

The Ombudsman's final decision

Summary: There was no fault in how the County Council worked with the housing authority to get Miss B's kitchen adapted. It is not clear however, that the County Council properly considered its power to intervene when problems with the work was not corrected for many months. I have not recommended the Council take action to remedy this, because, given the circumstances, it is unlikely it would have decided to intervene.

The complaint

1. Miss B complains that the County Council has failed to:
 - ensure that her adapted kitchen met her needs and would be accessible by her; and
 - communicate with her properly about this.
2. Miss B says that as a result of the Council's failings she has been unable to properly access or use her kitchen for some time. This has impacted on her physical and mental health and put her to unnecessary time and trouble to resolve the issue. She says it is exhausting and frustrating. Miss B wants the Council to change the kitchen rather than try to adapt the unsuitable kitchen units.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I considered the information provided by Miss B and discussed the issues with her. I considered the information provided by the Council including its file documents. I also considered the law and guidance set out below. Both parties

had the opportunity to comment on a draft of this statement. I considered the comments received before issuing a final decision.

What I found

The law and guidance

6. The County Council has an underlying primary duty under social care legislation (The Care Act 2014) to meet the assessed eligible needs of a disabled adult. This duty cannot be delegated to another body external to the Council.
7. The Ombudsman does not consider the primary duty to have been discharged until the disabled adaptations have been completed to a satisfactory standard.
8. Miss B is a tenant of the District Council, who agreed to carry out and fund the disabled adaptations. The actions of the District Council are not in the Local Government and Social Care Ombudsman's remit, because here it is acting in its role as a social housing provider.
9. Section 23 of the Care Act sets out the boundary between councils' care and support functions and their housing functions. It prevents a council from meeting needs for care and support by doing anything which it or another local authority is required to do under housing legislation.
10. Government Guidance says that section 23 does not prevent authorities working together or prevent a council in its care and support role from providing more specific services such as housing adaptations (*Paragraph 15.52, Care and Support Statutory Guidance*)

What happened

11. Miss B has a degenerative disability and is a permanent wheelchair user. She cannot stand and has limited strength through her arms. Miss B lives in a property owned by the District Council. I have not investigated the actions of the District Council for the reasons set out below. Miss B found that she could no longer use her kitchen independently. To do so she needed adaptations to the kitchen and in 2017, the County Council's Occupational Therapist (OT) and the District Council's surveyor visited Miss B's home to assess what adaptations were needed. The OT and surveyor conducted a second visit with a representative from the contractors who would do the work.
12. Between 2017 and 2019, the OT, surveyor and contractor continued to work with Miss B to finalise the plans. The case notes show the OT asked the contractor about the height of the kitchen units and how Miss B will be able to get the footplates of the wheelchair under these, and also about the sink unit, pull out storage and larder. The final plans included a detailed specification made by the OT, having measured the clearance needed beneath the units, the height of the work surfaces and other aspects of how Miss B would use the kitchen independently.
13. The work started in January 2020. In February the OT wrote to the District Council. She reported that the work was nearing completion but there were significant issues including that:
 - Miss B would not be able to use the work surfaces as despite the OT's detailed specification, the units installed do not allow Miss B clearance for her wheelchair.

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- The sink is too deep and it puts Miss B at risk of scalding. The OT said she has identified a shallower sink and needs approval that the District Council will fund this.
 - The taps and plug are also unsuitable for Miss B to use.
14. Miss B viewed and tested an alternative sink and taps in early March. The OT passed the new sink and taps details to the District Council. She also told it that Miss B could not use the new oven as she cannot grip the controls.
 15. The case notes show that by July 2020, none of these issues had been resolved, although the surveyor had been chasing the contractor, they were unable to work on site due to COVID-19 restrictions. There was some confusion as the surveyor did not realise Miss B had chosen the sink and taps. The OT reminded the surveyor that she had already sent details. After checking again with Miss B, the OT confirmed the sink specification, the issue with the taps and how this might be resolved, and that Miss B was struggling to grip the knobs of the oven and it had now broken. Miss B would look at the ovens available for a more suitable model and the OT would consider whether there was a suitable turner so once fixed, the oven would be accessible. The OT later confirmed that there was no suitable turner for the current oven and Miss B would need a different model.
 16. Miss B and the OT also raised that Miss B could not use the hob and so the contractor refitted Miss B's original one but this did not work.
 17. In August, Miss B found a suitable oven and the OT sent the details to the surveyor so that funding could be considered. However, the sink and taps were not fitted until late September 2020.
 18. In October, the Council revisited the issue of the oven and the OT got details of the new model, but when the OT checked again in December there was problems with supplying this. The OT reviewed how the new kitchen was meeting Miss B's needs. She found that Miss B still needed changes to the sink depth and taps as water was splashing back every time she used it.
 19. In April 2021, Miss B made a formal complaint about how the County Council had handled the adaptations to the kitchen. In response to Miss B's complaint, the surveyor and the OT visited her home. At this visit, the County Council established that:
 - the kitchen units were wrong. Miss B still could not get her wheelchair footplates beneath them.
 - Miss B would need a carousel or snake cupboard but the contractor would need to see what was possible;
 - the taps were not suitable and the District Council would get technical advice on whether lowering the water pressure would resolve this;
 - there were ongoing supply issues with the correct model of digital oven but there was one in stock that might be suitable; and
 - It agreed the works needed to put the kitchen right but also said that lots of the issues were out of its control.
 20. In June, the County Council's OT, the contractors and the District Council's surveyor visited Miss B's home again. The contractor agreed to look at bespoke modifications to the kitchen units. They found the sink and taps still splashed too much when in use. Other taps had been explored but were not accessible and lower taps would make it hard to do usual things such as fill a kettle or pan. The

contractor agreed to explore reducing the water pressure. At this time, a new oven had arrived but it was the incorrect model. The contractor had already arranged for the correct one to be delivered and installed.

21. The contractor quickly sent the quote for the bespoke works and was due to start work in August, but could not due to COVID-19 infections in Miss B's household. Miss B again cancelled the next appointment in September because she was not well enough for the work to go ahead.
22. In response to my enquiries, the County Council has explained that it had been trying to arrange a joint meeting between its OT, Miss B, the District Council's surveyor, and the contractors from August 2021 to January 2022. The surveyor and the County Council's OT revisited to agree what still needed to be done in November, but the contractor was not available until January 2022. At the November meeting the OT and the surveyor observed that:
 - the taps or water pressure still needed to be adjusted;
 - Miss B could not access the fitted larder, and the contractor had proposed a bespoke larder but Miss B could not agree to the design; and
 - the clearance for foot plates under the units was still not resolved.
23. The County Council says the existing kitchen was left intact while the new adaptation was undertaken and the old kitchen was not removed until the final stages of completion of the adaptation. This was to give Miss B as much of a functioning kitchen as possible during the works.
24. The County Council says that there was functioning oven in place throughout, despite that Miss B had accidentally broken one of the controls. The new oven was accessible when the original specification was drawn up but Miss B's hand function had deteriorated since. The Council sourced a new oven but there were ordering issues which meant that the correct item was not received until the summer of 2021.

Was there fault and service failure causing Miss B injustice?

25. It is clear that the problems with the kitchen were not resolved in good time, taking many months. I recognise that dealing with this and trying to resolve the issues would have been frustrating and exhausting for Miss B. My task however, is to determine whether this was due to fault by the County Council.
26. The County Council ensured the District Council's cooperation at the beginning of the process, with a formal referral and specification for works that would meet Miss B's needs. The County Council's plans and specifications as agreed by Miss B were detailed and there was no fault here.
27. The County Council first alerted the District Council that there were significant problems with the kitchen in good time. Following that the County Council worked with Miss B to put the issues right. The OT helped Miss B source new fittings, and acted as a liaison point between Miss B and the District Council who retained responsibility for the adaptations.
28. It is clear that it took too long for the new kitchen to be made accessible to Miss B. Although it was incredibly frustrating and exhausting for Miss B, as far as possible, the care plans suggest that the County Council understood she could not use the kitchen independently and her package of care and support reflected this.

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29. It is not clear that the County Council properly considered its power to step in and finish the adaptations itself. However had it considered this, it may not have decided that it would have been the right course of action to intervene. The adaptation was complicated; some of the problems were not foreseeable; the contractor availability was a significant problem; the work was already substantially underway; and the County Council had ensured that the package of care took account of the problems with the adaptations. It would also have had to consider that primary legislation is clear that housing obligations should be met by the housing authority (in this case the District Council). On balance it is likely that it would have decided not to intervene, but to continue to support Miss B to progress the work and to help her use the kitchen despite the issues with it. The Council might want to review how it might properly consider whether to intervene in future cases of delays or lack of provision in housing adaptations.
30. Although there have been significant delays in putting the kitchen right, the County Council has, in the main, kept Miss B informed of its actions to try to progress the works.
31. I have seen Miss B's care plans as assessed and agreed by the County Council. These took account of the fact that although it was intended that Miss B should be able to use her kitchen independently, the problems with the kitchen meant that she still needed help and support with meal preparations.

Final decision

32. I have completed my investigation. There was fault by the Council but this did not cause injustice to Miss B.

Parts of the complaint I did not investigate

33. We cannot investigate complaints about the provision or management of social housing by a council acting as a registered social housing provider. (*Local Government Act 1974, paragraph 5A schedule 5, as amended*)
34. For this reason, I have not investigated the District Council's actions in progressing the adaptations.

Investigator's decision on behalf of the Ombudsman