

**Report by the Local Government and  
Social Care Ombudsman**

**Investigation into a complaint against  
Kettering Borough Council  
(reference number: 16 012 028)**

**3 August 2017**

## The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

# Investigation into complaint number 16 012 028 against Kettering Borough Council

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

## Key to names used

Mrs C            the complainant

Miss D           a young adult, one of Mrs C's children

## Report summary

### **Housing: homelessness and allocations**

Mrs C complains the Council has provided unsuitable temporary accommodation and is inappropriately restricting the types of property she can bid for. As a result, Mrs C reports she is living in temporary accommodation where she cannot access proper washing facilities, usually has to sleep on the sofa and does not have sufficient storage for her mobility equipment. Mrs C states she and her family have suffered distress.

### **Finding**

Fault found causing injustice and recommendations made.

### **Recommendations**

To remedy the injustice caused, we recommend the Council:

- offer to review the suitability of Mrs C's temporary accommodation. If Mrs C confirms she wants this review, the Council should invite her to list the reasons she considers the accommodation unsuitable. The Council should then complete the review as soon as possible in accordance with the relevant law and guidance and write to Mrs C with its decision. If the Council concludes the accommodation is unsuitable it should offer suitable accommodation without delay. If it decides the accommodation is suitable, it should explain that Mrs C has a right of appeal to the county court on a point of law. The Council has recently completed this recommendation;
- make fresh decisions, without fault, about whether to include Miss D on Mrs C's housing application and if so, whether the household is eligible for three bedrooms. The fresh decision(s) should be issued in writing and explain Mrs C's review rights;
- apologise to Mrs C for the injustice caused by its faults;
- pay Mrs C £500 to recognise the lost opportunity, frustration, uncertainty and justified anger caused by its faults;
- review the wording of its allocations scheme as necessary, including the definition of a 'child'; and
- review its procedures to minimise the risk of the identified faults recurring.

The Council has accepted our recommendations.

## Introduction

1. Mrs C has mobility and health problems. She needs a mobility scooter outdoors and expects to need a wheelchair indoors in future. Mrs C has a young adult daughter, Miss D, and a younger child.
2. In 2015 the family became homeless. The Council provided interim accommodation while considering Mrs C's homelessness application. When the Council accepted it had a legal duty to secure accommodation for the family, it provided the same property as temporary accommodation pending longer-term accommodation being found.
3. Mrs C complains the temporary accommodation is not suitable for her disabilities and health needs and that the Council is inappropriately restricting the types of longer-term social housing she can bid for. As a result, Mrs C reports she cannot access proper washing facilities, usually has to sleep on the sofa and does not have sufficient storage for her mobility equipment. Mrs C also reports she and her family have suffered distress.

## Legal and administrative background

4. We investigate complaints about 'maladministration' and 'service failure'. In this report, we 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. We 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*)
5. 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*)

## How we considered this complaint

6. We produced this report after considering relevant information from the complainant and the Council. We gave the complainant and the Council a confidential draft of this report and invited them to comment. We considered their comments before finalising the report.

## Investigation

7. We will deal first with parts of the complaint relating to Mrs C's temporary accommodation and then with points about the longer-term accommodation Mrs C is looking for.

### Complaint about temporary accommodation

8. The main points on this part of the complaint are the accommodation's suitability and the Council's actions about Mrs C's belongings when she became homeless.

#### **Suitability of temporary accommodation**

9. While considering Mrs C's homelessness application, the Council placed the family in a house. The house does not have a stairlift. This affects Mrs C's ability to get to her

bedroom and the bathroom. Mrs C reports she often sleeps downstairs and has to wash using the downstairs sink. There is also no secure storage for her mobility scooter, which was damaged and had the battery stolen. Mrs C also reports the lack of a designated parking space means she sometimes cannot park close enough to be able to walk between her car and the house.

10. The Council then decided Mrs C was homeless and it should secure housing for her. This is the 'full homelessness duty'. The Council said Mrs C should remain in the current house while it decided either to adapt it for her disabilities so she could remain longer-term or to offer her somewhere else.
11. When the Council owes the full duty and provides accommodation, the applicant has a legal right to request a review of the accommodation's suitability. (*Housing Act 1996, section 202*)

If the Council reviews its decision but the applicant remains dissatisfied, the applicant can then appeal to the county court on a point of law. Statutory guidance states councils should advise applicants of this review right. (*Homelessness Code of Guidance for Local Authorities 2006, paragraph 19.3*)

Councils usually explain this in the letter telling the applicant the Council is providing accommodation under the full homelessness duty.

12. The Council did not tell Mrs C of her review right. That was fault. The Council compounded this fault by still not offering Mrs C the review right when she expressed unhappiness with the accommodation, evidently implying she believed it unsuitable, including at all three stages of the Council's complaints procedure. Only during our investigation did the Council admit this failure.
13. This was a significant fault because Mrs C was entitled to a proper suitability review in the way the law prescribes and because the Council's view about accommodation's suitability is not necessarily final as applicants can go to court. The Council has now changed its standard letters and advised staff to ensure they give homeless people their review rights in future.
14. The fault deprived Mrs C of the opportunity to have a timely formal review of the property's suitability for her. Mrs C will also have a justified sense of frustration and anger from knowing the Council deprived her of this right.
15. When remedying injustice, we aim to put people back in the position they would have been in if the Council's fault had not happened. During our investigation, the Council said it would offer Mrs C a formal review of the property's suitability. That is the proper way of putting Mrs C into the position she would have been in, as far as this is possible. So it is not appropriate for us to decide whether the accommodation was or is unsuitable.
16. The Council said it would send us a copy of its suitability review within eight weeks. This did not happen. Mrs C stated she had heard nothing from the Council about this. The Council said it had not carried out the review because Mrs C did not request this. It sent

us a note of a Council officer's meeting with Mrs C on 13 February 2017. This note showed the officer told Mrs C about the review right at the end of a two-hour meeting about other housing matters and that Mrs C said she would consider this.

17. The right to request a suitability review is an important legal right. The Council should put this in writing so there is no scope for it to be misunderstood or forgotten. This is especially the case when the Council has already admitted it failed to tell Mrs C about her review right at the appropriate time. In the circumstances, we do not consider mentioning the review right at the end of a lengthy meeting about something else justified the Council doing nothing more to ensure Mrs C was aware of this right.
18. The Council also said it had not conducted the review because it was focusing on resolving Mrs C's housing situation. Naturally the Council would seek to address the longer-term housing situation. However that is not sufficient reason for failing to progress the review of the current accommodation's suitability.
19. These further faults prolonged Mrs C's uncertainty and added to her justified frustration.
20. In late July 2017 the Council completed the suitability review that a draft of this report had recommended. It concluded the property was suitable as temporary accommodation. The Council's letter explaining this decision to Mrs C told Mrs C that she can appeal to the county court on a point of law if she is dissatisfied.

### ***Mrs C's belongings***

21. If a council owes an applicant the full homelessness duty, it must protect the applicant's belongings from loss or damage if it has reason to believe those belongings are in danger because of the applicant's inability to deal with them and no other suitable arrangements are being made. (***Housing Act 1996, section 211(1) and (2)***) Paragraph 20.6 of the Homelessness Code of Guidance says:

*'Applicants may be unable to protect their property if, for example, they are ill or are unable to afford to have it stored themselves'.*

Before agreeing to store items, the council can impose conditions, for example about charging for storage or disposing of the belongings in certain circumstances. (***Housing Act 1996, section 211(4)***).

22. When Mrs C was becoming homeless, she told the Council she would have difficulty moving belongings to the interim accommodation because her disability prevented her moving or lifting items. The Council accepts it did not properly consider this and that it should have made more enquiries into Mrs C's financial circumstances. Mrs C says because of a lack of help she had to leave behind some items of furniture worth several thousand pounds when she moved, including an ergonomic desk and freezer. She also incurred continuing expense putting some items in storage.
23. The Council has no record of its decision-making at the time. It believes its officer thought Mrs C's belongings were not at risk because:

- the previous and new properties both had three bedrooms so the officer would not have thought a need for storage would arise;
- information the Council had about Mrs C's income and support she received from carers suggested Mrs C would have enough money and practical help to move items to the new property;
- the two properties were less than a mile apart; and
- the Council allowed Mrs C four weeks to move her belongings when it usually expects people to move much quicker.

The Council also points out Mrs C arranged storage of some items and paid for this for some time before falling into arrears (the Council's actions on the recent arrears are not part of this current investigation).

24. So the Council argues even if it had considered this in more detail in 2015 and kept records of its decision-making, it would probably still have decided it did not need to protect Mrs C's belongings. It also argues even if it had arranged removals it would have charged Mrs C the cost of this.
25. Mrs C disagrees with much of the Council's reasoning. She argues that her illness around the time of the move, restrictions on what her carers are allowed to do, her financial circumstances, the previous property being larger than the current one and other factors prevented her protecting her belongings fully.
26. The Council has now advised Mrs C it can help with the practicalities and cost of any move to alternative temporary or permanent accommodation. It states it will train officers on the Council's duties in this area and review its storage and removals policy.
27. The Council was at fault for not properly considering its duties when Mrs C was moving. However, given some of the factors the Council cites, such as the length of time it allowed for the move, and given that Mrs C arranged storage for some items, we are not persuaded that if the Council had considered this properly, Mrs C would necessarily still have the items she left behind. So we do not consider the Council is directly responsible for the loss of the items. But there was injustice to Mrs C as she lost the opportunity to have the matter properly considered at the time.

### **Complaint about long-term accommodation Mrs C can bid for or be offered**

#### ***Consideration of Mrs C remaining permanently in her current accommodation***

28. In November 2015 the Council told Mrs C it would consider whether her temporary accommodation could be adapted to meet her needs as a disabled person and then become her permanent home. An occupational therapist (OT) visited and recommended adaptations Mrs C would need. The main points were a ramp to access the property, a stairlift and changing the bathroom to a wet room. The Council states when it considers possible adaptations it does not just consider the feasibility of physically doing the alterations but also the impact the adaptations will have on the rest of the property and the longevity and cost-effectiveness of the changes.



29. It is for the Council to decide whether to adapt one of its properties. In deciding this, it can consider the feasibility of the adaptations the particular tenant would need. It can also consider the impact of adapting a particular property on the management of its housing stock as a whole.
30. A Council officer visited the property on 5 February 2016. The evidence satisfies us this visit was to consider possible adaptations and that the officer was appropriately experienced in doing so. The officer did not make a report of this visit at the time. It would have been better to have such a record. We have seen brief notes the officer made on the OT's report. On balance we are satisfied those notes were made at the time and show the Council had regard to the OT's report.
31. The Council concluded: ramped access would not be possible at the width the OT recommended or with handrails on both sides; the construction and layout of the stairs could make installing a stairlift with a suitable platform difficult without structural works; and the narrowness of the stairs meant a stairlift could restrict access for people not using the stairlift.
32. Mrs C disagrees. She cites a stairlift company that told her it could fit a stairlift. Mrs C also argues a ramp that was 'dog-legged' rather than straight could be satisfactory.
33. It is not the Ombudsman's role to decide whether or how a property should be adapted where people disagree about this. On balance, the Council's decision appears properly reached, based on consideration of the property and of the OT's recommendations. So we cannot criticise that decision, as paragraph 5 explained.
34. The Council accepts it was at fault for not telling Mrs C between February and July 2016 that it had ruled out adapting the property to let her remain permanently. Mrs C says as the Council had told her it would consider adapting the property for her to remain permanently, as an OT had suggested the property could be adapted and as the Council did not tell her anything to the contrary, she assumed she would remain there permanently. Therefore she paid for new kitchen taps that were easy to use with her disability, an outdoor tap, dishwasher plumbing, a bedroom carpet and a garden shed.
35. The Council denies responsibility for these expenses. It argues it did not actually tell Mrs C the property would be hers permanently and the tenancy agreement never stopped being temporary.
36. The Council's communications were not adequate but we are not persuaded this fault justified Mrs C incurring expense on the assumption her tenancy would become permanent. While the Council did not advise Mrs C of its decision against adaptations, neither did it tell Mrs C she would remain there permanently. So the formal position remained that the tenancy was temporary. Therefore we are not persuaded the fault in the Council's communications directly and necessarily caused Mrs C these expenses.
37. As the Council does not propose to offer Mrs C her current accommodation as a permanent home, it is considering offering her social housing directly. Mrs C can also use the Council's allocations scheme to bid for vacant social housing.

38. Mrs C says she would have started bidding for other social housing properties sooner had she known her current tenancy would not become permanent. The Council argues that, while it was at fault for not communicating properly, Mrs C was also responsible for seeking accommodation through its allocations scheme. It points out Mrs C has never bid for any properties. So it disputes its failure to tell her it would not offer her the current property permanently deprived her of an opportunity to seek other properties.
39. The key point here is that, until July 2016, Mrs C reasonably believed the Council was considering offering her a permanent tenancy of her current property and adapting it to her needs. Mrs C was content to accept this. So it is understandable Mrs C did not want to bid for other properties when she did not know if another move would be necessary. We do not consider Mrs C's not bidding for other properties contributed to her injustice during that time.
40. Therefore the Council's fault here deprived Mrs C of the opportunity to make a properly informed decision before July 2016 about whether to bid for other properties. This leaves Mrs C with avoidable uncertainty and frustration at not knowing if a better outcome might have been possible. These are injustices.
41. However we do not find that, but for the Council's fault, Mrs C would necessarily have bid successfully for another suitable property. So we cannot conclude the Council's fault here actually prevented Mrs C moving to a particular property at a particular time.

***The Council's consideration of two other properties***

42. Mrs C queried whether in June 2016 the Council properly assessed two properties for their feasibility to adapt for her before ruling them out. The evidence satisfies us the Council considered those two properties and reached its decisions properly. So we do not find fault in the Council's not offering Mrs C those properties.
43. However, when Mrs C asked for evidence the Council had considered those properties, the Council just gave brief reasons and said if Mrs C wanted more evidence, she must make a subject access request and pay £10. The Council could reasonably have been more forthcoming here although this point in itself did not cause a significant injustice.

***Number of bedrooms Mrs C's household is eligible for***

44. Mrs C says she needs a three-bedroom property so she, her adult daughter Miss D and her younger daughter have a bedroom each. The Council says Mrs C is only eligible for two bedrooms under its allocations scheme for social housing. We considered its reasons.
45. In doing this, we had regard to the Council's allocations scheme. During our investigation the Council accepted parts of the scheme should be clearer. The Council plans to clarify these points during a review of the scheme in 2017.
46. The Council says because Miss D is a student living in university accommodation away from Kettering borough during university term-time, she is not entitled to be on the housing application. Therefore the Council argues Mrs C and her younger daughter only need two bedrooms.

47. The law and government guidance do not say students living away at university during term-time should or should not be included on a parent's housing application. Councils can have their own policies on this. Mrs C cites some case law about students and housing benefit. However that only covers entitlement to benefit once someone is living in a property. It does not bind councils when they are deciding how to allocate accommodation.

48. The Council cited section 4.4 of its allocations scheme, which covers other people (apart from the applicant) who can be included on an application. Part of this section refers to 'dependent children' and says:

*'...the Council will consider whether there is a sufficient degree of permanence or regularity to constitute normal residence as a member of the family. The Council may also take into account the demand for and supply of accommodation...'*

49. The Council told Mrs C it had therefore considered whether there was a sufficient degree of permanence or regularity in Miss D's residence for her to be a normal member of the household. It gave reasons based on the length of Miss D's university academic year and the duration of her degree for concluding Miss D's presence in Mrs C's home was not sufficiently permanent or regular.

50. As we have explained, the part of the allocations scheme the Council relies on here is about 'dependent children'. Section 7.1 of the scheme defines a 'dependent child' as under 16 or between 16 and 18 and in, or about to begin, full-time education or training. Miss D is older than this. So this part of the scheme does not appear to apply to Miss D.

51. Section 7.1 goes on to say, '*Households containing a child who does not fit within this definition will need to be assessed to establish if they are dependent*'. However there is no evidence the Council considered whether any individual circumstances might make Miss D a dependent child despite her age. So in the circumstances the Council was at fault for applying points about 'dependent children' to Miss D.

52. The Council's correspondence with Mrs C did not quote another part of section 4.4, which says:

*'Where the household includes other household members capable of living independently, for example, adult children...the Council will assess the needs of the whole household, and if it is unable to meet this need through existing social housing in the borough, we may require those non-dependent members of the household to apply for housing separately'*.

53. Miss D is an adult child who might be considered capable of living independently. So on the face of it, this section might be more relevant than the part about dependent children. There is no evidence the Council considered how this part of its allocations scheme applied to Miss D.

54. Section 4.4 of the allocations scheme also says:

*'The Council will consider each applicant's individual circumstances when deciding whether to allow additional persons to be included on the application'; and*

*'In all circumstances, the Council may decide whether a child or other person will be considered for rehousing as a member of the applicant's household'.*

55. So the Council has discretion to include, or not include, Miss D on Mrs C's application as long as it reaches its decision properly. As explained above, the evidence suggests the Council considered some parts of its allocations scheme that do not seem to apply to Miss D, while not considering parts that might apply to her. So we are not persuaded the Council reached the decision properly. That was fault.
56. This fault leaves Mrs C with avoidable uncertainty about what the Council might have decided had it reached its decision properly. It is not for us to decide whether Miss D should be on the application and should have her own room. That is for the Council to decide after proper regard to the facts and to its allocations scheme. The Council needs to resolve this by reconsidering this point without fault.

***The Council's argument that adding Miss D to the application might not make a significant difference***

57. The Council also told Mrs C that, even if it were to add Miss D to the application, Mrs C would still not necessarily get a three-bedroom property because:
- Part of section 7.0 of its allocations scheme says, *'Two children of the same gender regardless of age (unless there is a 10 year age gap AND one child is at least 16 years old)'* will share a bedroom. There are fewer than ten years between Mrs C's children. The Council says this means both Mrs C's children could share a room, in which case two bedrooms could suffice.
- However it is not clear if Miss D is a 'child' in terms of section 7.0 of the allocations scheme. Section 7.1 says a 'dependent child' is aged under 16 or, in certain circumstances, 16 to 18. Miss D is over 18. The Council now says 'child' in section 7.0 has a different meaning to 'dependent child' in 7.1 and is intended to include applicants' adult children. The Council accepts this is not clear. It intends to clarify the scheme.
- Another part of section 7.0 of the allocations scheme says, *'Household members that are aged 16 years old or more are considered eligible for their own bedroom, although the level of priority awarded for a separate room will depend on the age and gender of the other occupant'.* Clearly this section might mean Miss D was eligible for her own room though the Council would retain discretion about how much priority to give this point.

The Council says this means the family might be considered eligible for either two or three bedrooms, which is why it allowed Mrs C to bid for three-bedroom properties

before Miss D went to university. It implies this would be the case again if it were to decide to reinstate Miss D on the application.

58. The allocations scheme enables applicants to be considered for two to three bedrooms, three bedrooms or three to four bedrooms. When bids are received for a three-bedroom property, the allocations scheme prioritises first the bidders needing three to four bedrooms, then those needing three bedrooms, then those needing two to three bedrooms. Hence the Council's position that even with Miss D included on the application, the family would merit 'two to three' bedrooms so Mrs C still might not bid successfully for three bedrooms.
59. There is no fault in the Council having this arrangement, which is in line with its allocations scheme. However this point relates to what might happen if Miss D were on the application. This is secondary to the question of whether Miss D should be on the application. The Council needs first to decide properly whether to include Miss D on the application.
60. The Council also considered some information from Mrs C about help Miss D gives her. However the Council was not persuaded this merited providing a bedroom for Miss D because it was not satisfied the evidence about Mrs C's needs, as assessed by the social services authority, shows Mrs C needs an overnight carer. We consider the Council was entitled to make this decision and we do not find fault in how it was reached.

#### ***Bidding for housing association properties***

61. Mrs C can bid for housing association properties on the Council's allocations system. The Council says Mrs C has priority for housing association properties that are adapted for disabled people. It states Mrs C can also bid for unadapted housing association properties. However the Council says it could not make a housing association agree to adapt such a property for a prospective tenant and a housing association would be unlikely to keep an unadapted property vacant long enough to arrange for an OT assessment of what adaptations Mrs C might need. The Council's allocations scheme explains it is for landlords to decide whether to adapt any particular property.
62. We are satisfied Mrs C can bid for housing association properties if she wishes. However it is ultimately for those housing associations to decide what to do with their properties. The Council is correct it cannot make housing associations hold properties vacant or adapt them for a disabled prospective tenant. The Council is not at fault here.

#### ***Bidding for properties with stairs***

63. In late September 2016 Mrs C told the Council the allocations system appeared not to allow her to bid for properties with stairs. The Council replied on 4 October 2016 that Mrs C had extra priority for ground-floor properties. It did not answer her query about whether she was actually prevented from bidding for properties with stairs.
64. We therefore asked the Council about this. The Council told us in January 2017 that Mrs C had priority over people without mobility problems for properties without stairs but Mrs C could also bid for properties with stairs.

65. That response was not correct. Mrs C told us she still could not bid for any properties with stairs so we asked the Council about this again. The Council then told us it began restricting the floor levels some applicants could bid for in September 2016. Since then it has prevented Mrs C from bidding for two-bedroom houses and other two-bedroom properties that are above the ground floor. It says this is because it has an abundance of ground-floor two-bedroom properties (flats and bungalows). So it did not want applicants who cannot manage stairs and who have increased priority for ground-floor properties to bid for two-bedroom houses for which they are not likely to be successful.
66. The Council states it would not prevent Mrs C bidding for three-bedroom properties with stairs if she were eligible for three-bedroom properties. This is because, in contrast to the situation with two-bedroom properties, there are few three-bedroom properties without stairs.
67. This restriction on bidding appears to be in line with the Council's allocations scheme so there is no fault in it. The Council is entitled to give people who need level-access housing priority for such housing and conversely sometimes to give them less priority for other accommodation.
68. However, the Council is at fault for not telling Mrs C about the restriction when she expressly asked about it. It compounded this fault by replying inaccurately to our enquiries. We should not have had to ask twice to receive an accurate answer. The Council must ensure its responses to us are correct.

## Conclusions

69. The Council was at fault for: failing to tell Mrs C she could seek a review of her property's suitability; not properly considering its duties regarding Mrs C's belongings; delaying telling Mrs C it would not adapt her property and offer it as a long-term home; not properly deciding whether to include Miss D on the housing application; and not explaining that Mrs C was unable to bid for two-bedroom properties with stairs.

### ***Injustice***

70. The faults summarised in paragraph 69 caused Mrs C some lost opportunity, uncertainty and a justified sense of frustration.

## Decision

71. Fault found causing injustice and recommendations made.

## Recommendations

72. We recommend the Council should:
  - offer to review the suitability of Mrs C's temporary accommodation. If Mrs C confirms she wants this review, the Council should invite her to put to it all the reasons she considers the accommodation unsuitable. The Council should then

complete the review as soon as possible in accordance with the relevant law and guidance and write to Mrs C with its decision. If the Council concludes the accommodation is unsuitable it should offer suitable accommodation without delay. If it decides the accommodation is suitable, it should explain that Mrs C has a right of appeal to the county court on a point of law. The Council has recently completed this recommendation;

- make fresh decisions, without fault, about whether to include Miss D on Mrs C's housing application and, if so, whether the household is eligible for three bedrooms. The fresh decision(s) should be issued in writing and explain Mrs C's review rights;
- apologise to Mrs C for the injustice caused by its faults;
- pay Mrs C £500 to recognise the lost opportunity, frustration, uncertainty and justified anger caused by its faults;
- review the wording of its allocations scheme as necessary, including the definition of a 'child'; and
- review its procedures to minimise the risk of the identified faults recurring.

73. The Council has accepted our recommendations.