

Complaint reference:
15 016 160

Complaint against:
Gravesham Borough Council

The Ombudsman's final decision

Summary: Mr B complains that the Council did not pay housing benefit to the landlord, Mrs B, rather than to her tenants. The Council accepts that it should have made a £705.86 housing benefit payment to Mrs B rather than her tenants because of their arrears. The Ombudsman considers the £250 compensation the Council has already offered Mrs B to be a suitable remedy for the injustice this caused. Aside from this, however, the Ombudsman has found no fault in the Council's actions.

The complaint

1. Mr B complains, on behalf of the landlord, Mrs B, that there was a lack of communication between the Council's Housing Needs and Housing Benefits departments and a failure to follow procedures. They also feel that the two departments relied failed to properly verify information from on the tenants.
2. He says that:
 - Housing Benefits failed to undertake proper checks at the start of the tenants' housing benefit claim in January 2014.
 - Housing Needs failed to tell Housing Benefits in April 2014 that the tenants were more than eight weeks in arrears, despite knowing they were receiving housing benefit and had authorised communication with the landlord.
 - Housing Needs did not check the tenants' incorrect claim that they had withheld rent because the property was in disrepair, or whether the property was suitable for the number of people living there.
 - The Council's reference to the "*fit and proper person*" test was not a valid reason for not paying benefit directly to the landlord, as it was not an issue in January 2015 when paid the landlord.
 - Housing Needs did not check the tenants' claim in August 2014 that they had paid all the unpaid rent, when in fact they owed over 17 weeks' rent.
 - Housing Needs provided incorrect advice about the Notices to Quit.
 - Since the Council accepts that it should have paid the landlord in November 2014 due to the arrears, it should also have done so from April 2014.
3. He considers that the Council should therefore pay Mrs B a sum equivalent to the housing benefit that Mrs B would have received from April 2014, with a further payment to reflect the distress caused.

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 normally expects someone to appeal to a court or tribunal if they have a right to - the Social Entitlement Chamber (also known as the Social Security Appeal Tribunal) is a tribunal that considers housing benefit appeals. However, the Ombudsman may decide to investigate a complaint if she considers it would be unreasonable for a person to have to do so. (*Local Government Act 1974, section 26(6), The Social Entitlement Chamber of the First Tier Tribunal*)
6. I have exercised discretion to consider Mr B's complaint because the Tribunal cannot require the Council to make a further payment of benefit to a landlord, where payment has already been made to the tenant.

How I considered this complaint

7. I have considered Mrs B's written complaint and spoken with her agent, Mr B. I have written to the Council, and considered its response, including letters and notes on the Council's computer system. I have also sent Mrs B and the Council a draft decision and invited their responses.

What I found

Local Housing Allowance (LHA) - legal and administrative background

8. From April 2008, housing benefit changed to the LHA scheme. There is now a presumption that benefit payments should be made to tenants unless:
 1. The tenant is more than 8 weeks in arrears.
 2. Deductions are being made from Income Support or Job Seeker's Allowance for rent arrears.
 3. A tenant is likely to have difficulty managing their financial affairs.
 4. It is improbable that a tenant will pay their rent, e.g. a previous and consistent failure to pay rent without good reason. (Evidence is required for points 3 and 4.)

What happened

9. In October 2013, Mr B, as agent for the landlord, rented a property to Mr C and Ms D. The rent was £550 monthly. Mr E, who is Mr C's brother-in-law and lived in another flat owned by Mrs B in the same building, acted as guarantor. Mr C and Mr E paid their rent with cash payments into the landlord's bank account. Because of this, and as the payments were often late, it was difficult for the landlord to determine which payment was for which account.
10. In January 2014, Mr C and Ms D made a joint claim for housing benefit. They told the Council they were not in rent arrears and provided receipts for rent payments. They ticked the box on the application form authorising the Council to discuss their claim with the landlord. The claim was put into payment in early February.
11. In March, Mr B contacted Housing Benefits to check if there was anything he needed to do in respect of the tenants' housing benefits claim. He was told there

-
- was nothing he needed to do. He did not know the claim was by then in payment because the tenants had not told him.
12. At the end of April, the tenants approached Housing Needs as the landlord had sent them a Section 8 Notice to Quit, due to arrears of £1,770. They explained that they were withholding rent due to outstanding repairs. The Council advised against this, but also wrote to Mr B on 2 May to propose a repayment period.
 13. Mr B wrote back on 7 May. He said that *“as of the date of your letter the unpaid rent is £1,520.00”*. He explained the difficulty the landlord had in getting the rent payments and knowing which account to apply them to, as there were two sets of tenants and two properties involved. He said he had been unaware of any disrepair but he had established the nature of the issues and would carry out any necessary repairs. He confirmed that he would accept the proposed two month repayment plan, with the arrears due to be cleared by 6 July. At the end of May, he agreed not to proceed with a Section 21 Notice to Quit.
 14. According to the payment history Mr B set out in his letter of 2 November 2014 to the guarantor, the tenants had reduced the arrears to £570 on 30 May 2014, and the arrears stood at £840 on 6 July. (However, Mr B later corrected these figures upwards when he wrote to the Council by email on 16 January 2015.)
 15. In early August, the tenants attended the Council’s offices with a copy of the previous Section 8 Notice. They told Housing Needs officers that they had paid the arrears but the landlord wanted them to leave. However, Mr B says he was in holiday and had not been in contact with them at this point. Housing Needs told them the landlord would need to issue a new notice if he wanted them to leave.
 16. On 2 November, Mr B wrote to the guarantor, Mr E. He asked for full payment of the tenants’ current arrears of £3,040, and threatened court proceedings if he did not receive payment. He issued a Section 21 Notice of Seeking Eviction to the tenants. Mr C gave a copy to the Council on 12 November, and the Council wrote to Mr B advising the Notice was invalid.
 17. At this point, due to information received from the DWP, the Council suspended that tenants’ claim. However on 24 November, the Council put the claim back in to payment and made a backdated arrears payment of £669.66 to the tenants.
 18. In early December, Mr B served another Section 21 Notice on the tenants.
 19. On 16 January 2015, Mrs B contacted the Council. She explained that she had learnt that the tenants were claiming housing benefit. She emailed the Council with details of then arrears of £4,990 and breaches of the tenancy agreement.
 20. On 19 January, the Council wrote to the tenants to tell them it was suspending their claim and asking who was living at the property. It arranged to pay housing benefit to the landlord directly. It made payments to the landlord until the end of February when the Section 21 Notice expired and the tenancy ended.
 21. On 2 March, Mr B complained to the Council because he considered it had not managed the situation properly. He felt that the Council should compensate the landlord for the benefits paid to the tenant from April 2014 when the Council first learnt that he had served the Section 8 Notice.
 22. The Council did not consider that there had been fault in the way it had dealt with matters generally. But it accepted it should have made the £669.66 housing benefit payment to Mrs B when it put the tenants’ claim back into payment in November 2014. (It has since amended this sum to £705.86).

My analysis

Checks at the start of the claim

23. Mr B says, when the tenants applied for housing benefit in January 2014, the receipts they provided did not correspond to the due rent dates and sums. The receipts showed the rent account £60 in surplus when, in fact, the tenants owed £260 in rent. He considers that, given the discrepancy, Housing Benefits should have contacted the landlord to confirm the payments.
24. While the receipts provided do not have tally with the rent due dates and amounts, they also do not show that the tenants were failing to pay their rent or that they were in arrears. Without any other evidence to suggest that the tenants were in arrears, I see no reason to question the officer's decision not to undertake further checks. Besides, had the officer been aware of the £260 arrears at the time, it is by no means certain that they would have decided there were grounds to pay the landlord directly, given that this was less than 2 weeks' rent.

Housing Needs did not tell Housing Benefits about the arrears in April 2014

25. Mr B considers that, as the Council's system would have shown that the tenants were receiving housing benefit, Housing Needs should have told Housing Benefits about the arrears. He says when Mrs B later contacted the Housing Needs officer to ask why they had not passed on information about the arrears, she was told it was not their job to do so.
26. Departments may share information as needed, and with consent. But, it seems to me that Housing Needs' primary tasks here were to safeguard the tenancy and to see that any necessary repairs were carried out. The landlord and tenants had reached an agreement on repayment of the rent and carrying out repairs. As the tenancy was therefore safeguarded for the present, I see no reason for the Council to have taken further action at this stage.

Housing Needs did not check if repairs were needed

27. Mr B considers that the Housing Needs officer should not have accepted the tenant's assertion that they were withholding rent due to outstanding repairs, without checking that the repairs were needed. He feels the Council should have procedures in place to determine that a property is in a safe and habitable state.
28. Councils have powers to require landlords to take action if they do not carry out essential repairs. But, as the landlord had agreed to carry out the necessary works, I consider it was reasonable for the Council to take no further action at this stage. If the landlord then failed to carry out the works, the tenants could have raised the matter with the Council who could have taken this up with the landlord.

"Fit and proper person" test

29. Mr B feels the Chief Executive's reference the *"fit and proper person"* test in the DWP's Local Housing Allowance Guidance Manual is irrelevant, as the Council was latter willing to pay the landlord directly in January 2015.
30. Section 4.050 states:

"Even where the tenant has eight weeks rent arrears, direct payments are not mandatory if it is not in the tenant's overriding interests to make them. For example:

a new tenant is in arrears from the outset because the frequency of rental payments is two monthly. In these cases the rent arrears will fall below eight weeks as soon as HB is paid

the tenant is withholding rent pending the landlord carrying out essential repairs, or

the landlord is not a 'fit and proper person.'"

31. It seems to me that section 4.050 was relevant because in April 2014 the tenants said they were withholding rent pending repairs, which was not the case in January 2015.

Suitability

32. Mr B considers that the Housing Needs officer should also have found out whether the property was suitable for the full complement of people living there.
33. It seems to me that it would firstly be a matter for the tenants to raise if they felt that their housing was unsuitable.

Housing Needs actions in August 2014

34. Mr B complains that, when the tenants contacted Housing Needs in August to say that the landlord wanted them out of the flat, the officer did not check their statement that they had paid the arrears. He feels the officer should have confirmed this either by checking deposit receipts or contacting the landlord. He says the officer also wrongly told them the landlord would have to issue a new notice, when a Section 8 Notice is valid for 12 months.
35. But Mr B had already told the Council he would put the eviction on hold provided the arrears were cleared by 6 July. Housing Needs heard nothing from the landlord or Mr B to say that the tenants were not keeping to the agreement. So it seems to me officers would have no reason to question the tenants' statement
36. I understand that to evict a tenant under a Section 8 Notice, the tenants would have to be in arrears both when the Notice was served and on the date of the court hearing. So, on the basis that the tenants said they had cleared the arrears, it seems to me that Housing Needs were correct in advising them that the landlord would need to serve a new notice – a Section 21 Notice - to evict them.

Validity of section 21 Notice

37. Mr B has questioned the Council's advice that the Section 21 notice issued in November 2014 was invalid.
38. It is not for the Ombudsman to determine whether the Notice, as prepared, was lawful. However, I understand that the officer advised Mr B that he needed to provide further information for the Notice to be valid. Mr B chose to accept the Council's advice and issued a new Notice. I see nothing here that warrants the Ombudsman's further investigation.

Difference between situation on April and November 2014

39. The Council accepts that it should have made the 24 November 2014 housing benefit payment to the landlord rather than the tenants. But Mr B questions why the situation was different on in November 2014 from that April 2014. He says "*in both instances the Housing Benefits Office had been informed that the rent was more than 3 months in arrears and yet it is only the latter occasion that the Council admits fault*".
40. The difference between the two situations is that, in April, the Council understood that the landlord and tenant had reached an agreement on repaying the rent arrears and carrying out any necessary works. As I have set out above, this safeguarded the tenancy and I see no reason to criticise the Council for not taking further action at this stage.

-
41. But in November 2014, the Council learnt, for the first time since April 2014, that the tenants were still more than 8 weeks in arrears. So, on this occasion it should have suspended the tenants' claim and made direct payments to the landlord.

Agreed action

Events up to the November housing benefit payment

42. For the reasons set out above, I do not consider there was fault in way the Council dealt with matters prior to the 24 November housing benefit payment. So I see no grounds to seek any remedy for the Council's actions during this period.

The November housing benefit payment

43. The Council accepts that it should have made that £705.86 payment to Mrs B. But it considers that the tenants and guarantor also share responsibility for the lost rent for this period. It therefore considers it would be reasonable for it to pay Mr B around one third of this amount - £250 - as compensation.
44. Mr B has asked why the tenants and guarantor should be held responsible for losses resulting from the Council's errors. He says the landlord has taken the guarantor, Mr E, to court for his own arrears. He says a County Court Judgement was made in the landlord's favour and a bailiff's warrant issued. But it could not be served as neither Mr E nor his wife had sufficient assets. The landlord has not taken the tenants to court because she does not know where they are now living.
45. I have considered whether the Council has proposed an appropriate remedy. The Ombudsman's *Remedies Guidance* says "*Remedies the LGO may recommend include...Where benefit was paid to the tenant instead of to the landlord, and the tenant cannot now be traced, pay the equivalent amount to the landlord.*"
46. The Council should have made the November 2014 housing benefit payment to the landlord. But if the tenants were responsible for the rent, irrespective of whom housing benefit payments were paid to. The guarantor has also not paid the rent.
47. The Ombudsman would normally expect a landlord to use a legal remedy to recover arrears from a tenant (or guarantor). I appreciate that it may not have proved possible for the landlord to recover the full rent owed by taking legal action. But the tenants were still living at the property from the time they failed to keep to their agreement in July 2014 until February 2015 when they were evicted. In that time, the landlord did not take legal action to recover the debt, nor further action to evict the tenants until November 2014.
48. It seems to me the landlord could reasonably have tried to recover the debt from the tenants and guarantor earlier, and that they share responsibility for the non-payment of the rent. So, while the Council should have paid the £705.86 housing benefit payment to Mrs B, I consider that it only bears part responsibility for this particular shortfall in the rent. So I consider the £250 the Council has already offered is a suitable remedy.

Final decision

49. For the reasons set out in my analysis and agreed action sections above, I consider that the £250 the Council has already offered is a suitable remedy for the injustice caused to Mrs B.

Investigator's decision on behalf of the Ombudsman