

The Ombudsman's final decision

Summary: Mr X complained about how the Council responded to his concerns about work carried out on his home. We found the Council did not check the work in progress and took too long to identify it had not been completed to the agreed standard. This caused inconvenience and frustration to Mr X and damage to his home. The Council agreed to apologise to Mr X, make a payment to recognise the injustice caused, and complete the outstanding works within three months.

The complaint

1. Mr X complains about the quality of work carried out to his home by contractors working on behalf of the Council. He says the work was not carried out to the agreed standard and his home has suffered damage as a result. He says the Council has not acted in response to his concerns. He would like the Council to carry out remedial works to the property and reduce the outstanding charge for the works. He would also like the Council to refund some costs he has incurred.

The Ombudsman's role and powers

2. 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*)
3. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)
4. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)
5. 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

6. I have considered the complaint made by Mr X and the documents he provided.
7. I considered the Council's comments about the complaint and the documents it provided in response to my enquiries.
8. Mr X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

Background

9. Most building work, whether new, alterations, or extensions needs building regulation approval. The regulations set standards for the design and construction of buildings and ensure the health and safety of people in and about those buildings. 'Approved documents' give examples of how the regulations can be met, but these examples do not have to be followed.
10. A person can seek building regulations approval in several ways. This can include an inspector checking work on site for compliance with the regulations and issuing a completion certificate within five weeks. Alternatively, an inspector can certify compliance with the regulations once the work is complete. Building control inspectors are not expected to check for compliance with approved plans.
11. Primary responsibility for building works rests with those who commission it and those who do the work.
12. The Consumer Rights Act 2015 sets out what should happen when services do not deliver what was agreed or are delivered without reasonable care and skill. Consumers can ask the service provider to fix the problem, or to receive a refund for the work.

What happened

13. In December 2015, the Council secured funding to carry out essential repairs and restore original features to the Grade II listed homes in New Bolsover Model Village. The village is a mix of private and council-owned homes. It appointed an architect and a private construction firm to carry out the work on its behalf.
14. Mr X owns his own home. As part of the project, all private properties were to have the following carried out for free:
 - Re-pointing (including the chimney stack)
 - Any loose slates made good
 - Downpipes and guttering replaced with cast iron works
 - Timber surveys carried out and remedial work completed
 - Lintel load bearings checked and remedial work carried out
 - External door frame and door condition survey and remedial work carried out
 - New windows installed front and back
15. Homeowners could choose other works to be carried out, at a cost. This included further work to the roof and installing insulation. Mr and Mrs X decided to pay for this extra work. The Council showed them architect drawings and gave them a 'shopping list' which detailed the work to be done.

2018

16. In March the Council wrote to Mr and Mrs X outlining the cost of the agreed works to the roof. The letter said the project architect would supervise and sign off the work. The architect's plans showed where insulation would be installed in the loft, including the air gap to be maintained between the insulation and the roofing membrane, in line with building regulations.
17. In April, work began on the roof. Mr X says workers removed part of the roof without notice, causing damage to their belongings and water damage in the house. Despite raising concerns with the site manager, Mr X says contractors returned the next day and removed the rest of the roof. Mr X spoke with another site manager, providing photos of the roof works which he said showed rotten rafters, large birds' nests and a lack of insulation. The site manager agreed to complete the works to the expected standard and said it would be signed off in stages by the architect. Mr and Mrs X wrote to the contractor setting out their concerns about the quality of work carried out to their roof.
18. Work continued to the property. In December, the project architect produced a 'snagging' list, a list of minor faults to be rectified. This included some replacement brickwork, added pointing, painting and cleaning. Mrs X signed a handover certificate to record her satisfaction with the work completed, subject to several outstanding items which included external snagging and a roofing guarantee.

2019

19. In January, a new site manager sent Mr and Mrs X a warranty for the work to install tiles on the roof.
20. In February, the Council became aware the 'shopping list' for the roof given to Mr and Mrs X did not include the full package of insulation works detailed in the architect's drawings. The full package was more costly. The Council said the contractor had installed the full package and absorbed the added cost itself, so the amount Mr and Mrs X would pay remained the same.
21. The project architect visited the property in February and inspected the loft. He said the insulation appeared to have been carried out to the specification. There were two areas where insulation still needed to be installed. He said Mr X had agreed to resolve some issues himself. He also said the quality of pointing was poor in places but did not appear to recommend this was redone.
22. Mr X contacted the Council following a meeting with the site manager. He said a fourth snagging list had been drawn up. He said he would accept an offer of £300 from the contractor for water damage and the loss of their possessions when it removed the roof. However, he advised the Council he intended to pay a reduced amount towards the outstanding bill to reflect the continuing concerns about the work carried out. The Council said the architect had confirmed the work had been completed to specification and so the full payment was now due, minus the £300 offered by the contractor. Mr X replied there were parts of the roof space the architect could not inspect as he could not access them. In his view, the roof warranty had been issued without the architect's approval. He said other work to the outside of the building was outstanding and he was asking for a discount on the rest of the bill.
23. The project architect carried out a 'ground level inspection' in March. He told the Council there were no obvious issues. He said 'although not inspected close up' he and the Council officer present considered the roof to have been completed to

the specification. He said the Council had periodically reviewed the works when the scaffolding was in place. He confirmed the findings in a letter to the Council shortly after.

24. Mr X complained to the Council. He said he had been in communication with the Council about damage caused to his home because of poor workmanship and a lack of care over the previous year. He said neither the Council nor the contractor had provided evidence the work had been completed to the specification agreed. He asked the Council to redo the roofing works to the full specification originally agreed. He said if it would not carry out the work, he wanted a further discount on the outstanding charge. Mr X referred to other damage caused by the works including:
- damage caused by water ingress;
 - damage to a television because of falling brickwork;
 - damage to possessions stored in the roof space;
 - damage to carpet in the attic room due to dirt falling through cracks in the plaster made by the roofers; and
 - damage to the damp-proof course.
25. The Council replied to Mr X in mid-April. It provided some background to the works on Mr and Mrs X's home. It accepted there was some damage to their belongings and the contractor had offered a discount of £300 on the cost of the work to remedy this. The Council said major works will always cause some disruption and inconvenience. The Council said the contract had no formal 'sign offs' but the architect and officers from the Council had inspected the roof inside and out. It assured Mr X it had installed the roof correctly and said this was why it had provided him with a warranty. It provided Mr X with information about his outstanding costs and said it would issue an invoice once it had completed the remaining snagging work.
26. Mr and Mrs X wrote to the Council in May. They provided a detailed background to the case. They felt the Council was not taking responsibility for the damage caused to their home. They said the added works carried out to the roof at the contractor's cost were irrelevant, as they still had no evidence to show what work had been done. Mr and Mrs X said they had no evidence the architect had visited during the works as agreed. They said the architect told them the contractor should have invited him to view the roof at various stages of completion, but it had not routinely done so. Mr X says the architect could not carry out a full inspection because most of the internal work was not visible. Mr X said their contract with the Council said payment plans would be subject to sign off and satisfactory completion of the work. He said the roof warranty was issued before an architect inspection and without any report from building control, making it invalid. He enclosed a receipt for the damaged carpet and asked for the Council to refund the cost.
27. The Council arranged for building control to visit the property in June, to confirm the works were carried out to specification and in line with building regulations. The surveyor carried out a visual inspection of the roof space and said insulation had been installed in the areas they could see. There was one part of the roof which was not accessible, and the surveyor suggested carrying out a further survey using a small camera. The surveyor did not comment on whether the insulation complied with building regulations. The surveyor also noted two areas

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- of the building where mortar was missing, and another where the flashing was loose.
28. A senior Council officer wrote to Mr and Mrs X in July. She said it could not offer a further discount for the work because the contractor had installed a more expensive package than the one Mr and Mrs X paid for. She said the Council was looking into who caused the carpet damage. She had arranged for the further inspection which took place in June and noted a camera survey was due to take place.
 29. Mrs X expressed reservations about the damage the camera survey may cause if carried out from the inside. Mr and Mrs X later declined the survey and asked if an inspection could be carried out externally.
 30. Mr and Mrs X wrote to the Council at the end of September. They said there had been five snagging lists produced but the work was still incomplete. They denied ever agreeing to resolve some issues themselves, and said they were waiting for the Council or its contractor to do so. Mr and Mrs X explained how much they were willing to pay of the outstanding bill for the work completed. They asked the Council to provide the original certificate of completion for the work, and evidence of the roof inspections carried out in 2018.
 31. In early October Mr X followed up the letter setting out his outstanding concerns about how the Council was dealing with the situation. He wanted compensation for the damage to their property and an apology. He intended to arrange another builder to complete the works and bill the Council, as the works were still not completed as agreed.
 32. In mid-October, the Council wrote to Mr X. It said there was still some external snagging work to be completed. It directed Mr X to the Ombudsman on the outstanding areas of disagreement.
 33. In mid-November, the Council wrote to Mr and Mrs X to confirm the work in the loft had been completed to the agreed specification. It cited the architect's reports, and that of the Council's building control, which said they had seen evidence of insulation being installed. The Council did not say how the insulation installed met building regulations.
 34. The site manager sent a lengthy snagging list to colleagues summarising the previous lists and asking for the outstanding tasks to be completed as soon as possible.
 35. Mr and Mrs X complained to the Ombudsman.
 36. At the end of November, Mr and Mrs X wrote to the Council to say they had found a leak in the roof which was dripping into the insulation and damaging the internal walls. They said they had told the team on site about this who said they needed to resolve the matter themselves. No remedial works or investigations had taken place to resolve the problem. They said they would arrange for their own roofing contractor to ensure no further damage was done to the property and would offset this against the outstanding balance for the roof. They attached photos showing water damage to an internal wall in the attic room.
 37. The Council told Mr X the snagging works were complete and asked him to sign off on them. Mr X said he would not sign off until the Council resolved the problems with water ingress.
 38. The Council responded shortly after. It said it had assured Mr X the work to the roof had been completed to specification and provided a warranty. It said the

Council had tried to arrange visits to find a solution to the problems of water ingress but Mr X had not arranged for these to happen. It said its preliminary tests had not identified any problems with the workmanship to the roof. It said it had found a similar problem in other properties which had been traced to leaves blocking the guttering, which had later been cleared. The Council said it would be appointing an independent heritage surveyor to confirm the cause of water ingress at the affected properties. It said if Mr X arranged for his own contractor to carry out work to the roof it would invalidate his warranty. It asked Mr X to contact the Council to arrange for an inspection of the areas letting in water and directed him again to the Ombudsman.

2020

39. In January, Mr X commissioned an independent building survey to address three issues: poor-quality pointing, water ingress, and incorrectly installed insulation. The survey found the mortar strength to be inconsistent, leading to cracks between the bricks and mortar in places. In other places, the surveyor found the mortar to be soft. The surveyor noted the pointing appeared to have been done during bad weather and there was mortar staining to the brickwork. The surveyor found evidence of water staining in the attic bedroom and penetrating damp in the chimney breast in the roof. The surveyor found insulation missing in places and in other parts of the roof it was loosely installed between rafters with no ventilation.
40. The surveyor concluded the pointing had been carried out with poorly mixed mortar of inconsistent quality. He suggested the chimney pointing and flashings may be allowing water ingress. He said the poorly installed insulation would create areas that may encourage condensation and mould growth. He suggested repointing the defective areas, including the chimney, and cleaning the brickwork. He also suggested checking the flashing to the chimney and reinstalling the insulation in line with the architect's drawings and building regulations. Mr X sent a copy of the report to the Council.
41. In mid-January Mr X wrote at length to the Council. He said the Council had still not addressed the poor pointing despite it being in the snagging list and this was causing water ingress when it rained. He said problems with damp from the chimney continued and he had told the Council about condensation build up. He was unhappy the Council had not carried out any investigative work. He said the warranty for the roof was invalid as it did not comply with building regulations or the architect's drawings.
42. The Council said it had offered to visit Mr and Mrs X to examine the problems with the chimney and check if the snagging works were complete. The Council said it had commissioned an external historic surveyor to do further tests. It said it had offered to arrange a visit from building control to inspect the insulation they could not see easily so they could sign off the work in the roof. Mr X declined this inspection as he considered the problems with water ingress to be a priority.
43. The project architect carried out a defect analysis of Mr and Mrs X's home, in response to the report commissioned by Mr X. It said it would need to carry out tests to assess the strength of the mortar and the chimney issues were being explored elsewhere on site. It said any repointing and flashing problems would be addressed if there was evidence the original specification was not delivered.
44. A follow up report a week later said the project architect had discussed the insulation with building control officers. It said the architect had received confirmation from the manufacturer about the correct air gaps required for the insulation.

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45. A senior officer arranged a site visit with the contractor and the architect. This was to look at the outside of the property, inspect the chimney and decide how to address problems with the pointing and flashing. He also proposed a further inspection of the insulation by building control, by removing some slates and using a camera to inspect the void from outside. Following the site visit, the project architect provided a final snagging list to the contractor and the Council arranged to be on site while the final works were carried out.
 46. In February, following a further inspection by the project architect, the Council agreed to replace some pointing at the back of the property and carry out repairs to the front. It said the contractor would tell Mr and Mrs X when it intended to carry out the work. It said it had ruled out the flashing on the roof as a source of damp or water ingress. It said the architect and contractor were still in discussions about the work to be done to the insulation. The Council said there were two areas which building control needed to check before they could issue a certificate. These were areas Mr and Mrs X had previously brought the Council's attention to. The Council said there were different methods available to ensure the insulation complied with building regulations and it could inspect as the work was carried out. The Council agreed that if possible, it would complete the works to the insulation without removing the ceiling, though it could not rule this out.
 47. Correspondence between the architect and the contractor shows concerns were raised about the air gap around the insulation installed at another property on site. In response, the contractor said it could not achieve the required air gap because of the physical constraints of the property. The architect said if the contractor could not install the insulation as planned then it should have told either the architect or the Council's clerk of works. The architect put forward some proposed solutions and suggested these be carried out at Mr X's property too.
 48. In March, the Council said the architect would inspect any areas where pointing had been removed before they were repointed. It would also test the removed mortar to rule out any problems. The chimney inspection report was still outstanding, but the contractor was costing up a solution to a possible problem with the flashing between Mr and Mrs X's property and their neighbours. There was some dispute about the air gap required for the insulation, which the Council was discussing with the manufacturer. The Council said the architect had a solution to the issues with the insulation which would meet building regulations. However, these would not be the same design as the original drawings presented to Mr and Mrs X when they signed up to have the work done.
 49. In an email exchange between the architect and the Council, the architect expressed concern that building control had previously carried out a visual inspection but not noted any problems with the insulation in the loft. He also noted that no work should be carried out to the property without him being told so he could inspect it before repointing was carried out.
 50. The Council later suggested an arbitration service to resolve the issues with the loft insulation. There was a difference of opinion between the Council and Mr and Mrs X about the correct air gap needed to meet building regulations. The Council proposed some alternatives to achieve the required air gap by either carrying out work from outside, or from inside the property. It asked Mr and Mrs X to seek advice and state their preference.
 51. Mr and Mrs X asked to see some reports before deciding. They also told the Council some mortar at the back of the property had been removed without notice and not replaced. They later complained to the contractor about this.

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52. At the end of March, the Council paused work at New Bolsover Model Village because of the COVID-19 pandemic. It wrote to Mr and Mrs X and advised it would complete the outstanding internal and external repairs as soon as possible. The Council said it would “take down the ceiling, replace the loft insulation and get it checked by the Building Inspector as soon as we can.”
 53. In April, the Council received a report from the heritage building surveyor it had appointed to inspect the chimneys at various homes on the site. The report concluded there were several defects which were contributing to the water ingress identified in several properties. The report said the standard of workmanship was not in line with the specification and would limit the durability and performance of the repointing.
 54. In June, the Council wrote to residents to say the contractor would be restarting its external snagging works. The Council estimated the work would take five months to complete, with Mr and Mrs X’s property falling into the third stage which it expected to carry out in October. The Council said it would be inspecting chimneys to ensure the work had been carried out to a suitable standard, and it would be refitting rainwater gutters.
 55. In the same month, the Council wrote to the Ombudsman. It said it believed the dispute should have been resolved between Mr and Mrs X and the contractors and it had tried to mediate to find a resolution. It said it had recently found out the full specification for the loft insulation was not possible because of the age and shape of the property. It said it was “not feasible” to complete the remedial works from the outside and it had offered to remove the ceiling to install improved insulation instead. It said under the Consumer Rights Act 2015 it would offer a full refund to Mr and Mrs X of the money paid under the contract. It would waive any outstanding balance, so Mr and Mrs X could pay someone else to install loft insulation. The Council said it could not achieve the result Mr and Mrs X wanted: insulation installed in line with the original architect drawings it gave them in 2018. The Council said it would also carry out any necessary repairs to rainwater goods, chimneys and lead flashings at the property, and the agreed external snagging. It said it would apologise to Mr and Mrs X for the time taken to resolve the situation and the inconvenience they experienced during the project.

Analysis

56. It is possible Mr and Mrs X could take this matter to court. However, I do not consider it would be reasonable to expect them to do so, and I have decided to exercise my discretion to investigate the matter. In reaching this decision I have considered the cost of court action; the Council’s acceptance of the poor workmanship; and the fact the Council signposted Mr and Mrs X to the Ombudsman to resolve their complaint.
57. This was a project of enormous scale, affecting almost 200 properties in the village. The Council is not wrong to say that such projects will cause disruption and inconvenience. However, when things go wrong, the Council should act quickly to resolve them. It failed to do so in this case, and this was fault.
58. The architect said the plans provided showed what should have been installed but ultimately the air gaps could not be achieved on site. The Council says the plans were a ‘generic schematic section’ showing all options available to homeowners and in reality most final installations would not meet the drawing. There is no evidence the Council told Mr and Mrs X this when they agreed to the works and this was fault. Mr and Mrs X had a reasonable expectation the Council would carry out the work as described in the plans.

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59. It is not for the Ombudsman to show if works carried out comply with building regulations; this is a matter for the professional judgement of officers working in building control. However, the Ombudsman would expect the Council to evidence how it has monitored compliance with building regulations in a project of this scale. There is no evidence of visits being carried out to Mr and Mrs X's property while the works were ongoing. This was fault.
 60. When officers in building control did visit, they carried out a visual inspection of the insulation installed in Mr and Mrs X's home. Their report fails to consider if the insulation had been installed in line with building regulations. This was fault.
 61. The architect's inspection which took place in February 2020 confirmed many of the concerns Mr and Mrs X had been raising through 2018 and 2019. During that time, the Council repeatedly claimed the insulation had been installed correctly. This caused Mr and Mrs X frustration and has left their property vulnerable to the effects of poorly installed insulation. It is unclear why it took the Council such a long time to carry out a suitably detailed inspection to settle the facts in this case. This was fault.
 62. The Council offered Mr and Mrs X the choice between having remedial works to the insulation carried out from the outside, or from the inside. However, it later told them it would only do the work from the inside. The Council has not explained to Mr and Mrs X how it arrived at this decision. This was fault.
 63. There is a lengthy snagging list which remains outstanding. Some of the items on the list now are the same as those identified in late 2018. Even allowing for periods of bad weather, and for the disruption of the COVID-19 pandemic, the Council should have ensured the outstanding actions were completed in a reasonable time-period. It failed to do so, and this was fault.
 64. It appears the Council feels Mr and Mrs X have at times been obstructive. However, Mr and Mrs X have provided reasonable explanations when they have declined works or inspections at their home. They have set reasonable conditions for the Council and its contractors, such as one of them being at home for any visits or being given notice of works. I have not seen evidence of Mr and Mrs X unreasonably refusing works or visits to their home.
 65. I must consider what position Mr and Mrs X would have been in if the fault had not occurred. I note the offer of £300 from the contractor to account for damage to Mr and Mrs X's possessions. I also acknowledge the Council's offer to refund the payment made so far for the roof work and insulation, waive the outstanding charge, and its commitment to carry out the outstanding remedial works to the rest of the property. However, this also creates inconvenience for Mr and Mrs X in having to source an alternative contractor to complete the insulation to the required standard. In my view, the Council's offer only goes part of the way to addressing the injustice in this case.
 66. Additionally, there is further damage to Mr and Mrs X's property which would not have occurred if errors had not been made. This includes damage to the carpet and damp. Mr and Mrs X have taken considerable time and trouble in trying to resolve their complaint. They have also experienced the continuing stress and frustration of living with the impact of the faults identified.

Agreed action

67. The work carried out on Mr and Mrs X's property was delivered by a contractor acting on behalf of the Council. When a council commissions another

organisation to provide services on its behalf it remains responsible for those services and for the actions of the organisation providing them. So, where I have found fault with the actions of the contractor, I have made recommendations to the Council.

68. Within four weeks of this decision, the Council will:

- apologise to Mr and Mrs X for the faults identified in this investigation.
- refund Mr and Mrs X's deposit towards the work to the roof and insulation, waive any outstanding charge, and arrange for the contractor to pay the £300 offered to remedy the damage to their possessions.
- pay Mr and Mrs X £250 in recognition of their time and trouble in bringing their complaint to the Ombudsman.
- pay Mr and Mrs X £1,000 in recognition of the prolonged stress caused to them by the Council's actions.
- pay Mr and Mrs X £1,200 towards the cost of a new carpet and internal decoration to repair the damage caused by the faulty works.

69. Within three months of this decision, the Council will:

- carry out any necessary repairs to rainwater goods, chimneys and lead flashings and ensure the outstanding snagging list is completed. Mr and Mrs X will allow access for exterior works in their absence, subject to the Council providing a detailed schedule of the actions to be taken, communicating any changes to the schedule in advance as much as possible and providing regular updates with its progress against the schedule until the work is complete.
- arrange for a building control inspection of the completed work, free of charge, and issue a certificate of compliance as required. The officer carrying out the inspection should have had no previous involvement in this case.
- arrange for senior officers to review the findings from this investigation and identify what steps it could take to avoid similar faults occurring in the future. The Council will provide evidence to the Ombudsman of the review and any actions arising from it.

Final decision

70. I uphold this complaint. Mr X has been caused an injustice by the actions of the Council and it has agreed to take action to remedy this.

Investigator's decision on behalf of the Ombudsman