

Complaint reference:
17 008 414

Complaint against:
East Devon District Council

The Ombudsman's final decision

Summary: The Ombudsman will not investigate this complaint about the Council's decision to place the complainant in the lowest band on the housing register. This is because there is insufficient evidence of fault by the Council.

The complaint

1. The complainant, whom I refer to as Mr X, disagrees with the Council's decision to place him in band E on the housing register. He says he should be in band C and that the Council should backdate the band C registration to December 2016.

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 an investigation if we believe it is unlikely we would find fault. (*Local Government Act 1974, section 24A(6), as amended*)
3. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)
4. The Social Entitlement Chamber (also known as the Social Security Appeal Tribunal) is a tribunal that considers housing benefit appeals. (*The Social Entitlement Chamber of the First Tier Tribunal*)

How I considered this complaint

5. I read the complaint and the Council's responses. I considered the housing allocation policy and Mr X's rent statement. I considered comments Mr X made in response to a draft of this decision.

What I found

Housing allocation policy

6. The Council places people in bands so it can determine who has the most urgent need for accommodation. People in band A have the highest priority. Band E is the lowest band. The Council places people in band E if they have no housing need. The Council also places people in band E if they have rent arrears of at least £500. The restriction to band E continues until the arrears have been paid or

where the person has shown a clear intention to pay and has maintained a repayment plan for at least three months.

What happens

7. Mr X lives in a two bedroom flat with his wife and two sons. He says it is unsuitable for the family's needs.
8. Mr X has rent arrears. He says he had kept to a repayment plan, for three months, but he remains in band E. The Council says it will not change his band until his rent arrears are consistently below £500.
9. Mr X also complained that the Council would not backdate his housing benefit. I have seen an email which states the Council backdated the claim. However, Mr X has repeated that he was off work sick for one month but he has only received housing benefit for three weeks.
10. I have read the rent statement that Mr X provided. This shows that, since December 2016, Mr X's rent account has often been in arrears by more than £500. For example, on 20 February the arrears were £695, on 3 April £688 and on 24 July £1133. At times the arrears have been less than £500 but never for more than a few weeks and the account has never been in credit (since December 2016). In early December the arrears were £1041 and by 7 August the arrears were £644.

Assessment

11. I will not start an investigation because there is insufficient evidence of fault by the Council.
12. Mr X may have maintained a repayment plan for three months but the rent statement shows that he is often in arrears by more than £500 and there is no evidence of a clear intention to clear the arrears. The Council's decision to restrict Mr X to band E is consistent with the policy so there is no reason to start an investigation.
13. Mr X says the arrears are caused by housing benefit delays. However, this is not supported by the rent statement.
14. Mr X says the Council has not awarded the correct amount of housing benefit. Mr X can ask for a review, and then appeal to the tribunal, if he thinks his housing benefit is wrong. It is reasonable to expect him to appeal because the tribunal is the appropriate body to consider housing benefit disputes.

Final decision

15. I will not start an investigation because there is insufficient evidence of fault by the Council.

Investigator's decision on behalf of the Ombudsman