

Housing

Ombudsman Service

REPORT

COMPLAINT 202007087

East Devon District Council

29 January 2021

Our approach

The Housing Ombudsman's approach to investigating and determining complaints is to decide what is fair in all the circumstances of the case. This is set out in the Housing Act 1996 and the Housing Ombudsman Scheme. The Ombudsman considers the evidence and looks to see if there has been any 'maladministration', for example whether the landlord has failed to keep to the law, followed proper procedure, followed good practice or behaved in a reasonable and competent manner.

Both the resident and the landlord have submitted information to the Ombudsman and this has been carefully considered. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.

The complaint

1. The complaint is about:
 - a. The resident's liability to pay the service charge for the mobile support service (the MSS) during the Covid-19 pandemic
 - b. The landlord's response to the resident's concerns regarding the delivery and provision of the MSS during the Covid-19 pandemic
 - c. The landlord's complaint handling

Jurisdiction

2. What we can and cannot consider is called the Ombudsman's jurisdiction. This is governed by the Housing Ombudsman Scheme ('the Scheme'). When a complaint is brought to the Ombudsman, we must consider all the circumstances of the case as there are sometimes reasons why a complaint, or aspects of a complaint, will not be investigated.
3. Paragraph 39(g) of the Housing Ombudsman Scheme sets out that the Ombudsman will not consider complaints which concern the level or rent or service charge.
4. Paragraph 39(i) of the Housing Ombudsman Scheme sets out that the Ombudsman will not consider complaints which concern matters where the Ombudsman considers it quicker, fairer, more reasonable or more effective to seek a remedy through the courts, a designated person, other tribunal or procedure.
5. As part of her complaint the resident said that she was not liable for the service charge relating to the MSS as it was a service no longer provided by the landlord following Covid-19. In response the landlord said that the resident was liable for the service charge as it was providing a modified MSS.

6. The First Tier Tribunal Property Chamber (the FTT) deals with disputes between tenants and their landlords. The FTT can make determinations on all aspects of liability to pay a service charge and/ or administration charge, including by whom, to who, how much and when a service charge is payable. In order to decide liability, the FTT also decides whether service charge costs have been reasonably incurred and if so whether the standard of any services or works for which the costs are charged is reasonable. Accordingly, where there is a dispute about such matters it is more appropriate for the matter to be considered by the FTT.
7. Therefore, and in accordance with paragraphs 39(g) and 39(i), the complaint about the resident's liability to pay the service charge for the MSS during the Covid-19 pandemic is outside of the Ombudsman's jurisdiction to consider.
8. While the Ombudsman cannot determine this aspect of the complaint it will be referred to within the summary as it provides context to the other matters which the Ombudsman can consider.

Background and summary of events

Background

9. The resident is the tenant of the property (the property) which the complaint concerns. The landlord owns the property.
10. The property is part of the landlord's sheltered housing stock.
11. The tenancy agreement for the property sets out that the MSS is included as part of the tenancy to help support the tenant in their home. The tenancy agreement further sets out that a support charge is payable by the resident for the MSS as part of her rent.

Summary of events

12. On 14 May 2020 the resident wrote to the landlord regarding the MSS. In summary the resident said:
 - a. The MSS had been suspended since March 2020 due to Covid-19.
 - b. She was concerned that she had been informed that despite Covid-19 restrictions having been lifted following the end of the lockdown the MSS would not be reinstated. The resident confirmed that she would like to know if this was correct.
 - c. She believed the MSS was an essential service.
 - d. If the MSS was not being reinstated soon, the landlord should deduct the associated charge from her rent.
13. On 21 May 2020 the resident chased the landlord for a response. On the same day the landlord acknowledged the resident's correspondence.

14. On 9 June 2020 the landlord responded to the resident at stage one of its complaint procedure. In summary the landlord said:
- a. The MSS had not been suspended due to Covid-19. The landlord said its Mobile Support Officers (MSOs) had worked throughout lockdown and would continue to do so. The landlord noted that many MSOs had worked “extra hours providing support via [its] Community Support Hub and working extra shifts as call handlers for Home Safeguard”.
 - b. To maintain the MSS the MSOs had been contacting its sheltered tenants via telephone as home visits had been prevented by the restrictions imposed by central Government.
 - c. Throughout lockdown it had continued to provide advice and support, welfare checks and safeguarding referrals. The landlord confirmed that it had also continued to operate the “responsive alarm service 24/7”.
 - d. It suggested that the resident did not withhold any element of the rent as it “could impact negatively on [her] tenancy”.
 - e. It was currently completing its recovery plans in response to Covid-19 which involved risk assessments and staff training.
 - f. It was not possible to safely resume home visits yet as it was not able to maintain social distancing requirements. The landlord explained that keeping both residents and staff safe was the rationale for changing the way it operated the MSS.
 - g. It was sorry that it had delayed in responding to the resident’s correspondence dated 14 May 2020.
15. On 9 June 2020 also, the resident wrote to the landlord setting out that she had contacted the landlord to request “mobile support” but was informed that it was not providing the service. The resident said that “telephone support [was] unhelpful [to her] and [was] not in line with the tenancy agreement”. The resident added that as the country was no longer in lockdown the MSS could safely resume. The resident confirmed that she was not willing to pay for a service that she was not receiving.
16. Following receipt of the landlord’s stage one response the resident wrote to the landlord to request to escalate her complaint. In summary the resident said:
- a. The MSOs had “not been working”.
 - b. The MSOs had “not been manning any phone line”. The resident said that the MSOs “simply pick up messages, sometimes days after the message [was] left”.
 - c. Since lockdown had ended and restrictions had been eased the MSS should have been reinstated.

- d. MSOs could socially distance and it was “nonsense” that the landlord said otherwise. The resident stated that the Government had said that people may go back to work if they could socially distance.
 - e. She had “every right” to withhold payment for a service she was not receiving. The resident said that the landlord was bullying her by saying her tenancy would be impacted if she did not pay the MSS charge. The resident noted that she had made “a reduced rent payment today”.
 - f. She had “disabilities, mental health problems [and] autism issues”.
 - g. She had informed her MP of the matter.
17. On 18 June 2020 the landlord provided its final response to the complaint. In summary the landlord said:
- a. The MSS had continued to operate in line with best practice and Government advice throughout Covid-19.
 - b. It had increased contact with its tenants in sheltered housing.
 - c. Its website provided information outlining the changes to its MSS. The landlord said that it continued to offer support while protecting residents and staff by not visiting tenants in their homes unless it was absolutely necessary.
 - d. It noted that the resident had stated in some correspondence that a telephone conversation with an MSO was not sufficient for her needs and therefore requested that the resident confirm why a home visit was necessary. The landlord confirmed that on receipt of the information it would “see what [it] might be able to do to help”.
18. The landlord concluded by confirming that if the resident was not happy with its response she may refer the complaint to the “Local Government Ombudsman”.
19. On receipt of the landlord’s final response the resident wrote to the landlord setting out that it had not addressed her complaint. In summary the resident said:
- a. Despite the Government confirming that people may return to work the MSOs had not.
 - b. During lockdown she paid the service charge for the MSS. The resident said that “every time” she attempted to call the MSS for support there was no answer “just an answer phone”.
 - c. It was unfair that she was paying for a service that she was not receiving.
 - d. The landlord was failing to support those in sheltered housing.
 - e. She had begun deducting the support charge from her rent.
20. On 24 July 2020 the landlord wrote a general letter to all residents in sheltered housing. In summary the landlord said:

- a. It had been considering how to best maintain its service to its residents during Covid-19. The landlord said “until now [it] had no option but to restrict [its] service to a phone and email based approach except in exceptional circumstances”.
 - b. From 3 August 2020 it would be offering face to face appointments with its MSOs at local community centres. The landlord explained that the appointments would be conducted in a controlled way with a system in place to ensure resident and staff safety.
 - c. Residents should call their MSO to request an appointment.
 - d. It was still able to offer support via telephone if preferred by a resident.
21. Following the end of the complaint procedure the resident has continued to raise concerns regarding the MSS and the associated service charge. This has included operation of the community centres for MSS visits and lack of an annual MSS care plan.

Assessment and findings

Scope of investigation

22. The resident’s concerns were registered as a complaint in May 2020, and the landlord issued its final response on 18 June 2020. This Service is aware that, following the landlord’s final response, the landlord and resident have continued to communicate regarding the complaint. The focus of this investigation is the matters which resulted in the original complaint and the landlord’s response to this. The investigation does therefore not extend to events which occurred after the complaint procedure was exhausted. This is in accordance with paragraph 39(a) of the Housing Ombudsman Scheme which sets out that ‘the Ombudsman will not investigate complaints which, in the Ombudsman’s opinion...are made prior to having exhausted a member’s complaints procedure’.

The landlord’s response to the resident’s concerns regarding the delivery and provision of the MSS during the Covid-19 pandemic

23. The Ombudsman accepts that Covid-19 has had a major impact on the services a landlord is able to provide, and therefore that some normal services will have been significantly and unavoidably disrupted during the pandemic and going forwards.
24. New legislation and Government guidance was issued in response to Covid-19 setting out how a landlord should deliver its services during the pandemic. In respect of the resident’s complaint the Ombudsman notes the following Government guidance:
- a. 28 March 2020:
 - i. Recommended that access to a property is only proposed for serious and urgent issues

- ii. Visits could still be made for urgent health and safety issues
 - iii. Encouraged landlords and tenants to take a pragmatic, common-sense approach to non-urgent issues
- b. 11 May 2020:
- i. Landlords to carry out an appropriate Covid-19 risk assessment for working in other peoples' homes
 - ii. Finding digital or remote alternative to physical, in-home work where possible such as video or phone consultations
25. In response to Covid-19 and the Government's guidance the evidence shows that the landlord modified the way it delivered its MSS, including by ceasing to undertake home visits and operating a telephone service instead.
26. The Ombudsman notes that the resident accepts that the landlord was unable to complete home visits between March 2020 and May 2020 (lockdown) due to the Government guidance, however is concerned that the landlord did not reinstate them following the updated guidance in May 2020. While the resident's concerns are noted, in the Ombudsman's opinion the landlord's decision to not reinstate home visits, as part of the MSS, in May 2020 was reasonable in the circumstances. This is because the landlord explained that its decision was made following a risk assessment which identified that home visits could increase the risk of the spread of Covid-19 and therefore it needed to minimise non-essential contact.
27. As part of its complaint response the landlord identified that the resident reported that phone contact was not suitable and therefore requested further information from the resident. In the Ombudsman's opinion this was an appropriate response in order to assess the resident's situation and to determine if it was able, and reasonable, to make any modifications to the MSS it provided to her. The Ombudsman cannot see that the resident responded to the landlord's request whilst the complaint was live. In the absence of a response by the resident, in the Ombudsman's opinion it was reasonable that the landlord did not make any modifications to the service it provided to the resident at that time.
28. In response to the resident's position that she would pay reduced rent as she felt that the MSS was inadequate the landlord advised the resident that this may impact on her tenancy. In the Ombudsman's opinion it was appropriate to inform the resident that if her rent account fell into arrears it may apply to the Court for a possession order in line with the tenancy agreement for the property. The landlord informed the Ombudsman as part of its investigation papers that in August 2020 it advised the resident that it was prepared to write off her arrears (£103.05) due to underpayment in relation to the MSS as a gesture of good will. The landlord has confirmed that its offer still stands.

The landlord's complaint handling

29. The landlord's complaint policy sets out that it will acknowledge stage one complaints within five working days and provide a response within 20 working days of the acknowledgement. The landlord apologised that it did not respond to the resident's correspondence dated 14 May 2020 on receipt, and only after the resident chased on 21 May 2020. In the Ombudsman's opinion the apology was appropriate to the service failure, noting that the landlord's stage one response was provided within 20 working days of the 14 May 2020.
30. The landlord's stage two, final response, was provided promptly.
31. Within its final response the landlord advised the resident that if she was not happy with its position on her complaint she may refer the complaint to the Local Government and Social Care Ombudsman. While the Ombudsman understands why the landlord may have provided the resident with incorrect information, as the landlord is a local authority, it is unsatisfactory that the resident was signposted to the incorrect Ombudsman. However in the Ombudsman's opinion the landlord's omission did not adversely impact the resident.

Determination (decision)

32. In accordance with paragraph 54 of the Housing Ombudsman Scheme there was no maladministration by the landlord in respect of the resident's concerns regarding the delivery and provision of the MSS during the Covid-19 pandemic.
33. In accordance with paragraph 55b of the Housing Ombudsman Scheme the landlord has made an offer of redress, which in the Ombudsman's opinion, resolves the landlord's complaint handling.

Reasons

34. In the Ombudsman's opinion the landlord's decision to not reinstate home visits as part of the MSS service from May 2020 was reasonable as it explained that its decision was made following a risk assessment, taking into account the Government's guidance, to protect its staff and residents.
35. The landlord identified that the resident reported that phone contact was not suitable and therefore requested further information from the resident. In the Ombudsman's opinion this was an appropriate response in order to assess the resident's situation and to determine if it was able, and reasonable, to make any modifications to the MSS it provided to her.
36. The landlord's apology for the delay in acknowledging the resident's correspondence dated 14 May 2020 was proportionate to the circumstances of the case, noting that a formal response was provided within the landlord's service standards for a complaint. The Ombudsman is satisfied that the apology was appropriate redress in these circumstances.

37. While it was unsatisfactory that the landlord signposted the resident to the Local Government and Social Care Ombudsman, rather than this Service, the Ombudsman has not identified that the error adversely impacted on the resident.

Recommendations

38. The landlord should contact the resident to discuss her request for home visits by an MSO to determine if the request should be accommodated. If the landlord assesses that the request cannot be met, the landlord should explain its reasons and explain how it will provide the resident with an appropriate level of support going forwards.

39. The landlord should contact the resident to discuss her rent arrears. The landlord may wish to reiterate the offer it made in August 2020 to write off the arrears as a result of the resident not paying the MSS.

40. The landlord should provide learning to its complaint officers to ensure that accurate signposting to the relevant Ombudsman is given within a complaint response.