

27 June 2018

Complaint reference:
17 017 688

Complaint against:
Welwyn Hatfield Borough Council

The Ombudsman's final decision

Summary: The Council is not at fault in sending letters and a notice to quit to Ms X as she was in arrears with her rent for her garage. The Council is at fault for not providing Ms X with a statement showing how she had accrued the arrears when she disputed the debt. The Council has written off the arrears which has remedied the injustice to Ms X and we cannot achieve any more for her.

The complaint

1. Ms X complains that the Council wrongly decided she had rent arrears from 2013/14 and 2017 for her garage, unreasonably served a notice to quit and threatened to remove her goods from the garage. Ms X says this caused significant distress to her.

The Ombudsman's role and powers

2. 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'. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe:
 - it is unlikely we would find fault, or
 - the fault has not caused injustice to the person who complained, or
 - the injustice is not significant enough to justify our involvement, or
 - it is unlikely further investigation will lead to a different outcome.

(Local Government Act 1974, section 24A(6), as amended)

3. 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)*

How I considered this complaint

4. I have:
 - Considered the complaint and the information provided by Ms X;
 - Made enquiries of the Council and considered the information provided;

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- Invited Ms X and the Council to comment on the draft decision.

What I found

5. Ms X rents a garage from the Council and has done for a number of years. The Council charges rent weekly in advance.
6. Ms X pays her rent monthly in arrears. On 19 April 2017 the Council wrote to Ms X in response to correspondence from her. It explained her annual rent for her garage would be £630.76 and her monthly payments would be £52.56 in April 2017 followed by eleven payments of £52.60. A statement provided by the Council shows Ms X made payments of £52.56 usually at the end of each month.
7. The Council's policy is to write to a tenant if they are in rent arrears of three weeks. If no payment is received within a week it will then issue a second letter. This letter warns it will serve a notice to quit if payments are not made. If no payment is made within a week it will send another letter and serve a notice to quit. The Council will repossess the garage if payment is not made by two days after the expiry of the notice to quit. These letters are automatically generated and sent out.
8. The Council will stop this process if the tenant makes a payment which reduces their arrears to less than three weeks. The action will start again from the beginning if the tenant accrues three weeks arrears.
9. On 2 January 2018, the Council sent a letter to Ms X advising her she had arrears of £87.62 including that week's rent. On the same day Ms X made a payment of £52.56. This left arrears of £35.06 on her account.
10. The Council sent another letter to Ms X on 9 January 2018 as she had not paid that week's rent in advance and together with the debt of £35.06 Ms X was more than three weeks in arrears.
11. Ms X made a complaint as she disputed the debt. The Council responded on 16 January 2018. It explained that it issued the letter on 2 January 2018 as Ms X had not paid December's rent and she had arrears of £22.94 from 2013/14.
12. On the same date the Council issued another letter to Ms X as she had not paid that week's rent. The Council has said this letter notified Ms X that it could issue a notice to quit if she did not make a payment.
13. On 19 January 2018 Ms X wrote to the Council stating she would only be making her usual monthly payments.
14. The Council served a notice to quit on Ms X on 23 January 2018 as she had not made further payments. Ms X made a payment of £52.56. This cancelled the notice to quit.
15. Ms X made a complaint to the Council. She disputed she had historical arrears on her account and considered the Council had not provided evidence of that debt. She also complained the letters had caused her significant distress. The Council responded and advised Ms X that it would write off the arrears of £22.94 from 2013/14 as a gesture of goodwill and to allow her to pay in arrears. Ms X considered this did not adequately remedy her complaint so made a complaint to the Ombudsman.
16. In response to my enquiries the Council has provided copies of letters from 2014 notifying Ms X she was in rent arrears and serving a notice to quit. The Council has also provided a statement showing Ms X's rent payments since 2012. The

statement shows Ms X had arrears from 2012/13 and 2013/14 and her regular rent payments had not been sufficient to clear these arrears.

My assessment

17. There is no evidence of fault in how the Council made its decision to issue the letters to Ms X notifying her that her garage rent account was in arrears and in serving the notice to quit. The Council's policy is to send letters requesting payment in the event a person is three weeks in arrears and to issue a notice to quit if payment is not received after it has issued two letters. The statement provided by the Council shows Ms X had arrears on her rent account from 2012/3 and 2013/14. So Ms X's payment of her rent in arrears, together with the arrears of £22.94 on her rent account, meant she was three weeks in arrears when the Council sent each of the letters and the notice to quit to her. So the Council is not at fault in sending the letters and notice to quit to Ms X.
18. But the Council is at fault for not providing Ms X with sufficient information for her to know how the arrears had arisen. Ms X disputed that her rent account was in arrears so the Council should have sent a statement to her showing how the arrears had arisen. It was particularly important to provide Ms X with evidence of the arrears as she incurred them several years ago and may not recall how she incurred the arrears. This fault caused some uncertainty to Ms X. But the Council has adequately remedied this injustice to Ms X by writing off the arrears and I cannot achieve any more for her.
19. The Council's letter of 19 April 2017 sets out Ms X's monthly payments for 2017/18. But it does not state Ms X must make the payments in advance, not arrears. It would have better for the Council to have clearly explained this so Ms X could not have been in any doubt that she had to pay her rent in advance.

Final decision

20. The Council is not at fault in sending letters and a notice to quit to Ms X as she was in arrears with her rent for her garage. The Council is at fault for not providing Ms X with a statement showing how she had accrued the arrears when she disputed the debt. The Council has written off the arrears which has remedied the injustice to Ms X and I cannot achieve any more for her. I have therefore completed my investigation.

Investigator's decision on behalf of the Ombudsman

6 February 2019

Complaint reference:
17 017 574

Complaint against:
Welwyn Hatfield Borough Council

The Ombudsman's final decision

Summary: Mrs C complains about the way the Council dealt with her daughter's housing transfer request and says she had to provide extra care and assistance for her daughter in unsuitable accommodation for longer than necessary. The Ombudsman found fault by the Council but is satisfied the agreed actions of an apology and payment of £750 provide a suitable remedy.

The complaint

1. The complainant, whom I shall refer to as Mrs C, complains about the way the Council dealt with her daughter's housing transfer request to move to a ground floor property. Mrs C says because of the Council's fault she had to provide extra care and assistance for her daughter in unsuitable accommodation for longer than necessary.
2. Mrs C also complains about the Council's failure to resolve persistent dampness and mould problems at her daughter's property which she considers contributed to her early death.

What I have investigated

3. The complainant, whom I shall refer to as Mrs C, complains about the way the Council dealt with her daughter's housing transfer request to move to a ground floor property. Mrs C says because of the Council's fault she had to provide extra care and assistance for her daughter in unsuitable accommodation for longer than necessary.
4. The final section of this statement contains my reason(s) for not investigating the rest of the complaint.

The Ombudsman's role and powers

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*)

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6. 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*)
 7. 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*)
 8. We cannot investigate complaints about the provision or management of social housing by a council acting as a registered social housing provider. (*Local Government Act 1974, paragraph 5A schedule 5, as amended*)

How I considered this complaint

9. I read the papers provided by Mrs C and discussed the complaint with her. I have considered some information from the Council and provided a copy of this to Mrs C. I have explained my draft decision to Mrs C and the Council and considered the comments received before reaching my final decision.

What I found

Background

10. The law says that the following categories of persons must be given 'reasonable preference' through the council's allocations scheme:
 - people who are homeless (within the meaning of homelessness law)
 - people owed a duty as a homeless person under certain sections of the Housing Act 1996
 - people occupying insanitary overcrowded or unsatisfactory housing
 - people who need to move on welfare or medical grounds
 - people who need to move to a particular area to avoid hardship to themselves or others.
11. Councils can only award priority or points based on their allocations policies. In general, most councils will award 'reasonable preference' to allocations by awarding points or placing an applicant in a certain priority band. Applicants have a right to review a council's decision about the number of points or band they have been awarded.
12. This Council uses a banding scheme (A to D) to give reasonable preference with Band A providing the highest priority. There is also a Band E reserved for those with no local connection or recognised housing need who are over the age of 60 and are applying for sheltered accommodation. Within each band preference is given to applicants that have been registered the longest period in that band.
13. The relevant criteria for Band A is applicants with an urgent need to move. This would include an applicant with an urgent medical priority or exceptional social circumstances seriously affected by their current housing and which would be helped by a change of housing.
14. The relevant criteria for Band B is applicants with a very high need to move and would include applicants with high medical priority plus one other factor from Band C criteria.

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15. The relevant criteria for Band C is applicants with a high need to move and would include those with a high medical priority where the current housing is deemed not appropriate for their medical needs.
 16. The relevant criteria for Band D is an identified housing need.
 17. The Council's Allocations Policy says those wishing to move to sheltered accommodation who do not meet the usual age requirement can be considered for such accommodation if they have medical factors but this requires approval by a Senior Officer Panel.

Key events

18. Miss C received an occupational therapist (OT) assessment in March 2015. This identified that she used crutches, had fallen on the outside steps to her property and was unable to access the bath which was a particular issue due to another health condition. The OT recommended a level access and ground floor property which was already adapted with a level access shower. The OT further noted a property with access to a garden would benefit Miss C.
19. Miss C made a housing transfer application to the Council and provided medical information. The application stated she could not climb the steps or use the bathroom in her current property. The Council accepted the application and awarded high medical priority and placed Miss C in Band C.
20. Miss C provided a copy of the OT report in support of a bungalow. The Council decided in August that Miss C was not eligible as the OT report did not refer to the need for sheltered warden controlled accommodation and most bungalows were for those aged over 60 years old.
21. Miss C contacted the Council in February 2016 about the suitability of her property and advised she was sleeping in the living room due to mould issues. There is a case officer note dated 24 February which says: *"seeking adapted bungalow with warden – has Band C with high medical priority for general needs properties so not well placed for gr floor adapted – historic damp probs – needs move urgently- living and sleeping in living room for past 7 weeks and repairs supervisor requested urgent move."*
22. The Council's medical advisor suggested Miss C should be considered for sheltered accommodation. The application was considered by the Council's Senior Officer Panel in March. This report states *"Given that we have limited properties within the general needs stock that would meet all her requirements her prospect of being moved quickly is remote so it is requested that she be entitled to bid for 1 bedroom sheltered bungalow ..."*
23. The Panel awarded Miss C Band A for an urgent need to move for a 1 bed ground floor flat but not sheltered accommodation. The Council says the Panel considered the recommendation, Miss C's age at the time (26 years old) and the age restrictions in its policy in arriving at this decision.
24. The Panel reconsidered the application in December. This report says Miss C had been regularly bidding but was not top of the shortlist as either the properties were not suitable on medical grounds ie not adapted or were too large with 2 bedrooms. It was again noted a quick move could not be guaranteed due to the lack of ground floor adapted non-sheltered properties even with Band A priority. The report seeks to allow Miss C to bid for sheltered 1 bed properties within a neighbourhood scheme or to provide a direct let and provided details of a particular property that was available.

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25. The Panel agreed to make a direct offer of the 1 bedroom bungalow which had been identified by officers. Although the property had priority for those aged over 50 years old the Council says it exercised discretion as its Housing Maintenance Inspector had highlighted recurring mould at the property and Miss C's mobility issues meant she was unable to maintain the property. The Council noted the time waiting for a suitable property and difficulties in managing condensation in the home as factors in its decision. Miss C sadly passed away in January 2017 before being able to accept this property.
 26. The Council says Miss C only made a limited number of bids for the 53 ground floor properties which were advertised after March 2015 which would suggest she could have moved to more suitable accommodation sooner. However, the Council has accepted there were very few ground floor vacancies and a shortage of accommodation for tenants with mobility issues.

My consideration

27. There was an identified need following a OT assessment in March 2015 for a level access property already adapted with a level access shower. This assessment recorded Miss C had fallen and was unable to access the bathroom. The Council awarded Miss C a high medical priority and placed her application in Band C. I see no fault in how the Council applied its policy here.
28. Miss C advised the Council she was sleeping in the living room of the property in February 2016 due to issues of damp. The Council reassessed the application and provided Miss C with Band A priority in March 2016 for a 1 bed ground floor property. However, this award did not include sheltered accommodation despite a recommendation from its own medical assessor. It was also apparent by this stage that there was a limited supply of ground floor properties that would meet Miss C's assessed needs. The Council itself described the possibility of a quick move as 'remote' and subsequently in December accepted even Band A priority would not ensure a timely move due to lack of ground floor adapted non-sheltered properties.
29. The Council's Allocations Policy does allow those wishing to move to sheltered accommodation who do not meet the usual age requirement to be considered for such accommodation if they have medical factors. It is clear the Council did not have enough suitably adapted ground floor properties to meet Miss C's assessed needs within a reasonable period irrespective of her priority banding without including sheltered/age restricted accommodation. For this reason, I consider the Council should have included this type of accommodation either at the March Panel or certainly reviewed the likelihood of Band A priority providing a successful outcome within a short period thereafter. I consider the Council's failure to do so is fault.
30. I am satisfied earlier consideration to allowing Miss C to bid for sheltered/age restricted properties would have provided a better chance of being suitably rehoused sooner. Regrettably, it is not possible to provide a remedy to Miss C for the period she remained in unsuitable accommodation for longer than necessary. However, I also consider Mrs C suffered an injustice through providing extra care and assistance to her daughter during this period.

Agreed action

31. Within one month of my decision, the Council will apologise to Mrs C and pay her £750 in recognition of the extra care and assistance she provided for an unnecessarily prolonged period and her time and trouble in making the complaint.

Final decision

32. I have completed my investigation as I have found some fault by the Council. I consider the agreed actions above provide a suitable remedy.

Parts of the complaint that I did not investigate

33. I have not investigated the complaint about the Council's failure to resolve persistent dampness and mould problems at Miss C property for the reason set out at paragraph 8 above. I have provided the contact details for the Housing Ombudsman to Mrs C.

Investigator's decision on behalf of the Ombudsman