

12 November 2021

Complaint reference:
20 011 841

Complaint against:
Birmingham City Council

The Ombudsman's final decision

Summary: Mr X complained the Council did not provide him with information about how it calculated the service charge for his business premises. The Council accepted fault for its failure to communicate with Mr X. It has now provided the requested information. The Council agreed to provide Mr X a remedy for the impact of its failings.

The complaint

1. Mr X complained the Council did not provide him with information about how it calculated the service charge for his business premises.
2. Mr X said the Council failed to acknowledge his request and he had to complain to get a reply. Mr X said this caused him distress and time and trouble.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(j), as amended*)
5. This complaint involves events that occurred during the COVID-19 pandemic. The Government introduced a range of new and frequently updated rules and guidance during this time. We can consider whether the Council followed the relevant legislation, guidance and our published "Good Administrative Practice during the response to COVID-19".

How I considered this complaint

6. As part of the investigation, I have considered the following:
 - The complaint and the documents provided by the complainant.
 - Documents provided by the Council.
 - The Landlord and Tenant Act 1985.
 - The Ombudsman's advice on good administrative practice during the response to Covid 19 (May 2020).
7. Mr X and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

Legislation

8. Section 22 of the Landlord and Tenant Act 1995 gives leaseholders the right to inspect documents relating to their service charge. They can ask their landlord for access to inspect the accounts, receipts, and relevant documents. A request should be made within six months of receiving a summary of the service charge.
9. Landlords must provide facilities for inspecting the documents within one month of the request. Failure to do so is an offence which can result in a fine. However, local authorities are exempt from prosecution.

Ombudsman guidance

10. The Ombudsman recognised the pressures the COVID-19 pandemic placed on councils and how this affected their resources.
11. We therefore published updated guidance on the principles of good administrative practice during COVID-19. This includes:
 - The importance of record keeping for key decisions and changing from normal practice.
 - Ensuring frontline staff understand new and adapted policies.
 - Explaining the reasons for delays and changes from normal processes.

What happened

12. I have summarised below some of the key events leading to Mr X's complaint. This is not intended to be a detailed account of what took place.
13. Mr X rents a business unit from the Council for which he also pays an annual service charge. The site contains several business units of varying sizes.
14. Mr X wrote to the Council in March 2020 to ask how it apportioned the service charge between the different business units at the site. He asked the Council if he could inspect the invoices it used to calculate the service charge.
15. Mr X emailed the Council on 28 October 2020. He said he wrote to the Council in March asking for clarification about the service charge for his business premises but had still not received the requested information.
16. Mr X emailed his local councillor on 7 December. He said he had not received a response from the Council following his letter in March and his email in October. He said he now wanted to make a complaint.
17. Mr X put in a formal complaint on 11 December.

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18. The Council sent its first complaint response on 6 January 2021. It said there was currently no way to let Mr X inspect the records due to the COVID-19 national lockdown, and the Council's offices had been closed for 10 months. It said its finance team was looking into how much information was available in electronic form. It asked Mr X to confirm what specific information he wanted to see.
 19. Mr X asked why no one from the Council had responded to his earlier requests and said the Council ignored him. He said he wanted to inspect the receipts and invoices for the last six years of service charges. He also wanted the Council to confirm how the charges are split between the business units at the site.
 20. The Council sent its final complaint response on 2 February. It said:
 - Its first complaint response correctly told Mr X it could not allow access to records held in its offices due to the COVID-19 pandemic, and its finance team was searching to find what electronic records the Council held.
 - The service charge statements were only signed off on 25 February 2020. The Council then closed its offices on 19 March due to the pandemic.
 - It apologised for not acknowledging or responding to Mr X's initial requests. It confirmed it did receive them. It said this fell below the expected level of service and it would look at amending its processes. It also apologised for not telling Mr X sooner that he could not inspect the records in person due to COVID-19.
 - Officers did look into Mr X's request and consider how the Council could respond given the COVID-19 pandemic. The Council recognised officers should have confirmed this to Mr X.
 - Service charges are apportioned based on the square footage of each individual unit.
 - It had instructed its finance team to find as much meaningful electronic data as possible and send this to Mr X.
 21. Mr X brought his complaint to the Ombudsman on 8 February 2021. He said he is legally entitled to see the information about the service charge and is still waiting eleven months later. He wanted the Council to provide this electronically.
 22. Mr X emailed his local councillor on 5 March 2021. He gave them a copy of the Council's complaint response. He said he did not ask to see 'meaningful data'. He was concerned the Council may not send all of the documents. He wanted to see the actual receipts and invoices the Council used to calculate the service charge.
 23. Mr X emailed his local councillor again on 14 March 2021. He said it was six weeks since the Council's complaint response and it had still not sent the information he asked for.
 24. The Council emailed Mr X on 15 March 2021. It said it sent the relevant documents to him on 2 March, and it would check with its IT department why this had not worked. The Council also said it would send separate emails to Mr X with the information.

Response to my enquiries

25. The Council told me it normally invites a tenant in Mr X's position into the office to view the data. However, because of the COVID-19 national lockdown this was not possible. Council offices were closed, and staff were working from home.

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26. The Council acknowledged it failed to respond to Mr X's initial request or keep him updated. It had presumed Mr X wanted to physically examine the receipts and did not realise he was satisfied receiving them electronically.
 27. However, it said extracting and redacting data for disclosure is time consuming and therefore not something it normally offers. The Council also said it had redirected staff to deal with the pandemic, affecting normal business activities.
 28. The Council said it sent all the data it has to Mr X in three separate emails after he got in touch again in March 2021.
 29. The Council accepts it did not manage Mr X's request in a timely manner and he only received a response after making a formal complaint.
 30. Following Mr X's complaint, the Council has adapted the way work is received and processed. It now uses encryption software for sharing sensitive documents and staff are expected to record and acknowledge data requests.
 31. The Council has also rolled out a new corporate complaints process which means complaints are escalated quickly to ensure a resolution. The Council also carries out root cause analysis of complaints to identify service improvements.

Analysis

32. The Council had a duty to let Mr X inspect the documents relating to the service charge within one month. The Council was at fault for failing to do so.
33. Following Mr X's complaint, the Council did provide him with its computerised records. However, Mr X told me he was not able to access everything the Council sent to him.
34. The Council gave me copies of all the data it sent electronically to Mr X after his complaint. Because of the COVID-19 pandemic, I cannot say whether this is all the information held in the Council's offices. However, what I can say is the Council has provided substantial records and financial reports for the relevant period.
35. The Council accepted the service it provided to Mr X fell short of acceptable standards. However, it also said the COVID-19 pandemic was a contributing factor.
36. The Ombudsman issued guidance to councils about principles of good administrative practice during the pandemic. I consider the Council fell short of those principles here.
37. I found the officer Mr X contacted was unsure how to respond to his request. They tried to find out what they should do and what the Council's responsibilities were. However, they did not acknowledge Mr X's request or tell him what the issue was.
38. The Council should have told Mr X he could not visit a Council office during the pandemic. Mr X may then have asked for data to be sent by email, or the Council could have offered this as an alternative.
39. I found the Council did not properly consider how it would respond to service requests in this area while staff were working from home.
40. The Council rightly admitted its failings when Mr X complained, and I am satisfied it took suitable steps to improve its service and prevent a recurrence.

Injustice

41. The Council's failure to communicate with Mr X caused him considerable avoidable frustration. He was also put to added and unnecessary time and trouble because he had to involve his local councillor and then make a formal complaint just to get a reply from the Council.
42. That is very poor practice. The Council agreed to provide Mr X a remedy for the distress its faults caused.

Recommended action

43. Within four weeks of my final decision, the Council agreed to pay Mr X the sum of £300 to acknowledge the distress its faults caused. That is made up of:
 - £150 for avoidable frustration.
 - £150 for added time and trouble.

Final decision

44. I have completed my investigation. The Council accepted fault for its failure to communicate with Mr X. It has now provided the requested information. The Council agreed to provide Mr X a remedy for the impact of its failings.

Investigator's decision on behalf of the Ombudsman