

Standards Committee – 30 October 2008

Local Government Ombudsman – Report on an investigation into complaint 07/B/07346 against Walsall Council

Service Areas: Corporate Performance Management, Strategic Housing (Housing Standards & Improvement)

Summary of report:

The purpose of this report is to:

- a) set out for the Committee's consideration a report issued by the Ombudsman following his investigation of a complaint relating to this council, and attached as Appendix A to this report
- b) also to set out details of action taken by the council in response to the complaint and the Ombudsman's findings

Recommendations:

The Committee is recommended to note the contents of this report.

Legal considerations:

The Ombudsman service was established by the Local Government Act 1974, to investigate complaints about council services by service users.

In most cases, the Ombudsman will conclude his investigation after finding no maladministration on the council's part, or when a satisfactory local settlement of the matter has been achieved. However in a small number of cases, the Ombudsman will issue a formal investigation report, such as the document submitted for Committee's consideration at this meeting. Please note that the names within such reports are anonymised to maintain the confidentiality of complainants.

When a report is issued, the council concerned must place a notice in the local press advising residents that the report has been published and is available for inspection, and must arrange for the report to be submitted to the relevant council committee for its consideration. The Committee is advised that the report, which was published on 17 June 2008, was advertised by the council in the Walsall Observer on 27 June and the Walsall Advertiser on 26 June, and made available at the First Stop Shop, in the Civic Centre, and at Walsall Reference Library. The Ombudsman was advised that the report would be submitted to the next meeting of the Standards Committee which, locally, is responsible for Ombudsman matters.

Financial considerations:

The Ombudsman, in concluding his investigations, recommended that the council should write off client contributions of around £3,500 towards the cost of residential care, and pay a further £1,000 to reflect the time, trouble and distress caused to the complainants. These payments were agreed, prior to the publication of the Ombudsman's report, as is reflected in paragraph 28 of that report, and have already been implemented by officers.

The investigation, and the report, related to the council's policy and procedures relating to Disabled Facilities Grant (DFG), funding to enable essential adaptation to allow disabled homeowners and tenants to remain in their own home, and in particular to the council's then policy on the use of discretionary powers available to it to make payments above the prescribed maximum DFG payment, currently £25,000. The Committee is asked to note that, during the course of the Ombudsman's investigations, officers were reviewing the council's policy in this respect, and a revised policy was agreed by Cabinet on 24 October 2007.

The Ombudsman also criticised the council (paragraph 29 of his report) for failing to take into account the significant costs it was incurring, week by week, in maintaining the complainant 'Mr Crown' in residential care, costs which over the period concerned, exceeded the additional funding required to resource the complainants' housing adaptations. In addition, the Ombudsman took the view that more effective use of resources would have been achieved by closer (more 'joined up') working between the two services, in Strategic Housing and in Adult Services, and the Committee is advised that working arrangements have subsequently been reviewed to address this point.

Citizen impact:

The Ombudsman service provides one way in which residents and other service users may make complaints about council services. The outcome of complaints provides valuable information about our services, and opportunities to learn, and to make improvements for the future.

Environmental impact:

None specific to this report.

Performance and risk management issues:

The Local Government Ombudsman issues an annual letter to each council relating to complaints made to the service about that council during the year, and about cases concluded during the same year. The Ombudsman's annual letter for 2008/09 will include reference to this particular complaint, and report; and brief details will also be included in his annual report for that year.

This is the first report issued by the Ombudsman about Walsall Council since 2001.

Equality implications:

The issues raised by this complaint, relating to Disabled Facilities Grants, have helped inform consideration by the service of its policy and procedures, and have led to improvements in the service provided to clients.

Consultation:

The Ombudsman liaised closely with the council, and with the complainants, throughout the investigation of this complaint. Interviews were held with relevant officers, and with an elected Member who is a ward councillor for the complainants.

The council was consulted on the draft report, and given the opportunity to correct any factual errors.

Vision:

Complaints handling, and the ability of service users and citizens to make complaints about our services, are important to the council, and assist towards our strategic priorities to make effective use of resources, deliver quality services that meet customer expectations, and, by learning from complaints, to take forward the transformation agenda.

Background papers: None

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Signed:

Signed:



Executive Director: Tim Johnson
Date: 21 October 2008

Executive Director: Dave Martin
Date: 21 October 2008

1. THE OMBUDSMAN'S INVESTIGATION

- 1.1 The council received a complaint from the Ombudsman on 29 August 2007. The complainants had complained to the Ombudsman that the council had misled them as to the amount of Disabled Facilities Grant (DFG) that would be available to them, had failed to consider use of its discretionary power to award an amount higher than the mandatory grant maximum, and had failed to keep them up to date with the progress of their application.
- 1.2 The council provided a full response on 27 September 2007, setting out full details relating to the specific case and also indicating that, following an internal review officers would be taking a revised DFG policy to Cabinet in October.
- 1.3 Following further enquiries from the Ombudsman, the council wrote again on 31 October, to provide the additional details needed, including the costs of residential care incurred because 'Mr Crown' was unable to live at home prior to its adaptation, and also to confirm that the full costs of the adaptation, £48,769, would now be funded, following the award of discretionary funding under the revised council policy. A copy of the cabinet report is attached (Appendix B). The Ombudsman was also advised that the Housing Standards and Improvement Manager was due to visit the complainants to make an apology on behalf of the council for the delay in resolving their adaptations, which he did on 6 November.
- 1.4 The Ombudsman's investigator then visited the complainants, who raised additional points, relating principally to the background to the complaint, in particular officers' actions at an earlier stage in the matter, when the complainants had first moved from their own home which was unsuitable for adaptation, into privately rented accommodation which was suitable, but where the landlord subsequently refused to allow the adaptations to be undertaken, and finally into suitable rented accommodation provided by Walsall Housing Group.
- 1.5 As a result, the Ombudsman undertook interviews with relevant officers, of Strategic Housing and of Adult Services (Young Adults and Disability Services), and also interviewed one of the complainants' ward councillors who had previously raised their situation with the service. Interviews took place on 22 February. The Ombudsman has not criticised the council for its action between May 2005 when the council received a DFG application relating to the complainants' own home, and December 2006, when they submitted an application in relation to the WHG property that they had accepted on 24 November (see paragraphs 20-22 of his report).
- 1.6 Following these interviews, the Ombudsman quickly determined that a report would be issued, and submitted a draft report, for comment and any factual corrections thought to be necessary. In submitting this draft report, the Ombudsman also asked whether the council would be willing to accept his findings and proposed remedy, prior to the publication of his report. On 19 May, after discussions involving both the portfolio holder Councillor McCracken, and your committee's chair, officers confirmed that the council was willing to agree to the Ombudsman's proposal that his report be issued as one where his remedy has already been agreed by the council. Subsequently the Ombudsman issued the report on 17 June.

- 1.7 The Ombudsman has expressed his appreciation to the council for its willingness to provide redress to the complainants, both at an early stage in his investigation when the council, having completed its review of its policy and procedures relating to DFG, reviewed its previous decision on the Crowns' application, and awarded discretionary funding enabling work to proceed, and made a face to face apology to the complainants. Likewise the Ombudsman has acknowledged the willingness of the council to agree to his recommended course of action, set out in the penultimate paragraph of his report.

2. SERVICE COMMENTARY

- 2.1.1 Mr 'Crown' returned to the property, with the contractors agreement, in February 2008 prior to the completion of works
- 2.1.2 The adaptations to 'Mr Crown's' property were completed on 10th March 2008.
- 2.1.3 Subsequently a letter was received from 'Mr Crown' to say how satisfied he was with the high standard of workmanship.
- 2.1.4 The Housing Standards & Improvements service has used this complaint and the Ombudsman's investigation as a learning resource to assist it in the revision of its policies and procedures to ensure that they remain fit for purpose.

Report
on an investigation into
Complaint no 07/B/07346 against
Walsall Metropolitan Borough Council

17 June 2008

Investigation into complaint no 07/B/07346 against Walsall Metropolitan Borough Council

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Key to names used

Mr and Mrs Crown	-	The Complainants
Officer A	-	Housing Improvement Officer
Officer B	-	Social Worker
Officer C	-	Occupational Therapist
Officer D	-	Case Worker

Report Summary

Private housing grants

Mr and Mrs Crown (not their real names) complain about the way the Council handled their application for a disabled facilities grant. They complain that the Council failed to help them identify an alternative property when it became clear that their own property could not be adapted for Mr Crown's needs and unreasonably refused to fund the full costs of the adaptation.

The Ombudsman considers there was fault in the way the Council dealt with Mr and Mrs Crown's disabled facilities grant application. In particular, when Mr and Mrs Crown moved into a housing association property the Council was aware that the adaptations would exceed the mandatory grant maximum of £25,000. However, it failed to advise them that funding above that amount was discretionary or that there was any possibility that those additional costs would not be covered. In addition, he considers that the Council fettered its discretion by removing all discretionary funding irrespective of the circumstances of any case and failed to take into account the cost to the Council of keeping Mr Crown in a residential care home (as he was unable to return home until the adaptations had been completed) when it advised the complainants that funding would not be provided.

The Ombudsman considers that Mr and Mrs Crown have been caused a significant injustice because Mr Crown has had to remain in residential care, and separated from his family, for six months longer than he should have done. He also considers that this has caused Mr and Mrs Crown financial problems as Mr Crown lost his disability benefits while he was in residential care, Mrs Crown lost her carer's allowance and the family have been put to extra expense in visiting Mr Crown in the care home which is nine miles away from the family home. He is satisfied that this has caused considerable stress for the family.

Finding

Maladministration causing injustice, remedy agreed.

Remedy

The Council has agreed to:

- write off the residential care charges to Mr and Mrs Crown between November 2007, when Mr Crown should have been able to return home, and 14 March 2008 which is the date he returned home, which I understand to be in the region of £1,000;
- write off the charges to 31 October 2007 in recompense for costs incurred by Mr and Mrs Crown as a result of Mr Crown having to remain in residential care longer than should have been the case. Those charges total £2457.20; and

- pay Mr and Mrs Crown an additional £1,000 compensation in recognition of the significant distress they have been caused.

Introduction

1. Mr and Mrs Crown complain that the Council failed to help them identify an alternative property when it became clear that their own property could not be adapted for Mr Crown's needs. As a result, they say they were forced to find their own privately rented property, which the landlord later refused to allow adaptations to. This meant that Mr Crown remained in residential care, separated from his family, longer than he should have done.
2. Mr and Mrs Crown also complained that when they were allocated a housing association property the Council unreasonably refused to fund the full costs of the adaptation and that this decision was only communicated to them shortly before the works were due to begin. As a result the family were caused significant distress and Mr Crown again remained in residential care longer than necessary.
3. Mr and Mrs Crown say that this separation resulted in considerable anxiety for themselves and their children, resulted in their income being more than halved as Mr Crown lost his disability benefits and led to them incurring significant costs for the family to travel to the care home to visit Mr Crown.
4. For legal reasons, the names used in this report are not the real names of the people concerned.¹
5. One of my investigating officers met with Mr and Mrs Crown and interviewed Council officers and a local Councillor.

Legal and Administrative Background

6. Disabled Facilities Grants (DFG) are available for essential adaptations to allow disabled tenants and homeowners to remain in their home. These grants are administered by the Council, with an occupational therapist carrying out an assessment to establish the type of adaptations that are required.
7. The grants are subject to a set of criteria including a means test of income and capital.
8. The maximum amount payable for a mandatory DFG is currently £25,000 but the authority has discretion to pay an unlimited amount in excess of this prescribed maximum.²
9. Tenants making applications for disabled facilities grants must provide a copy of their landlord's agreement for the works to be carried out along with confirmation

¹ Local Government Act 1974, Section 30(3)

² The Disabled Facilities Grants and Home Repair Assistance (Maximum Amounts) Order 1996

that the disabled tenant will live in the property for the period of the grant condition (usually five years).

Investigation

10. Mr Crown suffers from muscular dystrophy, has a benign brain tumour and is confined to a wheelchair. Until 2005 he was living with his wife and three teenage children in a mortgaged home which had previously been adapted for his needs. However, by 2005 his medical condition was deteriorating and he needed further adaptations to his house. Mrs Crown was also having difficulty caring for her husband as she had undergone an eye operation.
11. In May 2005 the Council received a referral for a DFG for Mr and Mrs Crown's owner occupied property. An occupational therapist and Officer A, a housing improvement officer, carried out an assessment and potential adaptations were discussed, along with the possibility of a move to an alternative home as it appeared that there were limited adaptations feasible at the property. Officer A sent proposed plans to an architect to consider and in the meantime referrals to housing associations were made. On 30 September the Council informed Mr and Mrs Crown of an adapted property that had become available. They viewed that property on 9 November but declined it as it was too small. Officer A visited Mr and Mrs Crown again on 21 December to discuss amendments to the adaptations required due to Mr Crown needing a larger wheelchair. Further contact was made with housing associations in January 2006 and Mr and Mrs Crown indicated that they would widen the area they were prepared to live in, in order to secure rehousing. The Council advised them to apply to Walsall Housing Group, a housing association, and provided them with a letter of support. In March 2006 a housing association in Lichfield contacted the Council to discuss Mr and Mrs Crown's requirements as they had made an application for rehousing in that area.
12. On 29 March Mr and Mrs Crown informed the Council that they had sold their property and were in urgent need of rehousing. They were advised not simply to accept a property in Lichfield as a panic measure as it needed to be suitable for their needs. The Council then clarified the width of the wheelchair required by Mr Crown so it could establish the type of property required. On 5 April a Lichfield housing association advised the Council that it was assessing whether one of its properties was suitable for adaptation for Mr Crown. The Council contacted Walsall Housing Group on 11 April and was advised that it did not have any suitable properties available that could be adapted. Contact was also made with the homeless department, which advised that if Mr and Mrs Crown were treated as making themselves homeless it would have no duty to re-house them. As no property had been identified, Mrs Crown requested respite care for her husband on 13 April 2006. The potential property in Lichfield was withdrawn on 20 April as it was unsuitable for adaptation. Also, on 20 April, the Council contacted Brownhills and Aldridge Trust, another housing association, and was advised that

Mr and Mrs Crown had not been placed in a priority category for rehousing as they were still owner occupiers. On 2 May Mr Crown contacted the Council about a property he believed was due to become available which could be suitable for his needs. However, he contacted the Council again on 3 May to advise that the property was not suitable and therefore he would be going into long-term respite. Officer B, a social worker, requested funding for the placement on 23 May.

13. Officer A met Mr and Mrs Crown at a privately rented property they had identified and agreed to revisit with the architect to draw up plans for adaptations. Mrs Crown and her children moved into the new home on 6 June and Mr Crown moved into residential accommodation on a temporary basis until the new home had been adapted. Officer B sought further advice from his manager about charges for residential care on 16 June and on 20 June was advised that the shortstay charge should apply for an initial period of three months, with a means test to be completed after that if the stay was to be classed as permanent. That is because occupational therapy no longer held a budget to cover the costs of residential care when a disabled person had to be placed in respite to allow adaptations to take place. On 23 June Mr Crown was informed that he would be required to contribute £37.40 per week towards the cost of his residential stay. He was advised that this charge would be reviewed on 6 September if the adaptations had not been completed and that his entitlement to the care component of disability living allowance would be suspended from 4 July as he would then have been in the care home for more than 28 days. Mr Crown has not made any payments. He believes his stay in residential care should not be at any cost to him because he did not have to pay when he had to go into residential care to allow adaptations to take place to his owner occupied property in previous years. He says that Officer B advised him he would not have to pay towards the cost of respite care. The cost to the Council is £753 per week. Mr Crown lost his disability living allowance care component and Mrs Crown lost her carer's allowance on 4 July.
14. A referral for consideration of a DFG for the new property was completed in June 2006. An initial scheme for an extension was later revised to allow an amended layout of the existing property rather than an extension. That scheme was approved by Mr and Mrs Crown on 21 August. However, in October Mr and Mrs Crown's landlord refused permission for the adaptation to take place. The Council advised them to approach housing associations to be put on their lists and provided them with a supporting letter.
15. On 26 October Walsall Housing Group advised the Council that Mr and Mrs Crown had been placed in the highest priority category for rehousing and that they would need to bid for advertised properties. In November Mr and Mrs Crown contacted their MP who, in turn, referred their case to their local Councillor. She visited them to discuss the case in November and, after making enquiries with Walsall Housing Group, identified two suitable properties and put bids in on behalf of Mr and Mrs Crown. Officer C, an occupational therapist, visited the two

properties on 21 November to establish whether either was suitable for adaptation. She contacted Officer A on 22 November to see whether one of the properties would be suitable for an extension as that was considered to be the best option. He advised that an extension was possible. Mr and Mrs Crown accepted the property on 24 November.

16. On 7 December 2006 the Council received a referral for a DFG for the new property. Officers visited Mr and Mrs Crown on 19 December to complete the application form and identify required adaptations. The possibility of a downstairs shower room with a lift to access the front bedroom was explored in January 2007 but was abandoned, partly due to Mr and Mrs Crown's concerns about its suitability given that Mr Crown has vertigo. On 23 January Officer C recommended a single bedroom and bathroom extension and a ground floor survey was carried out on 14 February. A preliminary scheme was drawn up on 19 February and discussed with Mr and Mrs Crown on 17 March. The scheme was approved on 27 March and tender documents were drawn up. Building control plans were submitted on 26 April and tender documents were issued on 27 April. A means test was also carried out and Mr and Mrs Crown were informed that they would not have to make a contribution to the costs of the project. Mr and Mrs Crown indicated that they wished to proceed with the project on 1 May. Tenders were received in May, indicating costs between £35,500 and £53,150. Planning permission was obtained in June.
17. On 11 June due to unprecedented demand for DFGs the Council decided that grants exceeding the grant maximum of £25,000 could not be funded. Officer D, a case worker, informed Mrs Crown of that orally and Officer A and Officer D visited Mr and Mrs Crown on 13 June to discuss the decision. Mr and Mrs Crown indicated during that meeting that they intended to complain. Officer C also contacted Officer A to see whether the fact that the Council was funding residential accommodation for Mr Crown at a substantial cost would make any difference to its decision not to fund the grant. The Council investigated whether a housing association property, which had recently become available, would be suitable for Mr and Mrs Crown, but was advised that it had been allocated.
18. Mr and Mrs Crown complained to me on 23 August 2007. My investigating officer made enquiries of the Council on 24 August. It responded on 27 September and advised that it had been unable to inform Mr and Mrs Crown about the implications of the cost of the proposed adaptations at an earlier date as those costs were not known until May 2007. It also stated that it was not appropriate to award discretionary funding for their case given its view that a move to a more suitable property would provide a more cost-effective solution and as an alternative adaptation at the property could be considered. However, on 24 October the Council resolved to consider discretionary grants above the grant maximum of £25,000 in exceptional cases. These included cases where the disabled person would have to remain in residential care if the adaptation did not proceed and where there were no suitable alternative properties to move to.

Following further enquiries the Council wrote to my investigating officer on 31 October to advise that the only scheme which would meet Mr and Mrs Crown's needs is that which had been identified and costed in excess of the grant maximum and therefore the case would be awarded discretionary funding. The Council conceded in that letter that this decision should have been arrived at earlier. Building works began in November 2007 and were due to be completed in March/April 2008.

19. The Council's interim Chief Executive visited Mr and Mrs Crown on 6 November 2007 to apologise on behalf of the Council. Mr Crown returned home on 14 March 2008.

Conclusions

20. I have seen no evidence to suggest that the Council advised Mr and Mrs Crown to sell their property prior to identifying suitable alternative accommodation to move into. The evidence I have seen satisfies me that the Council was not aware that Mr and Mrs Crown intended to sell their property without first securing another to move into until around four weeks before the move was due to take place. In the circumstances I consider that the Council did all it could for Mr and Mrs Crown by making referrals to local housing associations and providing those associations with a letter of support, given that the Council does not own any accommodation itself. In my view it was particularly helpful for the Council to have written an individualised covering letter to explain Mr and Mrs Crown's circumstances so they would not be disadvantaged in the points system by the fact that they had sold their own home prior to identifying suitable accommodation. I therefore do not criticise the Council for its actions during the period May 2005 to June 2006. It seems to me that Mr and Mrs Crown expected more help to be provided and it is possible that it was not made clear to them that the role the Council could play was limited and that it could be some time before a suitable property was made available via a housing association. Nevertheless, I see no reason to conclude that the Council was responsible for Mr Crown having to go into residential care accommodation when he sold his own property. I say that because, although the property had its limitations, Mr Crown was able to continue to live at home at that point. It is my view that he did not act in his own best interests by selling the property when he had no alternative accommodation to move into.
21. The next problem occurred when Mr and Mrs Crown accepted a private tenancy following the sale of their property. Although the landlord of that property initially indicated that he would be willing for the Council to undertake adaptations to it he later refused to give his permission for the works to go ahead. I understand why this would be a frustrating time for Mr and Mrs Crown given that Mr Crown was unable to return home until a suitable property had been adapted to his needs. The refusal of the private landlord meant that Mr Crown had to remain in residential care accommodation while attempts were made to find another

suitable property. While I have great sympathy with Mr and Mrs Crown during what was clearly a very distressing period I am satisfied that it was the actions of the private landlord, rather than the Council, which were responsible for the additional delay and distress. I therefore do not criticise the Council for its actions during the period June 2006 to December 2006.

22. Mr and Mrs Crown believe that the Council failed to support them during this latter period and as evidence of that they cite the fact that they were offered a property designed for retired people at one point. They say that in offering them that property the Council failed to recognise that they had children living with them and the property was inappropriate. I do not have any details of when that property was offered to Mr and Mrs Crown. However, I believe there has been some misunderstanding here. As I said earlier, the Council does not own any housing stock. So, the offer of accommodation Mr and Mrs Crown received appears to have been from a housing association. I cannot see that the Council had any role to play in determining which property should be allocated.
23. However, I have serious concerns about what happened when Mr and Mrs Crown moved into their housing association property. First I am satisfied that the Council was aware that the costs of the scheme would exceed the £25,000 mandatory grant prior to Mr and Mrs Crown moving. I say that because all sides were aware that an extension to the property would be required. I have seen no evidence that Mr and Mrs Crown were advised that the Council was only required to fund grants up to a maximum of £25,000 and that funding above that amount was discretionary. Nor have I seen any evidence that they were advised that there was any possibility that those additional costs would not be covered. The failure to advise them of the possibility that funding would not be available was maladministration.
24. I recognise that the Council has experienced a dramatic rise in applications for DFGs which has meant that not all applications can be funded immediately. It is not my role to judge whether councils have enough money or if their priorities for expenditure are right. These are political matters and go to the merits of decisions. However, I would not expect the Council to fetter its discretion by applying the decision or policy without regard to any exceptional circumstances in a particular case. It is clear to me that the Council decided, in June 2007, that it would only fund DFGs up to the £25,000 mandatory grant maximum irrespective of the circumstances of any case. That amounts to a fettering of the Council's discretion and is maladministration. The Council did not correct that position until October 2007, some three months later.
25. I am also concerned to note that although Officer C requested consideration of the cost to the Council of keeping Mr Crown in a residential care home, which was costing the Council around £753 per week, no consideration was given to whether it would be a better use of Council resources to commit the additional funding for the adaptations to go ahead. It is my view that if this had been

properly considered the Council may well have decided that it would be better value for money to fund the adaptations to the property at an earlier date. The Council's failure to take into account this clearly relevant consideration was maladministration.

26. Mr and Mrs Crown believe that they should not have to contribute towards the cost of Mr Crown's stay in residential care as he did not have to pay when he went into a care home to allow adaptations to take place to his own property a number of years previous to this complaint. It is my understanding that the situation then was different as at that time occupational therapy had a budget to cover costs of residential stays when a person had to go into respite care to allow adaptations to take place to the property. But by 2006, when Mr Crown went into residential care, this budget had been discontinued. So I do not criticise the Council for requiring Mr Crown to pay towards the cost of his residential care. I understand that the calculation is in Mr and Mrs Crown's favour given that the Council has applied the short-term stay rate rather than carrying out a financial assessment based on a permanent stay.
27. I am satisfied that the maladministration I have identified has had a significant impact on Mr and Mrs Crown. It is my view that if the Council had properly considered their case in June 2007, when it became clear that budgets for DFGs had to be limited, it would have realised that the case warranted discretionary funding as the ongoing cost to the Council of keeping Mr Crown in the residential care home was substantial and there were no other alternatives for the family. Had a proper consideration of the case been made I am satisfied that the building work could have begun on time in July 2007 and Mr Crown would have been able to return to live with his family by around November 2007. So the Council's failure to properly consider his case has meant that he has had to remain separated from his family for around four months longer than he should have done. I am satisfied that during this period Mr and Mrs Crown have been under considerable financial stress as Mr Crown lost his disability benefits and Mrs Crown lost her carer's allowance. The family have therefore had to rely on a reduced income while also funding travel between the care home, which is nine miles away, and the family home and increased telephone bills to allow Mr and Mrs Crown to maintain regular contact. I am also satisfied that the family as a whole has been under significant stress as a result of being separated and this has had an adverse impact on Mr and Mrs Crown and their children.

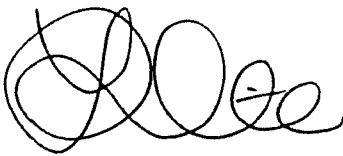
Finding

28. For the reasons given in paragraphs 23, 24 and 25 I find that there was maladministration by the Council as a result of which the complainants have suffered the injustice identified in paragraph 27. The Council has agreed to:
- write off the residential care charges to Mr and Mrs Crown between November 2007, when Mr Crown should have been able to return home, and

14 March 2008, the date he returned home, which I understand to be in the region of £1,000;

- write off the charges between 6 June 2006, when Mr Crown went into the residential care home, and 31 October 2007 in recompense for costs incurred by Mr and Mrs Crown as a result of Mr Crown having to remain in residential care longer than should have been the case. Those charges total £2457.20; and
- pay Mr and Mrs Crown an additional £1,000 compensation in recognition of the significant distress they have been caused.

29. I am grateful for the Council's willingness to put things right here. And I applaud the action of the interim Chief Executive in visiting Mr and Mrs Crown and apologising to them personally on the Council's behalf. But I have gone on to issue this report in the public interest: specifically, it seems to me that other people may have suffered injustice as a consequence of the maladministration I have identified.



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17 June 20078

Cabinet – 24 October 2007

Ensuring statutory duties relating to the provision of Disabled Facilities Grants (DFG) are met

Portfolio: Councillor Barbara McCracken, Social Care Health and Housing

Service: Strategic Housing

Wards: All

Key decisions: Yes

Forward plan: Yes

Summary of report

To advise Cabinet of the large increase in demand for the disabled facilities grant (DFG)/aids and adaptations service, the resulting pressure on capital budgets and subsequent need to put robust mechanisms in place to ensure the Council meets its statutory duties whilst also minimising the citizen impact.

Recommendations

That Cabinet note the contents of the report outlining the current pressures on the DFG/adaptations budget and endorse the process outlined to ensure statutory duties are met and discretionary funding over the grant maximum is awarded to cases only in exceptional circumstances.

Resource and legal considerations

Financial

The arrangements proposed in the report will ensure the most efficient use of available resources to maximise the number of disabled people that are helped to remain independent at home.

Legal

The requirement to approve a disabled facilities grant within 6 months of any person presenting the Council with a 'valid application' is statutory duty. The proposed arrangements above will ensure a robust and transparent approach to ensuring funding is primarily directed at mandatory works to allow the Council to meet its statutory duties. Discretionary funding will only be provided in exceptional circumstances.

Citizen impact

Disabled persons assessed as requiring an adaptation to their home, but with a non urgent need, could face lengthy delays for the works they require to be funded. The arrangements proposed in the report will ensure the most efficient use of available resources to maximise the number of disabled people that are helped to remain independent at home.

Community safety

None directly linked to this report

Environmental impact

None directly linked to this report

Performance and risk management issues

Performance Management

Rapidly improving OT performance has impacted on DFG processing times. DFG processing times have steadily reduced during 2005/6 and 2006/7. They will increase significantly for 2007/8 and beyond as cases are placed on the priority register. This will impact on Housing CPA score and the Adult Social Care indicator relating to the average length of time waiting for adaptations from assessment to work beginning. Current performance is 39.66 weeks.

Adoption of the approach described in the report will ensure the maximum possible performance against the local performance indicator relating to the number of adaptations completed each year.

Risk Management

The priority register will be used to manage the cases waiting for grant.

Equality implications

The DFG/Aids and Adaptations budget is used to fund adaptations in the homes of disabled people. The Social Care and Inclusion Directorate Equality Champion has been consulted on the need for an Equality Impact Assessment as a result of this report.

Consultation

The portfolio holder, the Health, Social Care and Inclusion Scrutiny and Performance Panel and the Social Care & Inclusion Senior Management Board have been consulted.

Vision 2008

Adoption of this approach will contribute to the 'ensure all people are safe and secure' vision priority.

Background papers

None.

Author

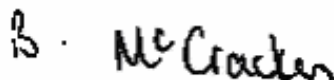
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Date: 15 October 2007



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Date: 16 October 2007

Historical Overview

In the years leading up to 2005/6 there was a significant under resourcing of services to deliver aids and adaptations to disabled people. Inadequate staffing levels within both the Occupational Therapy (OT) and Disabled Facilities Grant (DFG) services meant that in late 2004 approximately 2000 disabled people were waiting to be assessed by an OT and 450 who had been assessed were waiting for a DFG.

At that time both the DFG and OT function sat within one service. This resulted in probity issues whereby both the clinical and the grant assessment were made by the same service. In December 2004 a decision was made to move the DFG service, staff and budgets, to Strategic Housing. Cabinet agreed to invest £16m in the aids and adaptations budget over the next four years to clear the 'backlog' of cases on both OT and DFG waiting lists, of which c. £6m has been invested to date. £16m was the best estimate of likely costs to clear the backlog available at the time and to meet the existing level of demand. This additional mainstream capital funding for the Aids and Adaptations capital budget was in addition to the capital funding of £0.867m per annum for DFGs. 60% of the annual DFG budget (£0.520m) is provided as grant subsidy with the remaining 40% (£0.347m) matched funded from Council capital resources.

On completion of the backlog it was anticipated that the capital input would be reduced and the service would return to just dealing with new cases

The DFG budget is used to fund adaptations to the homes of disabled people. This is a statutory function. The maximum amount of DFG available is £25,000 per application.

The Aids and Adaptations budget funds a lift maintenance contract with Concept Elevators and also any expenditure under £1000 that the Occupational Therapy (OT) service is required to provide for 'minor works' such as grab rails and half steps for disabled customers. It is also used to fund staff costs in the Occupational therapy service and a proportion of staff costs in the Housing Improvement service. In addition it can be used to 'top up' any costs over the DFG limit of £25,000. The Aids and Adaptations budget is 100% funded from mainstream resources.

The DFG service transferred to Housing in April 2005. Only 2 staff managed DFG's at the time. There was no IT system, no written procedures and no performance management structure. During 2005/6 the DFG service recruited additional staff, procured a new IT system, implemented new procedures, a performance management system and national good practice was implemented. As a result of this work 2005/6 saw a 130% increase (from 52 to 120) in the number of adaptations completed compared to 2004/5. In 2006/7 the number of adaptations completed rose again to 192. Anecdotaly this resulted in significant savings on care packages by allowing disabled people to remain at home.

£6.183m of the £16m allocated to Aids and Adaptations for the 4yrs from 2005/06 onwards, has been spent to date.

Table 1 below shows the funding available for DFG's / adaptations each year from 2004/5, the number of referrals for DFG received, DFG completions and actual budget spent in the year.

Table 1

Year	Budget Aids and Ads (A&A) (£'s)	Total Spend A&A	Variance to A&A Budget (+/-)	Budget DFG ⁽¹⁾ (£'s)	Variance to DFG Budget (+/-)	Total Spend DFG	No. of DFG referrals (both DFG and A&A used to fund referrals)	Total DFG Completions
2004/5	0.924	1.289	0.365	1.015	(0.476)	0.539	158	52
2005/6	4.805	2.043	(2.762) ⁽⁴⁾	0.867	0.910	1.777	950	120
2006/7	3.375	4.140	0.765	0.867	0.619	1.486	663	192
2007/8	1.876 ⁽²⁾	n/a	n/a	1.0	n/a	n/a	480 ⁽³⁾ (estimate)	200 (target)
Bid 2008/9	4.597	n/a	n/a	1.0	n/a	n/a	480 ⁽³⁾ (estimate)	200 (target)

Note: £6.183m of the £16m allocated to Aids and Adaptations for the 4yrs from 2005/06 onwards, has been spent to date.

- ⁽¹⁾ 60% of the annual DFG budget is provided as grant subsidy with the remaining 40% matched funded from Council capital resources.
- ⁽²⁾ the 2007/8 budget has not been cut. More money was spent in 2006/7 than was profiled. This has been deducted from the 2007/8 budget.
- ⁽³⁾ 480 is the estimated number of DFG referrals the Occupational Therapy Service expect to make each year now that the backlog of people waiting for assessments has been cleared. This is not a downward trend. Clearance of the backlog resulted in the 950 and 663 referrals experienced in 2005/6 and 2006/7 respectively.
- ⁽⁴⁾ Unspent funds returned to corporate capital pot.

During 2005/6 independent OT agencies were used to clear the backlog of cases awaiting OT assessment and a permanent OT staffing structure was recruited to in early 2006/7. This has reduced the OT waiting list from 1985 in February 2005 to 11 at the end of May 2007 and the waiting list has now been cleared completely. By the end of 07/08 the OT service aim to achieve the D55 indicator on acceptable waiting times for assessments which is to start the assessment within 2 days and complete the assessment within 4 weeks from the date of first contact.

As can be seen in table 1 the increase in OT performance has had a significant effect on the referrals made to the DFG service in 2005/6 and 2006/7. The referral rate is much higher than the completion rate.

The Current Position

The increase in referrals during 2006/7 has had a critical impact on the DFG service and its budgets.

At the end of August 2007 there were 1056 DFG cases known to Housing Standards and Improvement. It is estimated this figure will be 1600 by the end of 2007/8. The estimated cost to complete these cases is £32m. The capital bid for 2008/9 is £5.597m (£4.597m A&A and £1m DFG). This bid will form part of the capital bids budget setting process and is subject to cabinet approval. These resources allow approximately 200-250 DFG cases to be completed for the year. Within these resources, and without action being taken to make better use of existing resources, it would take 8 years to complete 1600 cases not accounting for those new cases expected to be referred to the service each year during that period.

A priority register is being put in place to ensure referrals made to the DFG service are processed and approved in order of urgency as instructed by the OT service according to the resources available. This is however resulting in large amounts of complaints to the service and hardship for waiting cases.

In July 2007 Cabinet approved a virement of £1.4m from the Private Sector Renovation Grant Budget. This has allowed to Council to meet its statutory duties by approving valid applications within the required 6 months whilst also processing the most urgent cases being referred to the service.

Strategy For Managing Increased Demand

The Council must satisfy itself that it is dealing with as many cases as it can as quickly as it can whilst also ensuring the most efficient use of resources is made to maximise the number of cases completed each year. To achieve this a new approach to the award of funding is required. Grants will be limited to the DFG grant maximum of £25,000. Exceptional cases requiring funding over the limit will considered as described in paragraph 4.6 below.

Anecdotal evidence suggests high demand for DFG's is a national not a local issue. Housing Standards and Improvement, with the help of Corporate Performance Management, will carry out a benchmarking exercise with nearest neighbours and

comparator group members during the period October to December 2007. This will help assess Walsall's performance against other Authorities, identify innovation and best practice and generate an action plan to ensure the most effective use of local resources.

High Cost Adaptations

Historically the Council has 'topped up' DFG grants that require adaptations costing more than the grant maximum of £25,000. Due to the current level of demand detailed above this can no longer continue in all cases. If discretionary resources are used to top up all cases over £25,000 then the Council will fail in its duty to provide mandatory DFG's waiting further down the list.

DFG adaptations currently cost from £1000 to provide a basic ramp to allow access into a property, up to costs in excess of £75,000 to provide a double storey extension incorporating new bedroom and bathroom facilities.

High cost adaptations do however form a relatively small percentage of the total number of adaptations completed per year. Table 2 below shows a sample of 98 adaptations completed in 2006/7 and the range of average costs of each.

Table 2

Adaptation Type	Number Completed	Average Cost
Bath out shower in	39	£5,664.53
Double bed/bathroom in new structure	15	£40,283.11
Stair lift	15	£3,743.00
Bathroom in new structure	14	£23,047.96
Toilet in existing structure	4	£4,104.70
Ramps	4	£3,906.18
Door Widening/Assoc Works	2	£8,475.21
Vertical lift	2	£13,355.11
Bath/shower in existing structure	1	£9,671.29
Kitchen Adaptation	1	£16,981.70
Toilet in new structure	1	£20,851.35
Total	98	Average Cost £13,542.73

The average cost of a DFG from this sample is £13,542.73. Only 15 of the 98 cases exceed the maximum grant of £25,000. These 15 cases had an average value of £40,283.11, the highest cost adaptation being £71,737.80. The majority of adaptations are small bathroom adaptations costing less than £6000.

A new policy (see Appendix 1) is being proposed for the award of discretionary funding for the relatively small number of cases that exceed the maximum grant. This will be based on the following actions/principles:-

- Persons applying for a DFG will be advised at the point of OT assessment that the maximum grant available is £25,000, except in exceptional circumstances.
- The OT service will specify the minimum adaptation needed to meet the individual's needs over a reasonable period of time.
- The OT service will investigate the availability of charitable sources of funding for all qualifying cases.
- Moving house to a property more suitable for the applicants needs will be considered as an option in all cases. Adapting the existing property will not be the only consideration. Full use of the Adapted Housing Service will be made.
- Equity release loans are now available for vulnerable persons needing help to repair their homes through our partner ART Homes Limited (AHL). For 2008/9 Housing Standards and Improvement will investigate the potential for AHL to be able to offer this as an option to DFG applicants who are able to use their own resources to pay any costs over the maximum.
- Full use of relocation grants will be made. A proportion of the annual adaptations budget will be ring fenced for 2008/9 to support relocation grants/adaptations for those persons who are willing and able to move house.
- Making bids to the Adult Social Care Budget to fund costs over the grant maximum where completing the adaptation will result in savings on care packages to the Adult Social Care Budget.

It is recognised that some cases will need to be funded as a discretionary grant over the DFG maximum. Discretionary funding will be approved in exceptional circumstances only where all other options have been discounted. Exceptional circumstances will include:-

- High likelihood of the disabled person entering, or remaining in residential care if the adaptation does not proceed, and Adult Social Care funding not available,
- inability to raise funds via a loan, savings, charitable sources or other means,
- lack of availability of a suitable alternative property to move to,
- potential disruption to school / care package that would result from moving home and funding not available from any other source,
- any other relevant circumstance will be taken into account.

Discretionary funding above the grant limit will, via delegated authority, be awarded by the Assistant Director (AD) Strategic Housing from December 2007. Cases will not be accepted for presentation to the AD Strategic Housing unless it can be demonstrated that all other options have been reasonably discounted. The decision will be reported to the applicant in writing within 14 days.

The applicant will have the right to request a review of that decision by the Executive Director Social Care & Inclusion. The decision of the Executive Director will be reported to the applicant in writing within a further 14 days. If the applicant remains unhappy they will be able to challenge the decision-making process by using the Social Care Complaints process to resolve the situation.

Scrutiny Panel

The new policy was considered by Health, Social Care and Inclusion Scrutiny and Performance Panel on 10 October 2007.

There were no recommendations relevant to this report. The panel will continue to scrutinise these issues.

Appendix 1

Policy for the award of discretionary funding above the DFG limit of £25,000

- 1.1 The maximum mandatory DFG available is £25,000.
- 1.2 The minimum adaptation needed to meet the individual's needs over a period of time will be specified by the OT service.
- 1.3 Moving house to a property more suitable for the applicants needs will be considered as an option in all cases. Adapting the existing property will not be the first consideration in every case. Full use of the Adapted Housing Service will be made. Where an offer of rehousing has been unreasonably refused a DFG will not be awarded and the applicant will be advised in writing of this decision.
- 1.4 Where the aggregate cost of moving house and, where necessary, adapting the new property, is less than that of adapting the existing property a discretionary relocation grant of up to £5000 may be awarded. A proportion of the annual adaptations budget will be ring fenced to support relocation grants/adaptations for those persons who are willing to move house.
- 1.5 Discretionary funding over the DFG maximum will be approved in exceptional circumstances only. Exceptional circumstances will include:-
 - High likelihood of the disabled person entering, or remaining in residential care if the adaptation does not proceed, and Adult Social Care funding not available,
 - inability to raise funds via a loan, savings, charitable sources or other means,
 - lack of availability of a suitable alternative property to move to,
 - potential disruption to school / care package that would result from moving home and funding not available from any other source,
 - any other relevant circumstance.
- 1.6 Decisions on awarding Discretionary funding will be made by the Assistant Director (AD) Strategic Housing. The AD Strategic Housing will consider the circumstances of each case and any other relevant material before making a decision to approve or refuse discretionary funding. Cases will not be accepted for presentation to the AD Strategic Housing unless it can be demonstrated that all other options have been reasonably discounted. The decision will be reported back to the applicant in writing within 14 days
- 1.7 The applicant will have the right to request a review of that decision by the Executive Director Social Care & Inclusion. The decision of the Executive Director will be reported to the applicant in writing within a further 14 days.
- 1.8 Applicants may challenge any decision made under this policy by using the Social Care Complaints process to resolve the situation.