

Complaint reference:
13 020 658

Complaint against:
Fareham Borough Council

The Ombudsman's final decision

Summary: There was fault by the Council in its administration of Mr X's place on the housing list. The fault gave raised expectations to Mr X and his family. This injustice requires a remedy.

The complaint

1. Mr X is complaining on behalf of his family, about the Council's administration of his family's place on their housing register. Mr X complains the Council:
 - a) Failed to notice its change of policy regarding local connections meant his family was no longer eligible to stay on its housing list;
 - b) Unreasonably applied its policy to his application retrospectively.
2. Mr X says the Council was about to offer his family a property, but realising its mistake, withdrew this at the last minute. Mr X is no longer eligible to be on the Council's housing list. He will not be able to get social housing in the area where other members of his family currently live.

The Ombudsman's role and powers

3. The Ombudsman investigates complaints of injustice caused by maladministration or service failure. I have used the word fault to refer to these. 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)*)
4. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

How I considered this complaint

5. As part of the investigation, I have:
 - considered the complaint and the documents provided by Mr X, including copies of Council letters;
 - read the relevant Council policy documents;
 - discussed the issues with Mr and Mrs X;
 - issued a provisional view, invited replies from Mr X and the Council, and considered responses received.

What I found

Background summary

6. The Council administers a housing list for people in the area of town A. The Council's previous policy on determining local connections of applicants required them to:
 - have lived in the borough for at least 18 months prior to applying to join the housing list; or
 - have lived in the borough for at least three years out of the previous five years.
7. Mr X and his family moved to town A in October 2008. They applied to join the Council's housing list in July 2010. The family had been renting privately in the area for 21 months so they qualified under the Council's policy, in force at that time, as having a local connection.
8. Mr X's family suffered anti-social behaviour from their neighbour. They decided to move in February 2011. The advice from the police and Council's officers was for them to move some distance away from their town A home. The family moved out of the Council's area, to nearby town B. Mr X says they could not afford to stay in town A at the time.
9. In June 2012, national government published new guidance to local authorities on how they should determine applicants' local connections. The Council asked Mr X to make a fresh application if he wanted his family to stay on the housing list, because the policy was about to change. Mr X sent a fresh application in March 2013. The Council implemented its new local connections policy with effect from 6 May 2013.
10. The new local connections criteria were more stringent, in line with the national government guidance. Under the new policy:
11. *"An applicant shall only be assessed as having a local connection if:*
 - *They live in the Borough in settled housing arrangements and have done so continuously for at least 18 months immediately prior to applying to join the Housing Waiting List or*
 - *They have lived in the Borough in settled housing arrangements for at least 3 consecutive years out of the last 5."*
12. The Council accepts that when it received and considered Mr X's March 2013 application, it did not properly apply the new policy on local connections. Under the new policy, Mr X's family was no longer eligible to be on the housing list. Mr X's application remained live after the new policy came in on 6 May 2013.
13. In November 2013, the Council was about to offer Mr X a property from its list. But on reassessing his application, officers discovered he was not eligible to be on the list. Mr X did not live in the borough, and in the five years prior to the offer being made, he had only lived there for two years and four months. He had lived in town B for two years and eight months.
14. The Council removed Mr X from the housing list. Mr X complained to the Council but remained dissatisfied with its replies so complained to the Ombudsman.

Assessment

Processing fault

15. The Council acknowledges it was fault for them to keep Mr X on the housing list after its policy on local connections changed in May 2013. I agree the Council misapplied its policy to Mr X's application. Mr X should have been removed from the list when the policy changed. This was fault.
16. I have gone on to consider what injustice this caused Mr X and his family. The allocation process was nearing its end when the Council spotted its fault and withdrew the opportunity of the new property. I find the Council's fault raised the family's expectations of getting a house back in the area they wanted to live. This is an injustice requiring remedy.
17. I have also considered other implications of Mr X staying on the housing list between May and November 2013.
18. While Mr X was on the housing list erroneously for those months, this may have dissuaded him from looking at other housing options. However, being on the social housing list did not prevent Mr X investigating those other options. So I do not consider this caused Mr X and his family any further significant injustice.
19. I consider Mr X did not gain any advantage from staying on the housing list for those months. On any date between May and November 2013, it is more likely than not that the Council would have noticed its error and withheld any property offered to him, much as it did in November.

Retrospective application of policy

20. I do not find it was fault for the Council, when it realised its error, to apply to Mr X's application the May 2013 policy. This was not the Council retrospectively applying a policy in an unfair way. It was the Council fixing its mistake several months later. It was required to do this to be fair to all others on its housing list who had already had the same policy properly applied to their applications.

Agreed action

21. In my provisional view I recommended the Council pay Mr X £100 for the fault causing injustice identified at paragraphs 15 and 16 above. The Council has agreed to my recommendation.

Final decision

22. I have found fault by the Council causing injustice to Mr X and his family. On the basis of the Council's agreement with my recommended remedy, I consider the complaint resolved and have completed my investigation.

Investigator's decision on behalf of the Ombudsman