

Complaint reference:
15 018 868

Complaint against:
East Devon District Council

The Ombudsman's final decision

Summary: There is no fault by the Council in the advice it gave to Mrs J, or in the way it assessed an application for a discretionary housing payment. There is no fault by the Council in its charges for an alarm system. The Council's offer to refund the charge for a six week period when the alarm was broken is fair. There is no fault in the way it assessed a request to transfer properties.

The complaint

1. The complainant, whom I will call Mrs J, complains the Council:
 - a) incorrectly advised her before moving from a one bedroom property to a two bedroom property that she would not have to pay spare room subsidy
 - b) did not explain that the maximum amount of council tax support was 80%
 - c) wrongly turned down her application and appeal for a Discretionary Housing Payment (DHP)
 - d) has charged her for an alarm system which does not work and is asking her to pay extra for an additional alarm system
 - e) is not helping her transfer to a one bedroom property

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She 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, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
3. 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)*)
4. 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

5. I spoke to Mrs J about her complaint and considered the information she provided. I considered the Council's responses to Mrs J and to my enquiries. I sent the Council and Mrs J my draft decision and considered their comments.
6. I considered the following Council policies: the Discretionary Housing Payment Policy, the Council Tax Discretionary Discount and Reduction Policy, the Home Choice allocations policy, and information about its Home Safeguard alarm system.

What I found

What should happen

7. The housing benefit scheme provides help with housing costs for people on a low income. Rules apply to the level of rent that will be met by housing benefit. If someone has more bedrooms than they need according to these rules the benefit will be reduced (the spare room subsidy). For most decisions about entitlement to the benefit there is a right of appeal to the first tier of the tribunal dealing with social security. If a person has a right of appeal and an opportunity to exercise it the Ombudsman cannot consider the matter for which the appeal applies.
8. Councils also have a cash limited fund from which to make DHPs. DHPs can help people if their housing benefit award does not cover their whole rent. Councils set their own criteria for eligibility for DHPs within government guidelines. In deciding whether to award a DHP councils take into account household income and expenditure. If a resident disagrees with a DHP decision the council will review it.
9. Every council has its own council tax reduction scheme (also known as council tax support) to reduce council tax bills for those on a low income. Eligibility for the schemes is means tested. Most councils have decided that all working age claimants must make some contribution. In this case, the Council's *Council Tax Discretionary Discount and Reduction Policy* requires people of working age to pay at least 20% of their council tax.
10. The Council offers services to support elderly, disabled or vulnerable residents in their own home. These include alarm systems which use the telephone line to contact operators when there's something wrong. The Council charges for this service.
11. Councils that are local housing authorities must publish a housing allocations policy. The policy explains how they prioritise applications for an allocation of social housing. Allocations must be made in strict accordance with the rules set out in the published allocations scheme.
12. The Council's housing allocations policy places applicants who qualify to join the Housing Register in one of five priority bands according to their housing need. Band A is the highest priority band and Band E is the lowest.

What happened

13. Mrs J and her husband decided to move by mutual exchange from a one bedroom property in a different area to a two bedroom property in the Council's area. Mrs J says they wanted to be closer to a hospital and needed two bedrooms for medical reasons. The new property was supported accommodation with an alarm system. Mr and Mrs J's needs were assessed by the Council before they moved in and they signed a support plan.

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14. Before they moved Mrs J called the Council to apply for housing benefit and council tax support. Mrs J says the officer told her she would not have to pay the spare room subsidy for the second bedroom. She also says the Council did not explain they would have to pay at least 20% of their council tax.
 15. After moving in, the Council awarded housing benefit and council tax support. It said Mr and Mrs J's medical conditions did not make them eligible for the two bedroom housing benefit rate. The Council sent Mrs J an application form for a DHP.
 16. Mrs J went to the Council's benefits advice surgery. She says the officer told her she would not need to apply for DHP as she would get the two bedroom housing benefit rate due to their medical conditions. Mr and Mrs J's medical evidence was sent to be re-assessed. The Council wrote to Mrs J confirming she would not receive the higher rate of housing benefit.
 17. Mrs J applied for DHP. The application was not successful. The Council said she had spare income to cover any shortfall in rent. Mrs J asked the Council to review the decision. The Council again decided not to award DHP.
 18. Six weeks after moving in Mrs J realised the pull cord alarm system was not working. She says the Council wanted to install another system which was not pull cord and would have an extra charge as it connected to the phone line. Mrs J refused to allow this system to be installed as she said she would then be paying twice. The Council says it wanted to fit a new alarm system to replace the broken pull cord but Mrs J would not allow the engineer access to do this. Mrs J says she did not refuse access to the engineer.
 19. Mrs J complained to the Ombudsman. She said the Council had wrongly advised her. She also said the Council did not correctly calculate her DHP application. Mrs J complained the Council charged her for an alarm that was not working and had asked her to pay extra for a new alarm system. She said the Council had left her in financial hardship and the situation was very stressful.
 20. After complaining to the Ombudsman, Mr and Mrs J decided to transfer properties. She said the Council did not help her with this. Mrs J has now applied for a mutual exchange to another area.

My findings

The Council's advice

21. Mrs J says the Council gave her wrong advice about her eligibility for the two bedroom housing benefit rate. I have listened to a recording of the conversation she had with the officer. The officer told Mrs J to send in medical evidence to support her claim for two bedroom rate housing benefit. She said the claim would be assessed but that Mrs J may or may not be eligible. The officer also said Mrs J could apply for a DHP but this was a council decision and she could not give any guarantees that Mrs J would receive it. There is no fault by the Council.
22. I have seen the note of the visit to the benefits advice surgery. The officer sent the medical evidence so that Mrs J's claim for the two bedroom housing benefit rate on medical grounds could be re-considered. I have seen no evidence the officer told Mrs J she did not need to apply for DHP. Even if there was fault here, there is no injustice as Mrs J applied for DHP a few days later.
23. Mrs J said the Council did not tell her that council tax support was only a maximum of 80% for people of working age. In its response to Mrs J's complaint the Council said information about the Council's policy is available on their

website. It apologised if it had not been made clear to her. I accept Mrs J was not expecting to pay any council tax, but I cannot find fault with the Council. I have seen no evidence that incorrect information was given to Mrs J.

Calculation of DHP

24. Mrs J said the Council did not take into account guidelines from the Money Advice Trust and British Bankers Association when it calculated her household expenditure. She told me their medical conditions meant their water rates were very high but the Council had not considered this.
25. The Ombudsman cannot substitute her view for the Council's if the decision was properly taken. The Council's policy is to calculate household expenditure using local averages. It is not required to follow the guidelines named by Mrs J. I have seen the Council's calculations. They used Mrs J's actual expenditure, including the actual water rates. The Council's calculation was that Mr and Mrs J had spare income to pay for the shortfall in rent. There is no fault by the Council.

Charges for alarm

26. The Council's policy is to charge for the alarm system in supported accommodation. In its response to the Ombudsman, the Council says that once the system is replaced it will refund Mrs J for the six weeks it was broken before they started to try to install a new system. The Council says it will not refund Mrs J for the period it was trying to install the new alarm system. Mrs J says she is "being held to ransom" because the Council is asking her to pay twice.
27. I have seen no evidence the Council has asked Mrs J to pay more than is set out in the support plan. If the alarm is activated there will be a telephone call charge. This was the case with the original system as well as the replacement. There is no fault by the Council.
28. The Council's offer is fair. Mrs J agreed to pay the charge for the alarm when she signed the support plan. It is not optional.
29. In response to my draft decision, Mrs J said the Council had agreed to refund the alarm charges for the whole period of her tenancy. I have seen the officer's email. Although it sets out the costs for the whole period it does not say the Council has agreed to refund this.

Housing transfer

30. Mrs J said the financial stress caused meant they needed to transfer to a one bedroom property. She said the Council did not help them with this as they did not meet the local connection criteria.
31. In April 2016, after she had lived in the Council's area for six months in line with the criteria, the Council placed Mr and Mrs J in Band B for a one bedroom property and Band E for a two bedroom. There is no fault by the Council.

Final decision

32. There is no fault by the Council in the advice it gave to Mrs J, or in the way it assessed her application for a discretionary housing payment. There is no fault by the Council in its charges for an alarm system. There is no fault in the way it assessed a request to transfer properties.

Investigator's decision on behalf of the Ombudsman