

The Ombudsman's final decision

Summary: The Ombudsman found fault by the Council on Mr W's complaint about its failure to promptly act to resolve the drainage issue affecting the garages he rents from it. It failed to do works it said it would, failed to show evidence of works done, and failed to clear vegetation. The agreed action remedies the injustice caused. It was not fault for the Council to insist he continues to pay the rent he agreed to pay for them.

The complaint

1. Mr W complains the Council failed to:
 - a) promptly act to resolve a drainage problem affecting the garages he rents from it; and
 - b) reflect the ongoing problem through a reduction in his rental payments.
2. As a result, the garages regularly flood, which he and his wife must spend time and effort cleaning up.

What I have investigated

3. The paragraph at the end of this statement explains why only events from September 2018 were investigated and nothing earlier. Any reference to events taking place before that date are given to put the current complaint in to context.

The Ombudsman's role and powers

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*)
5. 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*)
6. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

How I considered this complaint

7. I considered all the information Mr W sent, the notes I made of my telephone conversation with Mrs W, and the Council's response to my enquiries, a copy of which I sent him. I sent a copy of my draft decision to Mr W and the Council. I considered their responses.

What I found

8. Since 2017, Mr W has rented 2 garages to the rear of his home from the Council. Problems first began in 2017 when he noticed pooling of water to the front of the garages following heavy rain over a couple of days. The water then enters and floods the garages, leaving stagnant water behind. The area to the front is made up of poured concrete slabs. There is a channel in the ground to the front of them which leads to a storm drain.
9. He claimed workmen from the Council visited and cleared all the channels but, not those to the front of his garages. He was told the nearby drain needed jetting to clear it out but, this was not done. Mr and Mrs W spent time trying to clear the storm drain themselves.
10. Mr W complains they called the Council on many occasions about the ongoing problem but, the Council takes no action. Mr W withheld the rent increase amount to try and get the Council to resolve the situation.
11. When it responded to their formal complaint, the Council explained resolving the problem would require 'significant expenditure' which it could not justify considering the age and condition of the garages. It explained it could not guarantee the garages would be watertight. It concluded by saying it considered it failed to provide an adequate level of service on this occasion and partly upheld the complaint. It agreed to carry out jetting and install a new threshold to the garages to try and reduce their flooding.
12. In response to my enquiries, the Council says the problem is with a soakaway leading to a drain. The problem is that clay, oil, and silt enter both the soakaway and the drain. Contractors tried to remove this. To fully resolve the problem, the Council estimates it would cost about £15,000 as it would need to remove the concrete, refurbish the drain, and relay the area. It has no record of anyone complaining about the quality of the works its contractors carried out. While it is not in its capital programme for improvement, the Council is considering the site for refurbishment. The Council also confirmed the jetting and installation of the new threshold was not done.
13. The Council sent a copy of:
 - An invoice for October 2017 which states 3 buckets of silt/clay were removed from the drain. In response to my draft decision, Mr and Mrs W say they removed this material. It also said there was a need for a 'sweeper/gully wagon' to suck out the oil tipped in it;
 - An undated invoice for clearing the drain channel of moss and grass;
 - An undated note which said a report was passed to the County Council for one of its vehicles to vacuum up the water. It confirmed the County Council decided this water removal was not within its jurisdiction;
 - An email from Mr W in August 2017 about flooding;
 - A note for February 2018 when Mr W chased the Council about it;

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- A note dated March 2018 of another report of flooding. They were told of the target date for completion of the works which was for the following month. A note of Mrs W's further call in April said it did not look like any work was done;
 - A note of another call from Mrs W in March 2019 about the flooding. The Council confirmed workmen went out the previous year. They chopped trees down for access but, could not clear the other half because of weeds and nettles. It noted the wish for gardeners to clear it for safe access; and
 - In April 2019, Mrs W called again because of flooding. An internal email response said an officer had been out and confirmed a small amount of moss and vegetation outside the garage doors, but the cause of the flooding is a blocked drain. A contractor was asked to clear it. It recorded the area seems to be used by nearby houses to store garden rubbish which itself raised an enforcement issue.

Analysis

14. In reaching a decision on this complaint, I took the following in to account:
- a) Mr W agreed to rent these 2 garages from the Council. By doing so, he entered in to a contract (tenancy agreement). I have seen an example of the agreement he has which states it sets out the obligations, rights, and responsibilities of the Council as landlord and Mr W as tenant.
 - b) Under it, Mr W agreed to pay the rent on the first day of each month and on time. The agreement also allowed the Council to revise and change the amount of rent payable by giving 28 days' written notice.
 - c) The Council agreed to carry out repairs needed to the garage.
 - d) The tenancy agreement has no plan, and makes no reference, to the area outside of the garage. The area to the front of the garage does not, therefore, fall within the contract he entered in to with the Council.
 - e) I note the Council has not disputed it owns the concreted area, channel, and storm drain. Nor has it disputed responsibility for their maintenance.
 - f) Mr W may wish to take legal advice if he considers the Council is acting in a negligent way to make it impossible, or difficult, to use the garage in the way he wanted and expected because of flooding. He can also take legal advice about whether this has any impact on his contractual right to pay rent for the enjoyment of the garage, for example.
 - g) It was not fault for the Council to insist Mr W continue to pay the entire rent payable.
 - h) The note made following Mrs W's call in March 2019 referred to trees being chopped down the year before and a need for the remaining half of the site to be cleared of vegetation for access. It referred to the need for gardeners to do this. The note implied this work was not done. There is no explanation about why the remaining half of this work was not done or, how this would resolve the flooding issue. I consider this is fault.
 - i) A note in April said a contractor was asked to contact Mrs W to arrange clearance of the drains. There is no record to show whether this was done, or whether the Council chased the contractor to confirm what it did. Nor have I seen an invoice for this work. This is fault.

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- j) The works it told Mr W it would do in response to his formal complaint were not, confirmed the Council, done. This was jetting and new threshold work. This is fault.
15. I consider the fault caused Mr W avoidable distress. This includes raised expectations the Council would act in response to his complaint and reports. It also includes the inconvenience and frustration experienced.

Agreed action

16. I considered our guidance on remedies.
17. The Council will, within 4 weeks of the final decision on this complaint, carry out the following:
- a) Send Mr and Mrs W a written apology for failing to: ensure the vegetation removal works were completed; have records showing the contractor did the works as requested in April 2019; to do the works it said it would do in its response to the formal complaint;
 - b) Arrange for the completion of any outstanding vegetation clearance works and explain to Mr and Mrs W how this will help the flooding issue;
 - c) Arrange for the works to be done it said it would do in its formal response to their complaint (jetting and threshold);
 - d) Draw up a regular maintenance schedule for this drain and channel to minimise the risk of flooding; and
 - e) Pay them £150 for the avoidable distress the fault caused.
18. In response to my draft decision, the Council recognised the need to renovate the drainage system. It will arrange to schedule these works as soon as practically possible and will notify individual garage tenants. It cannot guarantee it will keep the site for garage use in the future.

Final decision

19. The Ombudsman found fault on Mr and Mrs W's complaint against the Council. The agreed action remedies the injustice caused.

Parts of the complaint that I did not investigate

20. I did not investigate the Council's actions before September 2018. This is because any Council action before that date Mr and Mrs W wish to complain about is a late complaint. This law states a complainant must usually make a complaint to us within 12 months from the date of becoming aware of the issue he or she wishes to complain about. Mr W complained to us in September 2019.

Investigator's decision on behalf of the Ombudsman