progress with Mr J's DFG because he disputed the County Council's recommendations. The District Council does not appear to have asked why Mr J's application for a DFG was not being pursued or to have appreciated that it had a duty to Mr J that was separate and stood alone from the County Council.

46. The Good Practice Guide makes clear that all the public services involved are responsible for ensuring that adaptations are delivered appropriately and within time. The Councils should have regularly reviewed, discussed and progressed Mr J's case. Their joint failure to do so was maladministration.
47. The Councils were both operating informal waiting lists, in the District Council's case for long periods, but failed to have a written policy explaining how the list would operate. The good practice guide says that the service user should be kept informed of problems including timescales and waiting lists. It is important that a waiting list is transparent and that a fair approach can be demonstrated to the service user.

Injustice

48. When Mr J complained to me he said: "*I have now given up all hope of ever having anything done to my property*". He said that he was having bleeds to his joints caused by using a bathroom that was too small and that the situation was causing him to feel depressed. Mr J felt that he had been treated with contempt by the County Council and was aggrieved by the lack of communication. He said that he would not want anyone else to go through what he had experienced during the last three years.
49. Mr J was without the use of improved bathroom facilities for at least three years longer than he should have been and almost certainly experienced more pain as a result. He was obliged to fight for a bathroom extension that would meet his needs and was put to a great deal of time, trouble and distress.
50. I find Mr Jones was caused injustice as a result of the failings of the Councils.

Recommended remedy

51. The Councils should:
 - apologise to Mr J for the way his DFG application was handled and for the failings identified in this report;
 - pay Mr J a total of £4,500 in recognition of the injustice caused to him – £3,000 from the County Council and £1,500 from the District Council;
 - develop a joint policy and effective procedure for dealing with disputes about what work to be funded by a DFG is necessary and appropriate to meet the needs of a disabled person;
 - ensure that the development and application of that joint policy and procedure are informed by the Good Practice Guide to Delivering Housing Adaptations for Disabled People and the duty (since December 2006) to promote equality for disabled people;

- ensure that all officers dealing with DFG applications are trained to apply the Good Practice Guidance; and
- provide to me within six months of this report copies of the new policies and procedure and details of the training.

52. I hope that the Councils will also recognise that the maladministration identified in this report will have resulted in significant avoidable costs borne by the NHS as a result of Mr J having bleeding episodes caused by knocks in his inadequate bathroom and ensure that their staff should seek to reduce all public costs not just those borne by the Councils.

**Anne Seex
Local Government Ombudsman
Beverley House
17 Shipton Road
York
YO30 5FZ**

14 October 2009