

## **The Ombudsman's final decision**

Summary: Ms F complains on behalf of her father, Mr D, about the actions of the Council's building control team. There was no fault by the Council in its inspections or in issuing a completion certificate. The Council wrongly offered a refund of fees, raising Mr D's expectations, and delayed dealing with the complaint. It has already apologised to Mr D, which remedies the injustice caused.

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## **The complaint**

1. Ms F complains on behalf of her father, Mr D, that:
  - a) The Council did not advise him in November and December 2017 that different roof tiles were needed for his single storey extension
  - b) The Council wrongly issued a building completion certificate in January 2018
  - c) An officer wrongly advised him he would refund the building control fees
  - d) The Council delayed dealing with his complaint.
2. Ms F says as a result, Mr D has had to carry out expensive remedial works and that he carried out further building works on the assumption the refund would be made.

## **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. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), 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*)

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## How I considered this complaint

6. I spoke to Ms F about the complaint and considered the information she sent and the Council's response to my enquiries.
7. I sent Ms F and the Council my draft decision and considered the comments I received.

## What I found

8. Most building work requires Building Regulations approval. The regulations set standards to ensure the health and safety of those people in or around buildings. Building regulations approval may be given by council building control officers.
9. As building works begin, the building control inspector will visit at various key stages to check on works. These include: the floor and ceiling joists; roof timber/trusses; fire safety and glazing regulations; and staircases. But they are not present for the great majority of the project, they do not act as a "clerk of works" and are not responsible to the developer if things go wrong.
10. After taking all 'reasonable steps' to satisfy itself that the regulations were met, the council can issue a completion certificate. This is not a guarantee of works meeting the required standard.
11. Primary responsibility for ensuring building work meets the required standards lies with those who commission the work and those to do it. Losses caused by faulty works, including failure to follow the regulations, is likely to be a contractual responsibility between the parties (usually the owner and builder) and so ultimately resolved in the civil courts.
12. The courts have established that councils are not liable for the cost of putting right defective building work if they fail to properly inspect works to ensure compliance with the regulations. (*Murphy v Brentwood District Council [1990]*)

## What happened

### Building control inspections

13. Mr D started building works to make alterations and build a single storey extension on his property.
14. The building control officer inspected the roof structure on 17 November 2017. He noted the pitch of the rafters was 17.5 degrees and spoke to Builder 1 about the roof tiles. The case records say the roof tiles that had been ordered were not suitable for the pitch and Builder 1 had agreed to change the tiles. The Council says at the inspection the officer was introduced to a gentleman as the owner and also informed him of the need to change the tiles. The officer therefore did not write formally to the owners about the roof tiles. Ms F disputes this, she says the inspector did not tell Mr D the tiles were wrong.
15. Builder 1 walked off the job and Mr D engaged a new builder. Ms F contacted the Council and there was a site meeting on 17 December 2017 to discuss outstanding points and previous inspections. Ms F says the Council did not tell Mr D about the roof tiles.
16. A second building control officer visited on 3 January 2018 and met Mr D and Builder 2. There was evidence of water ingress around the rooflight, Builder 2 explained the leadwork had not been cut into brickwork to provide weatherproofing. The officer visited again on 19 January 2018. All remedial work had been completed and only the electrical certificate was outstanding. The

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Council says on both visits there was a visual inspection of the roof from garden level. On receipt of the electrical certificate a completion certificate was issued on 29 January 2018.

### **Problems with roof**

17. In the summer of 2018, the extension's roof started to leak. Mr D employed Builder 3 who found there were problems with the roof. A building control officer visited in August 2018. Ms F says he told them that the inspections had not noticed that the wrong roof tiles had been used and that he had not checked the file notes before the 3 January 2018 visit. The officer said this had been an error and he would refund the building control fees, which were approximately £750.
18. Ms F says on that basis, Mr D employed Builder 3 to repair the roof and that Builder 3 charged a higher price than usual because a refund was anticipated.
19. The Council wrote to Mr D on 14 August 2018 to say it was in fact unable to reimburse the fee as Builder 1 had been instructed to replace the roof tiles. Ms F complained on 20 August 2018, enclosing Builder 3's invoice.
20. The Council replied on 21 August 2018. It said Building Control did not act as a Clerk of Works and meeting building regulations standards was the building owner's responsibility. The Council said the inspection of the roof covering was not part of the statutory items which building control are required to check under the Building Regulations 2010. If the roof was not found to be leaking on the day of final inspection, or to be in a dangerous or defective condition, there would have been no reason to prevent the issue of the completion certificate. It apologised that a fees refund had been wrongly offered.

### **Ms F's complaint**

21. Ms F remained dissatisfied and emailed the Council on 7 September 2018 but did not receive a response. In February 2019 Mr D complained to the Council that he had not had a Stage 2 response to the complaint.
22. The Council replied on 11 March 2019. It apologised for not responding sooner and said it had introduced a new complaints logging system to improve its service.
23. The Council did not uphold Mr D's complaint. It said it was unfortunate Builder 1 had not passed on the need for different roof tiles to Builder 2 or Mr D. At the time of the final inspection it was not obvious that the incorrect roof tiles had been used and, as the roof was not found to be leaking, dangerous or in a defective condition, a completion certificate had been issued. The Council said the only way to seek compensation was to make a claim against the Council. Ms F complained to the Ombudsman in July 2019.

### **My findings**

24. The Council, as a building control inspection authority, gave advice and inspected the building to satisfy itself that building regulations were met. There is a dispute about whether the Council informed Mr D about the roof tiles, but in November 2017 the inspector advised Builder 1 to order different roof tiles. It was Mr D's and the builder's responsibility to ensure this happened and that the roof met building regulations standards. The Council was not responsible for the actions or quality of the builder's work or for ensuring Builder 1 told Mr D about the roof tiles.
25. In January 2018 the Council issued a completion certificate. Ms F says it was wrong to do so as the roof tiles were incorrect. The Council was not required to inspect the roof tiles in order to issue the certificate. The Council followed the

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process we would expect and so I do not find fault with the inspections or issuing of the certificate.

26. The courts' ruling means the Council would not be liable for the cost of any remedial works Mr D had to do to his extension. This would be the case even if the Council was at fault in the way Ms F alleges. We could not, therefore, ask the Council to offer Mr D a payment to cover the cost of the building works.
27. Responsibility for compliance with building regulations lies on the builder and landowner. Disputes about the quality of work are not for the Ombudsman to decide. Any dispute about quality is a contractual matter for Mr D, Builder 1 and Builder 2. Resolutions to civil disputes are ultimately settled in the civil courts, not by councils.
28. In response to my enquiries, the Council acknowledged that the officer had wrongly offered a refund of the fees in August 2018 as he was not authorised to do so. It had apologised to Mr D for this.
29. This was fault and it caused Mr D raised expectations. However, I do not consider it caused significant injustice. Mr D needed to make repairs to the roof regardless of the refund and I can see no reason why he could not have waited until the refund had been confirmed before employing Builder 3. In any event, the Council wrote to Mr D on 14 August 2018 to say the refund would not be forthcoming, so he had not had to wait long. The Council is not responsible for Builder 3's pricing.
30. The Council delayed responding to Mr D's stage 2 complaint, which is fault. It has already apologised for this, which remedies the injustice caused.

### **Final decision**

31. There was fault by the Council. The actions the Council has already taken remedy the injustice caused.

### **Investigator's decision on behalf of the Ombudsman**