

**Complaint reference:**  
15 014 536

**Complaint against:**  
East Devon District Council

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

Summary: The Council was not at fault in its communications with the complainant about what information it needed to provide her with a certificate of regularisation for building works undertaken without building control consent. It is also not at fault for not issuing the certificate without further inspection or suitable evidence from the complainant about the work undertaken.

---

## **The complaint**

1. The complainant, whom I have called 'Mrs C', considers the Council at fault for its communications with her over a Building Regulations matter. As I understand it, Mrs C's complaint is that the Council:
  - delayed in making clear what information it needed to provide her with a certificate of regularisation for work undertaken to the roof of her property; *and*
  - is unreasonably refusing to issue such a certificate to her.

## **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints of injustice caused by maladministration and service failure. I have used the word fault to refer to these. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
3. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

## **How I considered this complaint**

4. Before issuing this decision I considered:
  - Mrs C's written complaint to the Ombudsman and information she provided in support of her complaint;
  - correspondence between Mrs C and the Council before this investigation began about the issues raised in the complaint;
  - information provided by the Council in response to written enquiries;
  - relevant Regulations where referred to in the text below;

- 
- comments provided by Mrs C in response to a draft decision setting out my thinking about the complaint which led me to make further enquiries of her contractor and the Council.

## What I found

### Background information on Building Regulations

5. Building Regulations set out the minimum standards required for design, construction and alteration of buildings. Local authorities give consent that building work complies with the Regulations through their building control teams. There are various circumstances where home owners should apply for building control consent before altering property; including where they replace roof coverings or fit loft insulation. Of particular relevance to this complaint are Regulation 23 of the Building Regulations 2010 which covers *“the renovation of thermal elements”* and Regulation 7 which covers the standard of works.
6. If a home owner undertakes building works requiring Building Regulation approval, but fails to apply for such approval, then the Council can retrospectively issue a certificate of regularisation. This is subject to the home owner applying for such permission and satisfying the local authority the work meets the standards set out in the Regulations.
7. The Council publishes information on its website and a leaflet explaining the procedure for applying and issuing certificates of regularisation. It says *“it is important to note that when you submit a Regularisation application you may be asked to provide details of construction, or to expose elements of the construction, so that we can see if the work carried out complies with the Building Regulations before we can issue a certificate”*.

### The key facts in this case

8. In 2012 Mrs C employed a contractor to undertake a roofing work on her property. The work included some insulation works to the loft. She made no application for building control consent for these works.
9. The Council became aware of the roofing works around November 2013 when Mrs C contacted it due to concerns about the standard of the work. A Council building surveyor visited the property. He noted the poor standard of works and there had been no application for building control consent. He gave advice the work would not meet the standard for consent. He recommended Mrs C apply for a certificate of regularisation and arrange to rectify the poor quality work.
10. Mrs C asked another contractor to rectify the work. In July 2014, before work began, the Council surveyor went again to the property and met with Mrs C, the contractor and others. He again advised Mrs C to apply for a certificate of regularisation and wrote to her in August encouraging such an application. The surveyor’s contemporaneous notes say that he gave Mrs C a copy of the leaflet referred to at point 7 above.
11. During August 2014 the surveyor spoke to Mrs C’s contractor by telephone. The Council says its surveyor explained what records the contractor should keep, including photographs, to obtain a certificate. After the conversation the Council wrote to Mrs C and its letter said *“I have spoken with [your contractor] on [xx] August 2014 and it was agreed the photographic and written evidence will be provided to the Council regarding the insulation provisions once the uncovering works commence”*.

- 
12. Neither Mrs C nor her contractor contacted the Council further and so the Council wrote to her in January 2015 asking for evidence to confirm the work undertaken to provide a certificate. Mrs C replied and sent the Council a copy of the invoice given by her contractor which provided some detail of work billed for. In February 2015 Mrs C's contractor contacted the Council direct and provided the same detail with some photographs. The Council says an application for a regularisation certificate did not follow until March 2015.
  13. The Council says the information provided so far is not enough for it to provide such a certificate. It has said an inspection will be needed before it can issue a certificate and has asked for more detail about the work from her contractor. The Council has written by email to Mrs C's contractor and spoken to him by telephone setting out in more detail the evidence it wants to see before it will provide a certificate. It has also put this in writing to Mrs C. It has suggested that if there is no further photographic record of the roof works then it would inspect the work by 'opening up' a portion for inspection. Mrs C says she left scaffolding around her property for several weeks at the beginning of 2015, at some expense, to allow for the Council's inspection. The Council has no record of Mrs C making it aware of this.

### **My analysis**

14. At point 1 I set out my understanding that there are two parts to Mrs C's complaint. First she says the Council did not make it clear to her what information it would need to provide the certificate of regularisation. I noted the letter the Council sent to Mrs C in August 2014 explained it would need information about the insulation work before it could give a certificate. But I also noted it did not set out what specific detail the Council needed.
15. However, the letter put Mrs C on notice that the Council had spoken at more length to her contractor about this. The Council's letter also set out that it expected Mrs C's contractor to keep a photographic record of the work. It would also be reasonable for the Council to assume the contractor had knowledge of the Building Regulations and the extent of proof usually needed to obtain building control consent. Mrs C also had the leaflet referred to at point 7. This could not cover every circumstance where Building Regulations apply. So it could not explain what proof the home owner needed to obtain a certificate in each case. But it provided an indication to Mrs C that certification relied on proof of works; as it referred to the Council needing details of building work and the possibility of inspections.
16. I consider the points discussed at point 15 more than compensate for any lack of detail in the letter referred to at point 14. I do not consider the Council could reasonably have done more to put Mrs C on notice of what information it needed to provide her with a certificate of regularisation. Therefore I find the Council was not at fault in those communications and I cannot uphold this part of the complaint.
17. The second point raised by Mrs C is that the Council has still not provided a certificate of regularisation. I do not see that it can do so while Mrs C has not provided the information it asks for.
18. I note there is no evidence to show Mrs C kept the Council informed of the works undertaken to her roof from the point the contractor began working after August 2014. There is nothing to indicate contact from Mrs C or her contractor until after the Council chased an update in January 2015. While the Council could have made it clearer that it has seen some photographs sent by Mrs C's contractor, I

---

can make no criticism of the information the Council has repeatedly asked for from Mrs C and/or her contractor since March 2015.

19. I noted the Council's record of its conversation with Mrs C's contractor in April 2015 suggested that he thought its requests for information were unnecessary and his comments to me suggest this also. But at point 2 above I summarised that my role is not to question the professional judgment of Council officers because of disagreement alone. In this instance I can see no grounds to dispute the professional opinion of the Council's surveyor that it needs the further information it has asked for. This is because there is nothing to suggest fault in how they came to that view.
20. I also considered if the Council had missed an opportunity to inspect the contractor's works given Mrs C's comments on leaving scaffolding in place. But as I noted at point 13 above there is nothing in the Council's record to suggest it knew of this at the time. So I cannot find fault here either.
21. Finally I noted comments made to me by Mrs C pointing out she was in poor health and that the protracted nature of this matter made this worse. I accept this episode is distressing for Mrs C as her contractors have let her down and she is dealing with correspondence about unfamiliar Regulations. But the Council must apply the law fairly and I consider that is all it has been trying to do in this case. I consider it unfortunate but unavoidable the Council's actions have added to Mrs C's distress. But the fact the Council's actions might cause distress is not in itself evidence of fault.

### **Final decision**

22. For the reasons explained above I could not uphold the complaint as there was insufficient evidence the Council acted with fault causing injustice to the complainant. I therefore completed my investigation satisfied with the Council's actions.

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