

Complaint reference:
15 020 508

Complaint against:
East Devon District Council

The Ombudsman's final decision

Summary: The Council was at fault for refusing Mr and Mrs B's right to buy application. In response to the Ombudsman's enquiries, the Council has agreed to change its original decision and allow Mr and Mrs B to buy their council house through the right to buy process. But, there is no evidence of fault regarding the advice the Council gave Mr and Mrs B about their application or the sale of their second home.

The complaint

1. The complainants, whom I will call Mrs and Mrs B, complain that the Council unfairly refused their application to buy their council house. They also complain that they were given the wrong information about selling a home they inherited so they could proceed with their right to buy application.

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. I have:
 - Read the papers submitted by Mr and Mrs B and discussed the complaint with Mrs B.
 - Considered the Council's comments about the complaint and the supporting documents it provided.
 - Explained my draft decision to Mr and Mrs B and the Council and considered their responses.

What I found

Misinformation

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5. Mr and Mrs B inherited a property in 2014 which was not suitable for them to live in because it was not adapted for their needs. Therefore they obtained a rental income from the property.
 6. In August 2015 Mrs B spoke to the Council to discuss a possible right to buy application and a new tenancy agreement the Council had sent them which was due to come into force in January 2016. The tenancy agreement introduced a new condition whereby Mr and Mrs B could have been in breach of their tenancy agreement or had to pay the full market rent for their home if they continued to gain a rental income from their second home.
 7. Notes from the phone call confirm that the Council said if Mrs B placed her right to buy application before January 2016 it would consider the application. After this date the Council could refuse a right to buy application, if they still owned the second property, because they could have been in breach of their council tenancy.
 8. In December 2015 Mr and Mrs B again contacted the Council concerned about the new tenancy agreement. The Council told Mr and Mrs B that it would not take any action into a possible breach of a tenancy agreement if they provided evidence that they were in the process of selling the inherited property.
 9. Mr and Mrs B argue that the Council told them they could not proceed with their right to buy application until they sold their second home.

Right to buy application

10. The right to buy refers to rights granted under the Housing Act 1985 (as amended) to tenants of social landlords, including councils, to buy their home at a discount provided they meet the criteria.
11. Section 119 of the Housing Act sets out the eligibility criteria, it states an eligible tenant:
 - Has rented the property for five years (as a secure tenant) in a row or for a period of five years.
 - Has lived in the house as his/her only or main home; and
 - Lives in a home which is self-contained and is not specially adapted for disabled or elderly residents.
12. Mr and Mrs B applied to buy their council home in February 2016. The Council considered this application and refused it under schedule 5 of the Housing Act which states:

The right to buy does not arise if the dwelling-house has features which are substantially different from those of ordinary dwelling houses and are designed to make it suitable for occupation by physically disabled persons, and –

 - a) *it is one of a group of dwelling-houses which it is the practice of the landlord to let for occupation by physically disabled persons, and-*
 - b) *a social service or special facilities are provided in close proximity to the group of dwelling-houses wholly or partly for the purpose of assisting those persons.*
13. The Council wrote to Mr and Mrs B and informed them of this decision.

Complaint response

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14. Mrs and Mrs B disagreed with the decision to refuse their right to buy application and alleged that they had been given wrong information about the sale of their second home. Therefore they submitted a formal complaint to the Council.
 15. The Council responded and said it did not uphold either of Mr and Mrs B's complaint points. It said after finding out about the inherited property it explained to Mrs and Mrs B that the property could place them in breach of their tenancy agreement or they could be liable to pay the market rent for their council home.
 16. The council's notes in August 2015 state that Mr and Mrs B told the Council that they needed to use the proceeds of the sale of the inherited property to fund the right to buy of their council home. The records state that Mr and Mrs B were told that they could make the right to buy application at any time.
 17. With regards to the right to buy refusal the Council explained that Mr and Mrs B's *"property has undergone substantial adaption to meet their ongoing needs, including the provision of a wet-room, specialised lighting and a new boiler with eye level controls. It is part of a group of sheltered and adapted properties in the area which also benefit from two community centres and dedicated mobile support officers"*.
 18. Mr and Mrs B remained dissatisfied with the Council's complaint response and brought their complaint to the Ombudsman for further consideration.

Analysis

19. In response to the Ombudsman's enquiries the Council reviewed its decision to refuse Mr and Mrs B's right to buy application. It said it could be argued that part a) of schedule 5 of the Housing Act was not sufficiently met in this case and therefore it will allow Mr and Mrs B to make an application to buy their home. It also apologised for the time and trouble Mr and Mrs B have experienced in pursuing their complaint and offered a £300 payment.
20. The Council has therefore accepted it should have allowed Mr and Mrs B to buy their Council home; and failure to do so in the first instance was fault. After reviewing all of the information I consider the Council's offer to Mr and Mrs B to be a satisfactory remedy for the injustice the original decision caused them.
21. With regards to ownership of Mr and Mrs B's second home, the Council maintains that it provided them with clear and accurate information about the changes to the tenancy agreement which came into force in January 2016. After reviewing the Council's case notes, I have found no evidence that the Council told Mr and Mrs B that they could not hand in their right to buy application until they sold their second property.

Agreed action

22. In recognition of the faults identified above the Council has already agreed, within six weeks of my final decision, to:
 - Change its decision and allow Mr and Mrs B to purchase their council home.
 - Apologise to Mr and Mrs B for the faults identified above.
 - Pay Mr and Mrs B £300 in recognition of the time and trouble spent pursuing their complaint.

Final decision

23. The Council was at fault for refusing Mr and Mrs B's right to buy application. In response to the Ombudsman's enquiries, the Council agreed to change its original decision and allow Mr and Mrs B to buy their council house through the right to buy process. But, there is no evidence of fault regarding the advice the Council gave Mr and Mrs B about their application or the sale of their second home. Therefore I have completed my investigation.

Investigator's decision on behalf of the Ombudsman