

21 June 2018

Complaint reference:

17 008 811

Complaint against:

Shropshire County Council

The Ombudsman's final decision

Summary: Mr B says the Council failed to follow Government guidance when charging for waste collection from privately owned student accommodation. There is no evidence the Council properly considered Government guidance when introducing the charge. That means Mr B's organisation has been charged an amount it should not have been. An agreement to cancel use of the policy and a refund of payments made is satisfactory remedy for the injustice caused.

The complaint

1. The complainant, whom I shall refer to as Mr B, complained on behalf of an organisation that owns student accommodation. Mr B complained the Council began charging for waste collection from its student accommodation when the Government has said student accommodation is residential accommodation and should not be charged.

The Ombudsman's role and powers

2. 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*)
3. 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(i), as amended*)

How I considered this complaint

4. As part of the investigation, I have:
 - considered the complaint and Mr B's comments;
 - made enquiries of the Council and considered the comments and documents the Council provided; and
 - gave Mr B and the Council an opportunity to comment on my draft decision.

What I found

Background

5. In 2012 the Government introduced the Controlled Waste (England and Wales) Regulations. Those regulations gave local authorities power to charge for collection and disposal of waste from a wider range of nondomestic premises than before.
6. In 2013 DEFRA wrote to local authorities about the practice of charging for domestic waste collection from private student accommodation.
7. In 2015 the Council granted planning permission for demolition of existing buildings and erection of student housing units. The Council imposed a condition on the permission which restricted use of the accommodation to student accommodation only. The condition said outside term time the accommodation shall be used as student accommodation or as temporary accommodation for conferences or exhibitions or other similar events.
8. Since 10 September 2016 each student in the accommodation has to register for an exemption from council tax.
9. Mr B works for a company that owns and manages the student accommodation blocks. Mr B complains the Council is charging the company for waste collection from the student accommodation blocks. Mr B says the Council should not do that because the Government has issued guidance which says privately owned student accommodation should not be charged for collection and/or disposal of waste.
10. The Council says the accommodation is commercial and therefore the waste is commercial which means it can charge. The Council has continued to charge Mr B's company. Mr B says his company has paid waste collection charges of more than £40,000 so far.

Relevant legislation and guidance

11. Section 45 of the Environmental Protection Act 1990 covers the duties of waste collection authorities. That section says no charge shall be made for collecting household waste except in cases prescribed in regulations made by the Secretary of State. In those cases waste collection authorities can recover a reasonable charge for collecting waste from the person who made the request.
12. Section 75 of the Environmental Protection Act 1990 defines household waste as waste from a domestic property which is a building or self-contained part of a building used solely for living accommodation.
13. In 2012 the Government introduced the Controlled Waste (England and Wales) Regulations (2012 regulations). Schedule 1 of the 2012 regulations provides a classification of what constitutes household or commercial waste. One of the items identified as commercial waste is 'domestic property used in the course of a business for the provision of self-catering accommodation.'
14. DEFRA wrote to Councils in July 2013 when it came to the Government's attention some local authorities were ending free domestic waste collections for privately owned student accommodation. The letter referred to the fact local authorities were seeking to charge under the 2012 regulations on the basis private rented student accommodation came under the definition of self catering accommodation. DEFRA's advice said:

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- 'it has never been the Government's intention to include waste from students, or any privately rented domestic property, in this description of self catering accommodation. Neither is it coalition Government policy to target the private rental sector for new waste charges.... We gave local authority's powers through the 2012 regulations to charge for the collection and disposal of waste from a wider range of nondomestic premises than before, so that local authorities and their residents are no longer obliged to subsidise the waste management costs of local businesses in all cases. Using the regulations to charge for the collection and disposal of waste from privately owned student accommodation blocks would be to go against our intentions. Our intention was to permit charging in cases of the provision of accommodation for individuals whose sole or main residence is elsewhere. We did not intend this to apply to students living in such accommodation blocks who are, by definition, residing at the student address to undertake their studies.
 - The Valuation Office Agency has determined that the student accommodation can be a residential dwelling, and is entered onto the council tax valuation list accordingly. Whilst students may not pay council tax, this is explicitly because the long-standing student disregard under the Local Government Finance Act waives their tax liability. By contrast, hotels, hostels and professional holiday lets are classified by the Valuation Office Agency as business hereditaments.
 - We are writing to provide clear advice that such charges should not be made. If charges relating to such student accommodation continue to be made, we are prepared to amend secondary legislation to ensure that this practice is stopped. Local authorities who charge may also be liable to legal challenge, investigation by the Local Government Ombudsman and/or a formal complaint to the local auditor for ultra vires charging.

Analysis

15. The Council says as a profit-making organisation Mr B's organisation should not receive subsidised waste collection where local council taxpayers bear the cost. The Council says although the Valuation Office has listed the student accommodation as residential sections 45 and 75 of the Environmental Protection Act 1990 and the 2012 regulations allow it to charge. That is based on the Council's view that waste from privately owned halls of residence is commercial.
16. I refer to the relevant legislation in paragraphs 11,12 and 13 of this draft decision statement. The issue is whether privately owned student accommodation can be classed as self catering accommodation and therefore its waste treated as commercial waste. It is not for the Ombudsman to decide whether it is lawful for the Council to charge Mr B's company for waste collection. That is a matter that only the courts can decide. The Ombudsman's role is to consider whether there is administrative fault in the Council's decision to introduce charging.
17. The Council has not provided any documentation to show how it decided to introduce charging for waste collection from privately owned student accommodation. All the Council has provided is a copy of the legal advice it took. That legal advice refers to the letter from DEFRA, which I refer to in paragraph 14. The Ombudsman would expect a Council to follow Government guidance, particularly when it is so clear. If the Council decided not to follow Government guidance though we would expect to see proper consideration of the case and a detailed explanation of why it did not consider it necessary to follow that guidance. That is important here given the Government that issued the advice about charging is the same Government that introduced the 2012 regulations. It

could therefore reasonably have understood the intention of the legislation. Given the clear advice that local authorities should not be charging for waste collection from student accommodation under the 2012 regulations and it was never the Government's intent to allow them to do so, I would have thought that gave little leeway to councils to charge under those regulations. I would have expected the Council to consider that point carefully. I have seen no evidence it did so when it decided to charge. Failure to follow Government guidance or to properly consider it is fault.

Agreed action

18. Within one month of my decision the Council should:
 - cancel use of the charging policy; and
 - repay any charges Mr B's organisation has paid, as well as any charges made by other providers of student accommodation.
19. If the Council intends to consider reintroducing the scheme it should ensure Members make that decision after considering the details of the case, the Council's legal advice, Government guidance and the content of this statement.

Final decision

20. I have completed my investigation and found fault by the Council which caused an injustice to Mr B. I am satisfied the action the Council will take is sufficient to remedy Mr B's injustice.

Investigator's decision on behalf of the Ombudsman