

Report

on an investigation into
complaint no 09 003 325 against
London Borough of Newham

9 November 2010

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Report summary

Subject

Miss Thornton lived in temporary accommodation provided by the Council. She complains that the Council gave her misleading information about the amount of local housing allowance (LHA) she would be entitled to when she sought a move from her accommodation. She now has rent arrears which she is unable to pay due to the shortfall in the LHA paid.

Finding

Maladministration causing injustice. The Council admits that it gave the wrong information about the potential LHA due to an officer believing that the accommodation was in a different borough. This caused injustice to the complainant because she was unable to make up the shortfall in the rent.

Recommended remedy

The Council should pay Miss Thornton £899.60 to make up the shortfall between the amount of LHA advised by the Council and the LHA paid, and £250 for Miss Thornton's time and trouble. The Council should also remind officers to check the Valuation Office Agency's website to ensure that it gives the correct advice regarding LHA rates.

Introduction

1. The complainant, Miss Thornton, (not her real name for legal reasons) complains that the London Borough of Newham (the Council) misled her about the amount of local housing allowance she would be eligible to receive when she moved out of temporary accommodation and into a privately-rented flat with the assistance of the Council's bond scheme. This left her with significant rent arrears.

Legal and administrative background

2. Local housing allowance (LHA) was introduced in April 2008 and requires Councils to pay housing benefit for private sector tenants based on rent levels set by the Rent Service. These rates are applied to specific geographical areas or 'broad rental market areas' (BRMA) and they are updated each month by the Rent Service. The LHA rate for housing benefit claimants depends on a number of factors including the number of family members in the household and their ages.

Investigation

3. One of my investigators has inspected the Council's file relating to Miss Thornton's complaint and has interviewed the Council's Landlord and Initiatives Officer, and a Homelessness Case Worker.
4. An opportunity has been given for both the complainant and the Council to comment on a draft of this report.

Background

5. Miss Thornton was living in temporary accommodation with her four-year-old daughter having been accepted as homeless by Newham Council. She was claiming housing benefit – a means-tested benefit to help people on low income meet their rent payments. The flat Miss Thornton lived in was situated in the London Borough of Redbridge, but as Miss Thornton had been placed in this accommodation by Newham Council it was responsible for assessing her housing benefit entitlement and making the payments.

The events that led to the complaint

6. In 2008 Miss Thornton sought a move from her temporary accommodation because she had experienced problems with the heating in the flat. She approached Newham Council for assistance and was told that it could offer her some help through its 'bond scheme'. This scheme provides assistance to homeless applicants who are living in temporary accommodation by guaranteeing their deposit for private accommodation. The Council agrees to reimburse the landlord up to the value of the deposit if the tenant leaves the property having caused damage to it. The prospective landlord must first be accredited by the Council and cannot charge rent in excess of the relevant local housing allowance (LHA) rate.
7. Miss Thornton says she asked the Council several times what rate of LHA would be paid but it could not give precise information until she had identified a specific property. The Council could instead only give information about different areas in general.
8. In August 2008 Miss Thornton found a new flat to rent within the same block that she was already living in. The landlord agreed to rent the flat to Miss Thornton through the Council's bond scheme. He was assessed and accepted by the Council for its accredited landlord scheme.
9. Miss Thornton asked the Council what rate of LHA she would be eligible for on this specific property so that she could then agree the commensurate level of rent with her prospective landlord before entering into a tenancy agreement. The Council's Landlord and Initiatives Officer told her that at current LHA rates, £866.66 per calendar month would be payable. When interviewed the Officer accepted that she did not check the BRMA for this property as she wrongly believed that the property was located in the London Borough of Waltham Forest and not – as was the case – in the London Borough of Redbridge. The Officer emailed Miss Thornton on 30 September 2008 to confirm that the eligible LHA would be £866.66 per calendar month. Miss Thornton's new landlord then completed the Council's property details form for the bond scheme confirming that the rent would be £866 per calendar month. The Council later advised Miss Thornton and her landlord that the LHA rate had increased to £874.99 per calendar month from 1 October 2008.

10. On 8 October 2008 the Council issued a confirmation letter to both Miss Thornton and her landlord informing them of their eligibility for the bond scheme. The letter incorrectly stated that Waltham Forest Council would be responsible for any housing benefit that the tenant – Miss Thornton – was entitled to.
11. Miss Thornton agreed to enter into a 12-month assured shorthold tenancy with her new landlord. Miss Thornton's landlord set the rent at £874.99 per calendar month or £201.92 per week based on the information the Council had given Miss Thornton. Her tenancy started on 10 October 2008.
12. On moving into her new flat with her daughter Miss Thornton immediately made a claim for housing benefit to Redbridge Council as this was the authority that the property was in. Redbridge calculated the local housing allowance rate based on the Outer North East London BRMA for a two-bedroom flat. Miss Thornton was told in December 2008 that she would be entitled to LHA of £184.62 per week. This left her with a shortfall of £17.30 per week. Miss Thornton claimed discretionary housing payments from Redbridge in order to help her meet this shortfall on the basis that she thought she would have been entitled to the full £201.92, but her application was refused.
13. Miss Thornton complained to Newham Council about the shortfall in her rent. In February 2009 the Council admitted it had made a genuine mistake regarding the information that it gave both Miss Thornton and her landlord about the local housing allowance rate for a two-bedroom flat in that area. It acknowledged that it had incorrectly identified that the property she intended to rent was in the London Borough of Waltham Forest when it was in Redbridge. The correct BRMA for the property was Outer **North East** London but the Council had given the BRMA details for Outer East London. As a means of addressing this situation the Council offered to help Miss Thornton in moving to alternative accommodation by assisting her once again with its bond scheme.
14. Miss Thornton rejected the suggestion that she find somewhere else to live as a means of resolving her situation. She said that by doing so she would be breaking the 12-month contract she had agreed with her landlord, and that moving again would cause further upheaval for her and her daughter and inevitably result in incurring further expense. Understandably, she did not want to leave owing rent arrears which the landlord would then be entitled to pursue.

15. Miss Thornton's landlord also complained that the Council had agreed that the LHA rate for the property would be £874.99 per calendar month, and so felt that it should be required to make up the shortfall. He reminded the Council that Miss Thornton had signed a legally binding 12-month contract based on what the Council had told them was a reasonable level of rent for a property of its size in this location.

The complainant's view

16. Miss Thornton says that the Council's error has caused her anxiety and embarrassment due to having incurred rent arrears through no fault of her own. She says that the relationship with her landlord has broken down. She did not become aware of the Council's mistake until five months into her tenancy and now had significant arrears which she was unable to make up from her own income.

The Council's view

17. The Council believed that its offer to support Miss Thornton to move to alternative affordable accommodation through its bond scheme was an appropriate remedy for her complaint. The Council says that Miss Thornton and her landlord would have been aware that the property was in Redbridge and not – as the Council's advice stipulated – in Waltham Forest. It feels that they should therefore have been alerted to the administrative error and that in any event the advice given regarding the potential level of housing benefit that would be payable was for information purposes only.

Conclusion

18. Both Miss Thornton and her landlord sought specific advice from the Council regarding the appropriate LHA rate for this particular property as a means of checking the viability of the potential tenancy. They were given the wrong advice because at least one Officer failed to check the correct LHA rate for a property of its type in its location. This was fault by the Council which caused injustice to the complainant who is contractually obliged to meet her rent obligation, without now having the means to do so.

19. The Council has said that Miss Thornton and her landlord should have recognised that the Council had identified the flat as being in a neighbouring borough and so checked the validity of the information they were given. But in my view, it was the Council's responsibility to give accurate advice, and the fact that neither Miss Thornton nor her prospective landlord identified the error would seem to indicate that they had a reasonable expectation that they could rely upon what they had been told without scouring the document for potential errors. Miss Thornton and her landlord subsequently agreed the rent based on this information in the full knowledge that it did not exceed the LHA rate as it could not do so as part of the terms of the bond scheme. Miss Thornton was therefore confident that her housing benefit application would result in a determination that she was eligible to meet her rent liability for the duration of her tenancy unless her financial situation changed.

Remedy

20. I do not consider that it was reasonable for the Council to expect Miss Thornton to move home when its error came to light. Miss Thornton would still be contractually liable for the rent as a result of the assured shorthold tenancy agreement she had entered into with her landlord. Neither did she want the additional upheaval that a further move would cause her and her daughter, nor the additional expense which is inevitably associated with moving house.

21. For these reasons I consider an appropriate remedy would be for the Council to pay the difference between the LHA rate paid, and the rent that was charged, for the 12-month period of the tenancy agreement. This amounts to £899.60. In addition I think the Council should pay £250 to Miss Thornton for her time and trouble in pursuing this complaint and the anxiety she has undoubtedly been caused. I recommend that the Council reminds all of its officers tasked with giving advice regarding LHA of the potential implications on people's lives of getting the advice wrong and to check the exact location of properties as well as the commensurate rates on the Valuation Office Agency's LHA Direct website regularly as they are subject to change.

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9 November 2010