

Complaint reference:

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Complaint against:

South Northamptonshire District Council

The Ombudsman's provisional view

Summary: Mr B complains the Council failed to pay housing benefit to him directly as a landlord when his tenant had over eight weeks of rent arrears. I find the Council took into account irrelevant issues and misdirected itself when it made its decision, and a further financial remedy is due. Mr B also complained the Council delayed in telling him their decision, and did not tell him about his right to appeal. The Council has already accepted fault and remedied this part of the complaint.

The complaint

1. Mr B is a landlord. Mr C is his representative and property managing agent, and brought the Complaint to the Ombudsman on Mr B's behalf. Mr K is Mr B's former tenant, who was in receipt of Housing Benefit payments during his tenancy at Mr B's rental property.
2. Here is a summary of the complaint as I understand it, that the Council:
 - a) Failed to pay Mr K's housing benefit to Mr B when requested to do so in April 2012 by Mr C, after over eight weeks of rent arrears had accrued;
 - b) Failed to inform Mr B or Mr C in writing of the Council's decision on 27 April 2012 to continue to pay the housing benefit to Mr K, or advise them of any right of appeal.
3. In respect of complaint b), the Council has accepted fault and offered £250 as compensation.

The Ombudsman's role and powers

4. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and, if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
5. 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)*)
6. Ombudsman has the power to start or discontinue an investigation into a complaint within her jurisdiction. (*Local Government Act 1974, sections 24A(6) and 34B(8)*)

How I considered this complaint

7. As part of the investigation, I have:
 - considered the complaint and the documents provided by Mr B and his representative Mr C;
 - made enquiries of the Council and considered the comments and documents the Council provided;
 - considered regulation 95 from the Housing Benefit Regulations 2006;
 - discussed the issues with Mr C.

What I found

8. Mr B is a private landlord. In 2012 he was renting a property to two tenants, Mr K and Miss L. Mr K was in receipt of direct housing benefit payments to pay just over four fifths of the property's rent. Mr B had Mr C, a letting agent, acting for him as the property's manager. The total rent was £595 per month. The benefit payment per month was £499.98, leaving a shortfall of £95.02 which was due directly from Mr K.
9. In February 2012 Mr K started to withhold his rent. He had written to Mr C on 8 February to complain about various repairs to the property that he believed rendered the property uninhabitable.
10. On 3 April 2012, Mr C wrote to the Council on Mr B's behalf to ask housing benefit payments to be made directly to Mr B. Mr B also called the Council the day after, requesting the Council to pay the benefit to him. By that time Mr K was in rent arrears by over eight weeks. The Council suspended Mr K's account on 4 April.
11. On 12 April, Mr K called the Council saying he was only a month in arrears. He explained he was actively withholding his rent because of the repair issues.
12. On 27 April 2012 the Council decided housing benefit would continue to be paid to directly to Mr K ("the 27 April decision"). The basis of this decision was:
 - Mr K and Mr B confirmed rent payments had stopped in February 2012 and both agreed the property needed repairs;
 - Mr K provided the Council with the 8 February 2012 letter to Mr C which supported his claim about the necessary repairs. The letter mentioned no heating, a faulty storage heater, asbestos problems, and a faulty water system;
 - Mr K had contacted the Council's housing department for advice because he was worried about possible eviction proceedings. The Council decided that if they suspended Mr K's housing benefit claim that this would further jeopardised Mr K's tenancy;
 - Housing benefit had been paid to Mr K without any issues since May 2011.
13. The Council did not advise Mr C of its 27 April decision until 9 May, and did not do so in writing. I understand this meant Mr B and Mr C were not advised of the relevant appeal rights.
14. A Notice Seeking Possession (NoSP) hearing was held on 9 May but it seems Mr C was advised by the Court that the Notice was invalid. If he wished to pursue formal action against Mr K, he would have to serve another Notice, affording at least another two months to Mr K prior to any further formal action.

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15. Mr B and Mr C did not contact the Council again until July 2012. It appears they sought to resolve the dispute between them and Mr K by organising the repairs which were the grounds used by Mr K to stop paying the rent. Mr B and Mr C report Mr K was uncooperative when they asked him to provide access to the property so work could be done.
 16. Mr B contacted the Council again on 13 July 2012 to tell the Council the repairs had been done. The Council suspended Mr K's benefits account on 17 July, then visited the property on 19 July. The visiting officer determined the repairs had been done.
 17. On 3 September 2012 the Council paid Mr B £1,059. It appears this was the backdated payment of benefit to cover the period from 8 July to 3 September 2012.
 18. Mr B complained claiming financial loss of £2,380, which is four full months worth of the total rent due of £595 per month. Mr B says this would provide redress for his losses between 3 April and 8 July 2012. The Council says the amount of housing benefit paid to Mr K for the 3 April to 8 July period was £1,615.32.
 19. The Council offered £250 to remedy the delay in advising Mr B or Mr C of the 27 April decision, and not informing them of appeal rights. Mr B did not accept the £250 sum.
 20. I understand eviction proceedings progressed against Mr K and he and his family no longer live in Mr B's property.

Assessment

21. The key issue for the Ombudsman to consider regarding complaint a) is whether or not the Council's 27 April decision to continue to pay housing benefit to Mr K was made without fault. A council that makes a decision which does not logically follow on from the known facts, or takes into account something irrelevant in making a decision, may make a perverse decision. This would be administrative fault.
22. When the Council made its 27 April decision, it took into account the repairs issues which Mr K had raised with Mr C in February 2012. I have not seen evidence that Mr K's tenancy agreement allowed him to withhold his rent should there be a dispute about repairs between him and Mr B. Without that evidence, I consider the Council took into account an issue which was not relevant to its decision on direct payments.
23. I am not persuaded that the Council's consideration of the 27 April decision was done without fault. I consider its decision, given the information it held on 27 April, was perverse and amounts to fault.
24. The Council has relied on regulation 95 from the Housing Benefit Regulations 2006 to support its decision. The relevant part of the regulation states:
*"... a payment of rent allowance shall be made to a landlord...
(b) where ... the person [tenant] is in arrears of an amount equivalent to 8 weeks or more of the amount he is liable to pay his landlord as rent, except where it is in the overriding interest of the claimant not to make direct payments to the landlord"*
25. I have considered whether the Council was correct, in view of the facts of this case, to decide it was in Mr K's overriding interest for the Council not to make direct payments of the benefit to the landlord.

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26. The Council has argued, using regulation 95, that it was an overriding interest to Mr K for the benefit to continue to be paid to him. The Council might have made this assessment on the basis that it meant Mr K could continue to withhold the full rent from Mr B, giving him leverage to get the outstanding repairs done. But the Council did not visit the property to check whether Mr K's claims of disrepair were correct in April or May. They only visited in July once Mr B told them the work had been done.
 27. One of the Council's key aims was to avoid further risk to Mr K's tenancy. But I consider the 27 April decision placed Mr K's tenancy at increased risk. This is because Mr K was intentionally not paying any rent, which the Council knew. If the Council had paid the benefit to Mr B from April 2012, this would have reduced the rent arrears Mr K was accruing, reducing the risk to his tenancy.
 28. The Council decided to continue to pay housing benefit to Mr K, money which was due to Mr B as the landlord, in the full knowledge that Mr K was not giving that money to Mr B. I consider that was fault by the Council.
 29. It appears the Council's position is that Mr B could have appealed the 27 April decision as soon as they told him about it on 9 May. The Council says Mr B or Mr C did not appeal, and did not contact the Council again until 13 July 2012. As a result, a further two months of arrears accrued which may have been avoided had Mr B challenged the Council's 27 April decision sooner.
 30. The Council has accepted fault in that it did not advise Mr B or Mr C of the relevant appeal rights on 9 May. It appears to me that Mr C as a professional property managing agent might have been aware of those rights even in the absence of the Council advising of them. But in any event, the Council has accepted this was fault, and offered a remedy.
 31. I consider Mr B and Mr C's actions after the Council's 27 April decision were understandable. I say this because the Council's decision made the repairs issue fundamental as to whether or not Mr B would get four fifths of his rent. So it was reasonable in those circumstances for Mr B to focus his efforts on resolving the repairs, especially as he had not been advised of how he might appeal the Council's decision and reinstate his rent receipts in another way. When those repairs were resolved after two months, he contacted the Council again.
 32. On balance, I do not consider it would be appropriate to penalise Mr B for delaying in challenging the Council's 27 April decision.

Recommended action

33. I consider the appropriate financial remedy here is for the Council to pay Mr B a sum equivalent to the housing benefit it continued to pay directly to Mr K between 3 April and 8 July 2012. This would put Mr B back in the financial position he would have been in had it not been for the Council's fault. I understand from the Council's evidence that this amounts to £1,615.32. If Mr B disputes the Council's calculations, he may respond to this provisional statement and explain why.
34. It should be noted that I consider Mr B is not entitled to the full rent sum claimed for this period as redress. Mr B's claim for £2,380 appears to amount to entire months of rent rather than for the exact relevant period. Furthermore, only £499.98 was ever payable to him by the Council during the relevant period. If Mr B wishes to recover the £95.02 per month of rent payable directly from Mr K, and if he has not already done so, he may wish to take independent advice on how he might seek this through separate legal action.

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35. The Council may believe it does not have the legal power to pay out housing benefit twice, once to Mr K and then a second time to Mr B as part of this settlement. But the Council does have the power to provide a financial settlement where the Ombudsman has made a finding of fault causing an injustice which requires financial redress. This is what the Ombudsman is recommending the Council does here.
 36. I consider the Council's £250 offer for its delay in telling Mr B of its 27 April decision, and not advising him and Mr C of the appeal rights, provides appropriate redress for this part of the complaint. I recommend the Council reinstates that offer to Mr B as part of the remedy here.

Provisional view

37. I consider the Council's decision of 27 April amounted to administrative fault. This caused significant personal injustice to Mr B.
38. For the reasons set out above, I consider Mr B's delay of two months in pursuing the matter with the Council should affect the redress due to him.
39. If the Council agrees to implement the recommended actions as set out above, I would consider my investigation complete, and would close the file.

Investigator's provisional view on behalf of the Ombudsman