

The investigation of a complaint
By Mr K
against Cartrefi Cymunedol Gwynedd

A report by the
Public Services Ombudsman for Wales
Case: 201304611

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Introduction

This report is issued under section 16 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as Mr K.

Summary

Mr K complained that Cartrefi Cymunedol Gwynedd ("CCG"), his housing association landlord, has unfairly refused his application to adapt his property to install a walk-in shower. He said that CCG had accepted that he had a need for the adaptation, as two occupational therapy assessments have indicated.

Mr K explained that CCG had refused the application mainly because he and Mrs K were under-occupying their home, as it was a three bedroom property. It had stated that many families were awaiting such homes. Mr K asserted that CCG's decision to refuse the application and then turn down his appeal, demonstrated that its policies were discriminatory against older and disabled people. In addition, he considered that the way CCG handled his appeal was incorrect.

Mr K said that he was being forced to move from a home he had lived in for 36 years against his will because he could not use the bathroom facilities satisfactorily.

The Ombudsman concluded that broadly CCG was operating reasonable policies, which were compliant with legislation and took account of the balance between a prudent use of its housing stock and the rights of tenants. However, he found that CCG needed to do more to provide evidence of the number and waiting times of families within its policy framework.

In Mr K's case, however, the Ombudsman found that CCG had been maladministrative in its handling of the application and appeal. He found that the initial decision to refuse the application had been taken without due consideration of Mr K's circumstances. The appeal decision then failed to identify that omission. The Ombudsman considered that Mr K had not had a fair hearing as a result of these failures. Mr K had suffered an injustice in that context. The Ombudsman upheld Mr K's complaint. He recommended that CCG:

- (a) apologise to Mr K
- (b) pay him £300
- (c) offer Mr K a fresh and prompt re-determination of his application
- (d) review its Adaptations Policy with regard to one aspect of its wording

- (e) consider how it could incorporate the evidential basis regarding the need for family homes into the Adaptations Policy.

CCG accepted these recommendations.

The complaint

1. Mr K complained about Cartefi Cymunedol Gwynedd ("CCG"), his housing association landlord. He did so with the help of the Older People's Commissioner for Wales ("OPCW").
2. Mr K's complaint concerned CCG's refusal to adapt his home by replacing a first floor bath with a walk-in shower. This is despite having a budget for such adaptations to fund such works. CCG accepted that as Mr K was 81 years old and disabled, he required a walk-in shower as occupational therapy assessments indicated. However, the adaptation was declined initially and on appeal in early 2013. The grounds for refusal, as supported by CCG policy, were that Mr and Mrs K's three-bedroom home, which they have lived in for 36 years, was under-occupied, the house was not appropriate for their long-term needs and the property was not suitable for the alteration as it was a family type home.
3. Mr K was dissatisfied with CCG's handling of his application for the adaptation. Specifically he was concerned about various aspects of this matter as follows:
 - how CCG's policies and decision-making in his case, relate to issues such as tenants' rights, disability discrimination, age equality and human rights
 - the robustness and effect of CCG's policies in general
 - the appeals process in his case.
4. Mr K said that the effect of CCG's decision was that he was "held to ransom" by virtue of being forced to move against his will.

Investigation

5. My investigator obtained comments and copies of relevant documents from CCG. I considered those in conjunction with the evidence provided by OPCW. My predecessor to specialist legal advice in connection with the matters involved in this case and this has informed my views on Mr K's complaint.

6. I have not included every detail investigated in this report but I am satisfied that nothing of significance has been overlooked.
7. Mr K, OPCW and CCG were given the opportunity to see and comment on a draft of this report before the final version was issued.

Relevant legislation and guidance

The Equality Act 2013 (“the Act”)

8. Section 29 of the Act imposes a duty on public bodies to make reasonable adjustments in relation to providing services and exercising public functions. Section 20(3) of the Act outlines the duty as comprising of the following three requirements:

“...where a provision, criterion or practice...puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.”¹

“...where a physical feature puts a disabled person at a disadvantage in relation to a relevant matter...to take such steps as it is reasonable to have to take to avoid the disadvantage.”²

“...where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter...to take such steps as it is reasonable to have to take to provide the auxiliary aid.”³

9. Technical Guidance to the Act⁴ makes it clear that a public body must have sufficient evidence of the impact of its policies in order to show that it meets the duties demanded by the Act.⁵

¹ Section 20 (3).

² Section 20 (4).

³ Section 20 (5).

⁴ Equality Act 2010: Technical Guidance on the Public Sector Equality Act Duty Wales issued by the Equality and Human Rights Commission Wales (2013).

⁵ See 5.15, 5.16, 5.18, 5.27, 5.54, and other sections of this guidance for a fuller explanation.

Principles of good administration

10. One of my predecessors issued statutory guidance⁶ on what bodies within my jurisdiction should be doing to deliver good administration. Good administration includes acting in accordance with the authority's policy and guidance and dealing with people sensitively, bearing in mind their individual circumstances.

CCG's policies

Transfer Agreement

11. In 2010, Gwynedd Council ("the Council") transferred its stock of rented properties to the newly formed housing association, CCG. The Transfer Agreement included that CCG would have a cash limited budget for aids and adaptations requested by tenants. This is a separate matter from the legal obligations on a council to provide community care services and to determine applications for Disabled Facilities Grants.⁷

Tenancy Agreement and Tenants Rights

12. The Tenancy Agreement and handbook set out CCG's "obligations". These include repairs and maintenance but not aids and adaptations. However, the Tenants handbook states that CCG will "invest" in adaptations.

Adaptations Policy

13. CCG has a range of policies. The Adaptations Policy, in operation from July 2012, is pivotal to Mr K's complaint. In short, the main aspects that are particularly relevant are as follows:

- its "purpose" is to allow "tenants to live independently in their own homes for as long as possible" (2.1)
- it is the "responsibility of the Adaptations Panel to use this policy consistently and fairly to prioritise which adaptations are approved" (4.2)

⁶ Under s31 of the Public Services Ombudsman Act 2005.

⁷ A Disabled Facilities Grant is used to adapt a property to enable a disabled person to live more independently in their own home.

- it notes that there is a shortage of family homes and a growing elderly population, the latter often living in properties larger than they need, too costly for them and hard to adapt (5.1.)
- it states that “generally” CCG will not undertake major adaptations in various situations such as where it is not appropriate for that type of home or where a property is under occupied (5.2)
- CCG “recognises that it is unreasonable to apply guidelines rigidly” and each case is considered “on its merits” (5.3)
- where adaptations are deemed inappropriate, CCG will try to offer the tenant alternative accommodation within 18 months (5.5.)
- if an adaptation is refused, there is a right of appeal (5.10)
- self-funded requests can be determined under its Improvement and Alteration Policy (7.2)
- CCG will help tenants move and can provide incentives where under-occupancy is reduced (9.1, 9.3).

Appeal process - adaptations

14. The aim of the Appeal Panel under this process is to:

“...consider if the decision to refuse an adaptation was contrary to [the Adaptations Policy]. The applicant must note clearly why they believe the Adaptations Panel did not follow the [Adaptations Policy] when coming to the decision and must provide evidence in support of their appeal.”

The background events

Mr K's health

15. Mr K was born in 1931. He has had a fractured spine for many years and wears a brace. He suffers from Chronic Obstructive Pulmonary Disease. He has a history of heart attacks, strokes and falls. His general health is poor.

Mr K's application for a walk-in shower

16. On 10 June **2010**, Mr K signed his new tenancy agreement with CCG.

17. In September that year, CCG adapted Mr K's property by adding a stair lift. This was in response to an occupational therapy referral. That decision was made under a previous Adaptations Policy that did not have an emphasis on under-occupancy.

18. On 12 December **2012**, CCG referred Mr K for an occupational therapy assessment after he requested a walk-in shower during a visit from its staff about another matter.

19. On 9 January **2013**, a CCG Occupational Therapist ("the First OT"), reported that Mr K "would benefit" from a walk-in shower as he is "unable" to use the bath and "finds bathing equipment difficult". The First OT also stated that he would gain from moving to "a more suitable property". She noted that Mr and Mrs K would not consider this.

20. On 10 January, CCG's Adaptations Panel considered Mr K's request. The full minutes of its deliberations are as follows:

"Refused – under occupancy, not meeting long term needs, unsuitable adaptation"

21. On 21 January, CCG wrote to Mr K. The letter explained that the Adaptations Panel had:

"...recently reviewed your referral and has taken into consideration an assessment of your home. They have decided that it would not be appropriate to provide these adaptations for the following reasons:

- You are under occupying the property.
- The adaptation is not appropriate to this type of property. The major adaptation would be provided [CCG has confirmed this should have said 'not provided'] in a family sized accommodation which is under-occupied...
- The property does not meet your long term needs."

22. The letter added that CCG staff would be willing to discuss the application further and talk about "alternative housing options". It also said that if Mr K wanted to appeal the decision, he should write to the Corporate

Performance and Governance Manager within 14 days. He should set out the reasons why he thinks that the Adaptations Panel did not follow the Adaptations Policy.

23. On 6 February, Mr K wrote to CCG as advised. He appealed the decision. His reasons included that the under occupancy provision does not apply to housing benefit claims for people of his age and the decision may not take proper account of his human rights. He mentioned the severe effects of his disability in terms of bathing. He added:

“Whilst I understand your comments and suggestions that the property may not be the most suitable for our current needs, you must accept that this has been our home for over 30 years and realise that moving at our stage of life is something that we will not consider”.

24. On 14 February, CCG wrote to Mr K. It told him that an Appeal Panel would meet on 27 February. It added that the Appeal Panel will “consider if the decision...was contrary to... [the] Adaptations Policy”. The letter invited Mr K to submit further evidence.

25. On 27 February, the Appeal Panel met. It consisted of the Chair and Vice-Chair of the Operations Committee and a senior officer to “oversee the process”. The papers available included the assessment from the First OT, the letter turning down the application and Mr K’s appeal letter. The minutes said:

“Discussed that the initial decision to refuse was on the basis of under occupation, that the adaptation is inappropriate for the house and also that the property does not meet the long term needs of the tenant. Noted that the property benefits from a stair lift at present – appeal pack confirmed under occupancy and OT report that the tenant would benefit from a move to a more suitable property...members acknowledged that tenant would be unwilling to move...Appeal not upheld – initial decision in line with policy...”

26. On 4 March, CCG wrote to Mr K. The letter informed Mr K that his appeal had failed. The reasons were summarised. The letter ended as follows:

"The [Appeals Panel] understands that their decision will disappoint you; however, the fact that your home is a three bedroomed house and that you are the only tenants does mean that your property is under occupied."

27. On 28 March, a Council Occupational Therapist ("the Second OT") sent an e-mail to OPCW. It said that he had worked with Mr K for a few years. His e-mail said that he was "completely behind his application for a walk-in shower". He referred to an assessment that he had carried out a few days earlier. That assessment included that Mr K was concerned that without the ability to shower, he might smell of urine and he felt "embarrassed" when friends and family visit.

Mr K's dispute with CCG

28. Mr K disputed the fairness and legality of CCG's policies and the validity of the decision-making in his case with the assistance of OPCW. This process started in March 2013 and culminated in Mr K's complaint to me, which I received on 28 November. It should be noted that this was an intense period of communications between the parties. There were no significant delays on CCG's part.

CCG's evidence

29. CCG explained that it has a budget for adaptations "in accordance with the Transfer Agreement" with the Council. It said that since March 2012, it has approved 86% of applications for a walk-in shower or a wet room. It has also adapted 55 empty properties to meet the needs of an incoming tenant.

CCG stated that:

"...investing in the right adaptations ...is important. It allows [CCG] to make best use of the adapted properties in which it has invested.

All of [its] policies are designed to be flexible and reasonable in delivering consistent services to all tenants...the policies recognise the diversity of our tenants and the lifestyle choices they make. However, [CCG] considers that choices made by tenants must be made within the context of reasonable and proportionate boundaries.

[CCG] strives to use available funding by effectively planning and managing our housing stock to better meet people's assessed needs for adapted and accessible homes whilst putting the individual at the centre of our services enabling them wherever practicable to enjoy the same choices and control over their lives as everyone else. Taking this need for balance into consideration, [CCG] considers encouraging tenants to move to a more suitable property to be a proportionate means of meeting an assessed need."

30. CCG summarised its policies in the context of the above. It stated that the Adaptations Policy:

"...provides a consistent approach to providing adaptations whilst allowing the flexibility required to provide a service suitable to the diverse needs of our tenants. It enables [CCG] to: manage its local housing stock; reuse its adapted and accessible housing stock; and spend its adaptations budget effectively."

It maintained that:

"Each request for a major adaptation is considered according to the unique circumstances of the tenant."

31. CCG said that it "considers the impact of its policies on specific groups". It outlined a range of policies and services designed to meet the needs of its tenants and promote equality and diversity. It added that the Adaptations Policy was "scrutinised" by its Quality Customer Services Forum during its development. The Forum includes staff and tenant members and the Council's Carers Champion. The Forum reviewed it in June 2013 and no changes were made.

32. CCG refuted the allegation that its policies could force tenants out of their homes if adaptation requests were refused. It maintained that:

"...it may be that the tenant decides to stay in their home without the adaptation; or it may be they use our Tenants Improvements and Alterations Policy." [which allows tenants to self-fund adaptations]

33. CCG discussed Mr K's case. It explained that the Adaptations Panel accepted the OT assessment of 9 January 2013. It said that the request was "evaluated" by considering all Mr K's needs and how best to remove the barriers that prevent him enjoying his home, the sustainability of any solution, the impact on Mrs K and the most effective use of resources. It added:

"[The First OT] advised that [Mr K's] condition is degenerative. Consideration was given to what would happen to [Mr and Mrs K's] quality of life should [Mr K's] use of the stair lift become unsafe as his condition degenerated. The Adaptations Panel considered that the stairs to [Mr K's] home is a barrier that increasingly disables him from accessing his bathroom and bedroom. Therefore, providing a walk-in shower upstairs was considered not to be an appropriate solution.

CCG said that Mr K might soon require a through floor lift or a bathroom downstairs. This was a secondary consideration. CCG asserted that although it did not minute information to demonstrate that it gave Mr K's application full consideration, it did so.

34. CCG stated that it has "a large and wide variety of housing stock" in Mr K's area and it was "very likely" that it could make "a reasonable offer" of alternative accommodation that would meet his needs. Therefore, the Adaptations Panel decided that seeking an alternative property for Mr K, whilst providing portable equipment, was the best solution. However, it noted that Mr K was "adamant" that he would not move.

35. CCG said that the Appeals Panel made its decision in line with its remit.

36. CCG stated that its Tenants Improvements and Alterations Policy would probably allow Mr K to pay for the adaptation himself. However, as the property was "a family type home", a condition would be placed on the agreement that Mr K restore the bathroom before he left.

37. CCG asserted that the complaint submitted via OPCW does not present "a fair reflection of our policies" and "paints an unbalanced picture" of its services to its tenants. In contrast, it said that it deals "sensitively" with matters relating to disabled adaptations.

Analysis and conclusions

38. The issues at the heart of Mr K's complaint are complex. There is a difficult moral dimension. In such a context, it is vital that responsible authorities such as CCG create a robust policy framework, which is lawful and capable of underpinning reasonable assessments of individual circumstances and then make fair decisions within that framework. It is my view that CCG has broadly achieved the former but in Mr K's case, failed in the latter. I will explain these conclusions below.

39. I should also state that the matters at issue here must have proved very distressing to Mr K. I sympathise with the position in which he finds himself, through no fault of his own. To be fair, the considerations that are at the centre of this case also present major challenges for social landlords in the context of an apparent shortage of accommodation generally. It seems that CCG responds positively to the bulk of applications it receives in that regard.

40. The crucial contextual matters to cover are the legality and reasonableness of CCG's Adaptations Policy. This accounts for the first two bullet points in Mr K's complaint, as set out in paragraph 3 above. There is no doubt that the provisions of the Equality Act apply to the Adaptations Policy. I would add that I do not consider that any other legislation, such as the Human Rights Act 1998, adds anything to the legal context provided by the Equality Act. The key legal question is whether the Adaptations Policy allows reasonable steps to be taken as demanded by that Act (see paragraph 8). In general, I am satisfied that it does. I consider that the Adaptations Policy provides the basis for CCG to make reasonable decisions, which can enable disabled people to continue to occupy their homes, subject to rational criteria for allocating limited resources, both of properties and funds for adaptations. It is lawful, in my view, for CCG to decline an adaptation request based on under-occupancy in certain circumstances if there is a pressing need for family accommodation.

41. I do not have significant concerns regarding the legality and reasonableness of CCG's Adaptations Policy in the context of my considerations above. However, CCG should consider two issues in relation to the Adaptations Policy. Firstly, to demonstrate its compliance with the Equality Act, it should identify a workable method of incorporating a sound

evidential base in terms of the number of relevant families waiting for family-sized accommodation and how long they have to wait. This is important, as the Adaptations Policy is grounded on a need for more family-sized homes to meet the demand. I assume that information is readily available. It should be attached to the Adaptations Policy in a reviewable manner. This will allow CCG to demonstrate that it has considered the competing demands among different groups transparently and on a case-by-case basis. In Mr K's case, such information would have made the decision to refuse his application more reasoned and more in line with the Adaptations Policy.

42. The second issue concerns the 18-month backstop date to source alternative accommodation after refusal of an adaptation request. I am not content that this is legally sound. If such a lengthy delay in finding alternative accommodation arose in any individual case it may be contrary to CCG's obligation under the Act to take the reasonable step of offering alternative accommodation. Although each case should be regarded on its merits, re-consideration of an application would be necessary if, after "a reasonable time" (which in my view would be a much shorter specified period than 18 months), no suitable alternative was available. In light of Mr K's health problems and the fact that he was not able to look after his personal hygiene, it is not surprising that he (or any tenant in his position) was not reassured that a suitable alternative property would be provided within a reasonable timeframe when he faced the prospect of an 18 month wait for appropriate alternative accommodation.

43. Although both the issues summarised above are general policy matters, and are for CCG to determine for itself, I am of the view that the lack of demonstrable evidence to support CCG's position and the general (as opposed to specific) offer of appropriate alternative accommodation affected the way in which Mr K viewed the outcome of his application. In view of this, there is some injustice to him. Therefore, I **uphold** aspects of Mr K's complaint to that limited extent.

44. I now turn to CCG's specific handling of Mr K's application for a walk-in shower, which I regard as the third facet of the complaint. The initial decision to refuse Mr K's application appears to have been taken by rote and not in the context of a previous decision to install a stair lift. There is no indication in the minutes that Mr K's circumstances have been borne in mind such as his long-term occupancy and his comments about being too old and

disabled to face moving. Nor is there any indication in evidence about how soon Mr K's health would render his occupancy untenable. Failure to consider individual circumstances is contrary to the Adaptations Policy. When it came to the appeal, the Appeals Panel failed to identify that obvious flaw despite its clear and limited remit to do exactly that. As CCG failed to comply with its own policy by not bearing in mind his individual circumstances, I find that this was maladministrative. As outlined above, decisions should be demonstrably evidence based and CCG should have made greater efforts to share information about its waiting list pressures with Mr K. I also consider that CCG could have tried harder to discuss alternative accommodation with Mr K and the assistance that he might receive, notwithstanding his apparent and often stated reluctance to contemplate moving.

45. Owing to the failures described, Mr K could not be expected to accept or understand the decision that was made. Moreover, I believe CCG did not give his application a fair hearing. That was an injustice to him. He deserved better. I **uphold** his complaint concerning the decision-making process.

46. It seems to me that, extremely difficult though the issues will often be, social landlords can implement policies which recognise the complex interplay between the rights and aspirations of tenants, a cash limited budget for adaptations and the problems caused by a lack of stock and high demand. They have no choice but to so do. However, when making decisions in that problematic context, they must do so:

- with full compliance with the Equality Act, which was introduced to protect categories of citizen against discrimination
- in accordance with good administrative practice
- ensuring that they follow their own policies
- having due regard to the individual circumstances of a case – in Mr K's case such as taking account of the demand for family sized accommodation at the location and more explicit information about any expected deterioration in health.

Recommendations

47. I recommend that CCG provide evidence to me, in the time scale indicated, that it has:

A. written to Mr K, with a copy to OPCW, to apologise for the maladministration and injustice outlined in this report (one month)

B. paid Mr K £300 for the injustice he has suffered (one month)

C. offered Mr K a fresh and prompt determination of his application for a walk-in shower, with a commitment to ensure that it will encompass:

- a new OT assessment to be carried out by an individual who has been involved in this matter
- consideration of any indications within that assessment regarding any timescales for anticipated deterioration in Mr K's health and mobility
- exchanging specific information with Mr K about CCG's need for family homes and Mr K's individual circumstances
- the opportunity for Mr K, should he choose to take it, to find out more about the sort of properties and locations that might be available and the help he might receive to re-locate
- a new decision by the Adaptations Panel, which includes recognition and consideration of Mr K's circumstances (one month)


D. reviewed paragraph 5.5 of the Adaptations Policy concerning the 18-month period to seek alternative accommodation for tenants who have adaptations refused (three months)

E. considered the need for a review of the Adaptations Policy to incorporate the evidential basis that underpins it, as paragraph 42 above refers (three months).

49. CCG has agreed to implement the recommendations above.

Nick Bennett
Ombudsman

29 August 2014



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