

Report

on an investigation into
complaint no 08 005 922 against
the London Borough of Havering

16 June 2009

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Key to names used

Mr Hoskyns – the complainant

Report summary

Subject

Mr Hoskyns (not his real name for legal reasons) complained that the £100 compensation the Council offered for its delays in connecting his gas supply when he took tenancy of a Council-owned flat was inadequate as he was unable to move in and had to pay for an additional two months rent in his previous private-rented accommodation. The Council also pursued him for an overpayment of housing benefit which arose because he was not living at the new flat and so was ineligible for benefit.

The Ombudsman found maladministration by the Council in its actions in letting out a property which was not in a lettable condition at the start of the tenancy. It had no heating or hot water and there were major gas leaks within the system. The Council then delayed unreasonably in taking two months to address the gas supply problems and making the system safe to use. It acted unreasonably in seeking to recover the housing benefit Mr Hoskyns had claimed for his new property when it was aware he could not move in and failed to advise him to notify the Revenues and Benefits Services.

It would have been open to the Council to have settled Mr Hoskyns' complaint at an early stage of the Ombudsman's investigation when the Council's fault had been clearly set out but this early settlement was declined by the Council.

Finding

Maladministration causing injustice.

Recommended remedy

The Ombudsman recommended, and the Council has agreed, to:

- a) pay the complainant £1,550 to reflect the two months rent paid for the private rented accommodation;
- b) pay the complainant the amount of housing benefit he would have received between the start of his tenancy and the date a proper gas supply was provided and
- c) pay the complainant £350 to reflect the complainant's time and trouble in pursuing his complaint.

The Ombudsman also agreed to assist the Council with staff training which it requested.

Introduction

1. Mr Hoskyns complained that the £100 compensation the Council offered for its delay in connecting his gas supply when he took the tenancy of a Council-owned flat was inadequate as he was unable to move in and had to pay for an additional two months rent in his previous privately-rented accommodation. The Council also pursued him for an overpayment of housing benefit which arose because he was not living at the new flat and so was ineligible for benefit.
2. The law generally requires me to report without naming or identifying the complainants or other individuals. The names used in this report are not the real names.
3. One of the Commission's officers has discussed matters with the complainant and officers of the Council. She has also examined the relevant files.
4. A draft of this report, including conclusions, was provided to the Council and the complainant and where appropriate their comments are reflected in the text.

Legal and administrative background

Gas Safety Regulations 1998

5. Landlords must maintain gas appliances, flues and installation pipework in a safe condition to prevent risk of injury to any person in lawful occupation. They must ensure safety checks are carried out within 12 months of any installation and at intervals of not more than 12 months since the last check. The landlord must keep a record of the check, which must be carried out by a person authorised by the Health and Safety Executive, and a copy of the last record must be given to any new tenant before that tenant occupies the premises.¹

The Council's fit to occupy standard

6. The Council's housing stock is managed by Homes in Havering, an arms length management organisation set up by and acting for the Council. Under the Council's housing policy, before it is let, an inspection should be carried out to check the property meets its fit to occupy standard. Part of this standard includes the provision of a safe and operational hot water and heating system. Electric and gas fittings must be checked for safety and certified. Gas tests and inspections are to be carried out by a CORGI registered gas contractor, and a test and inspection certificate are to be issued for all vacant properties at hand over stage.

¹Gas Safety (Installation and Use) Regulations 1998 section 36

Investigation

7. On 29 September 2006 Mr Hoskyns viewed and accepted a council flat which had been refurbished by a contractor following a major fire. He was moving from private rented accommodation. When he viewed the property, Mr Hoskyns was given a certificate showing that in August a Corgi registered worker had inspected the system following the installation of a new boiler and passed the appliance as safe to use. However, Mr Hoskyns says he was also told the contractor had not tested the gas system as the gas meter supply had been capped off, and that he would need to contact his chosen gas supplier to arrange for the supply to be uncapped. The tenancy for the flat started on 9 October.
8. The Council has no record of the gas safety certificate, although it does have details of a gas safety certificate from before the fire (and a later certificate). It believes the certificate was issued by its contractor, although the contractor has no record and does not recognise the name of the worker who completed it.
9. The Council says regulations specify that if a property is left void the gas supply must be capped off for health and safety reasons and only uncapped once the property is occupied. Mr Hoskyns contacted British Gas, which said it was the Council's responsibility to uncap the gas, as it had capped off the supply. He then wrote to Homes in Havering on 15 October to tell them and to say that he was unable to move into the property without heating and hot water. There is no record of this letter on Homes in Havering's files although the Council says that, in its early stages, correspondence was lost by the contractor used to scan all of Homes in Havering's correspondence.
10. Having had no response, Mr Hoskyns wrote again on 12 November, referring to his earlier letter, and saying again that he could not move into his new home until it had heating and hot water. He was continuing to live in the private rented accommodation and explained that he was incurring additional rent costs because he had transferred his housing benefit claim to the new flat at the start of the tenancy. He asked how he could claim this money back. He had no response, so wrote again on 20 November pointing out the urgency of his situation.
11. On 30 November Homes in Havering replied to his two previous letters under its complaints procedure. It said all new residents are informed that they need to tell their own utility company they have moved in, and that residents are provided with a contact telephone number so that they may arrange an appointment to have the gas uncapped and the heating checked for safe operation. They also said that they were unable to consider reimbursing his rent for the time spent at his previous property.
12. Mr Hoskyns went to the property on 30 November and found a calling card had been left by a gas engineer who had visited to uncap the gas supply on the previous day, at Homes in Havering's request. Mr Hoskyns had not been informed of this appointment. He contacted the company and made a new appointment for

1 December. When he called, the gas engineer discovered the gas supply had not been capped. It was turned on, and a major gas leak was discovered where a compression joint next to the cooker had not been installed properly. He then discovered further leaks coming from connections to the boiler and from pipework behind the kitchen base units. He was unable to stop the last leak and had to shut down the gas supply and issue a warning certificate not to use the gas. He told Mr Hoskyns that the kitchen units had to be removed to correct the pipework.

13. The next day Mr Hoskyns went to the property as the necessary works were due to be carried out. The worker he met told Mr Hoskyns that he was CORGI registered, but when challenged he admitted he was not. Mr Hoskyns was not happy to proceed with the works on this basis.
14. On 4 December two gas engineers visited to sort out the outstanding problems. They discovered that the thermostat had been wired incorrectly. It was rewired, but then found to be broken and in need of replacement. Matters were finally resolved with a properly working gas supply at some point between 7 and 9 December (Mr Hoskyns and the Council have different views as to the exact date).
15. Mr Hoskyns pursued his complaint about delay in resolving matters through Homes in Havering's complaints procedure. He had complained that the property had been unfit for human habitation when rented to him, as it had no heating or hot water and the gas supply had been left in a dangerous state. He asked for reimbursement of the additional rent he had paid for his privately rented accommodation. Homes in Havering delayed in responding because it wanted details of his gas supplier and confirmation that a proper gas supply and meter were in place. When this information was provided, they responded on 15 June 2007. They said that as they had only become aware of the problems with the gas supply with his 12 November letter, and they had responded by sending an engineer on 29 November, they were not at fault and were therefore unable to offer him compensation. Unhappy with this decision, Mr Hoskyns asked that the matter be looked at by an appeal panel, which is the third and final stage of its complaints procedure.
16. The appeal was heard on 26 September 2007. The panel decided partly to uphold his complaint: it agreed that "Homes in Havering should have resolved the problems surrounding your gas supply in a more timely manner and that there were some delays in replying to your correspondence". As the panel had received evidence that housing benefit had been claimed by Mr Hoskyns for his new flat from the start of the tenancy, it did not accept that he had incurred additional expense. However, "as a gesture of goodwill" the panel agreed to award £100 "for time and trouble and as an apology for any inconvenience or distress you may have experienced".
17. In November 2007 the Council told Mr Hoskyns that he had been overpaid housing benefit of £559 from 9 October to 18 December 2006 because he had

not been living in his new property during this time. The Council was aware he had been attempting to change the start date of his tenancy to the date the gas supply was connected and safe to use and knew of the panel's decision. It therefore told him: "I would advise you at this stage to contact Homes in Havering again regarding your tenancy date as I noticed your appeal commented on you having no financial loss which you now have". In other words, Mr Hoskyns now had lost money because he was liable for rent but had no housing benefit entitlement and should ask Homes in Havering to reconsider its decision. However, in the end he was told the matter had been considered a number of times and lack of heating and hot water was insufficient reason to change the tenancy date.

18. Mr Hoskyns considered that he should not have to repay the housing benefit overpayment, and the £100 compensation was inadequate (and nearly a year later had still not been paid), and complained to me. He also feels that he missed out on the chance of accommodation closer to his family which he says would have been available to him if this property had not been treated as habitable.
19. Following his complaint to me, the £100 was put against rent arrears outstanding on Mr Hoskyns' rent account. It seemed the Council had failed to check the state of the gas supply before Mr Hoskyns moved in and had then delayed in arranging the gas connection for two months. The Council was therefore asked to settle this complaint by paying Mr Hoskyns the equivalent of the two months rent he had paid for the private rented accommodation (£1550), together with the amount of housing benefit he would have received between the start of his tenancy and the date a proper gas supply was provided. A time and trouble payment of £100 was also proposed. The Council did not consider compensation was justified: it said Homes in Havering had no record of any of Mr Hoskyns' letters about the gas supply and so there was no prior notice of the problems.

Conclusion

20. It is a legal requirement for landlords to maintain gas facilities in a safe condition and the Council's policy requires a certificate to be provided to the tenant at handover. One was provided to Mr Hoskyns, but it clearly did not reflect conditions. Although he could not have known this until December, and while works could have been quickly completed, I do not consider the property was in a lettable condition at the start of his tenancy.
21. It is entirely reasonable to expect a property to have heating and hot water from the start of a tenancy. Mr Hoskyns appears to have tried to sort matters out, but he 'was given the run around'. It took two months for Homes in Havering to address the supply problem, address the major leaks and make the system safe to use. I consider this was maladministration by the Council.
22. The Council is concerned because Mr Hoskyns made a housing benefit claim for his new flat when he was not living there. This is true, but his claim was made

when he had just signed a new tenancy in full expectation that he would be moving in. He makes no secret of the fact that he was not living there: he told Homes in Havering on a number of occasions and asked how the cost of additional rent at his previous address could be met. The Council makes a distinction between him telling Homes in Havering and him telling the Revenues and Benefits Services, which was what he should have done. I accept this, but Homes in Havering should have passed on details or told Mr Hoskyns to contact the Service directly himself. It did neither. The Council also claims there had been no prior knowledge of the supply problem, but Mr Hoskyns had written in October and Homes in Havering had received both his November letters and had visited at the end of the month to address the lack of gas supply.

23. It would have been open to the Council to have settled Mr Hoskyns' case at an early stage. It was explained I considered there had been fault and that this had caused the complainant injustice: he was put to additional expense and time and trouble, including rental costs at two properties. The Council declined to settle this complaint. I am satisfied that the Council has acted with maladministration and that Mr Hoskyns has been caused injustice through this fault. Since my proposal was first put to the Council, however, Mr Hoskyns has had further time and trouble in dealing with this investigation. In the light of a draft of this report, the Council now accepts the failings I identified. I recommend that the Council pays Mr Hoskyns £1,550 and pays him a sum equivalent of the housing benefit to which he would otherwise have been entitled, together with £350 to reflect his time and trouble in dealing with this matter. The Council has asked me to assist with training for relevant staff. I am happy to agree to this.

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