THIS REPORT HAS BEEN REDACTED TO PROTECT THE ANONYMITY OF THE COMPLAINANT

APPENDIX

This is the report on the findings of my investigation pursuant to s21 of the Public Services Ombudsman (Wales) Act 2005, the Act governing the Ombudsman's jurisdiction.

Your complaint

A summary of your complaint was set out in my letter of 10 June 2009, which you have not disputed as being inaccurate.

You complained that your mother (MRS J. [redacted]) had been charged rent for her former Council tenancy, at [redacted], before she was able to take up occupation of it and that the Council was seeking what it viewed as "rent arrears" from her for the relevant period (a sum you claimed was almost £400). (property X)

You maintained that your mother could not move into the property sooner than she did owing to necessary works being carried out (at an OT's recommendation) before it was suitable to meet her needs. You do not believe that your mother should be charged rent for that period. Your mother had otherwise been entitled to Housing Benefit from the Council to help pay her rent. Being told she was in arrears, and receiving letters of demand which you claim were "threatening" has been distressing when your mother, you say, was already under emotional stress.

The Ombudsman's role

This has been explained to you in detail previously. I would refer you again to the points set out in my letter of 10 June 2009. To summarise, the Ombudsman is impartial of both a complainant and a council and he is not an advocate for either party. Disagreement with a decision taken is not of itself conclusive that a council has acted improperly.

The Ombudsman cannot determine legal issues or substitute his own decision if there is clear evidence that the Council has administered the charging of rent and a claim for housing benefit entitlement in accordance with the law. It is not either a matter for the Ombudsman to decide how much benefit a claimant may or ought to have been entitled to (unless there is clear

evidence of an obvious error within documentation), particularly where a right of appeal might exist.

My investigation

In addition to the documents you supplied in support of your complaint (including some of the letters/ e-mails passing between the Council and you), I have received formal comments from the Council. I also sought further information in relation to specific questions I asked of the Council. Whilst I asked you for any further information or comments you might have (by letters of 10 June & 17 July 2009), none were received. I sought an additional document from the Gwent Healthcare Trust (Occupational Therapy service).

A further issue came to my attention during the investigation which might mean that the Council will seek further payment from you; by way of recovery of what it claims is an overpayment of HB to your mother. (I informed you about this in my letter of 17 July 2009.) I do not propose to comment on this given it not a part of your complaint to this office for the purposes of this investigation. Also, were I to deal with it I would, in the absence of the Council resolving for certain to seek recovery, which it has not yet done to my knowledge, be contributing to its decision. That is not a matter for me to do. In any event, any decision it makes it is obliged to notify you about. Any claimant who thinks a notification is wrong for any reason has a right to ask for it to be reviewed / appealed.

I include below, for clarity, some information concerning the ending of tenancies and overpayments of HB which is partly relevant to Mrs [redacted] J's original tenancy.

Whilst I will not refer to every document examined within this report, I have considered all the information provided, as well as the law governing Housing Benefit and a tenant's rent liability, in my investigation of your complaint.

You did provide me with photographs and comments when I gave you a further opportunity to comment on a draft version of this report. I received these on 6 September 2009. The Council was also given an opportunity for comment. I have fully taken into account all the comments received.

The law relating to Housing Benefit[1] and tenancies

Where a person rents a home (a tenant) from another individual or body (a landlord, such as the Council) they will often sign a document (a tenancy agreement) which sets out certain conditions governing the letting, including the agreed weekly / monthly rent payable. Unless otherwise agreed, generally rent becomes payable from the date stipulated in the tenancy. In most cases Council tenancies operate weekly and always begin on a Monday so that the rent week runs from a Monday ending on Sundays. It is also the working week for Housing Benefit claims.

Housing benefit ("HB") is payable by councils to help those on the lowest incomes to meet their rent. For council tenancies it is also often called a "rent rebate". HB is worked out to a formula set down by government based upon the amount of money a claimant receives per week for his / her family unit (linked to the rates set for different state benefits / pensions). Being in receipt of a state benefit / pension does not automatically mean that someone is entitled to full HB as some benefits are treated differently in the calculation of HB. In addition, the rent charged may include the provision of certain services by a landlord which are not eligible, under the rules, for payment of HB e.g. emergency alarm or support services. Although support services are not eligible for HB they can be met from another funding source ("the Supporting People" fund)[2] for those tenants on a low income who are entitled to HB. Water charges / rates either included within the rent or, as in some authorities, collected on behalf of the water providing company and treated as rent, are also not met by HB. The Council is such an authority which collects water rates payment as part of rent on behalf of the water providing company.

Otherwise, in most instances, rent charged by a council is eligible for full HB / rent rebate. Where there is no full HB entitlement to meet the rent charged, a tenant is personally responsible for making up the difference.

The rules only generally permit HB to be claimed when an individual is in actual occupation of a property as a main home. In limited circumstances it can be paid when absent from it, e.g. where the claimant is in hospital, HB can be claimed for up to 52 weeks. The rules also permit HB to be paid on two homes in prescribed circumstances, for a maximum of 4 weeks, where

---

[1] The main rules governing HB are contained in The Housing Benefit Regulations 2006 (as amended by a number of Statutory Instruments subsequently introduced).

[2] A funding source in being from April 2003

the payment of rent on two properties is unavoidable, e.g. to cover the notice period to end a tenancy (usually 4 weeks) where there is a crossover with needing to sign the tenancy agreement for a new home.

The rules also permit, in limited circumstances, the payment of HB on a property to be occupied as a new home before the tenant physically moves in. In such an instance it can be paid if the delay in moving is reasonable and caused by a wait for the property to be adapted to meet the needs of a tenant's disability (or that of a family member). To qualify, the adaptation must be more than mere decoration and, in any event, HB can only be paid for a maximum of 4 weeks. In a decision issued by the Commissioner,[3] who deals with HB appeals at a higher level, he concluded that the words "adapt" meant alterations to the fabric or structure of the building in order to meet a disablement need (including such matters as the provision of fixed handrails, raised lavatories or widened doors) but did not include redecorating and carpeting the dwelling. In other words, the changes must be necessary to deal with the disability and not merely be for the purpose of making the property more pleasant to live in. The Commissioner had also in an earlier decision[4] clarified the position regarding decoration (which I feel it is relevant to quote) stating as follows:

> "The works of cleaning and decoration...do not qualify since they, and indeed also the works carried out before, were not carried out to meet the disablement needs of the claimant, but necessary for any occupant, regardless of the claimant's disabilities. They are not adaptations to meet the requirements caused by his disabilities."

Finally, where a tenant continues to be paid HB when they are no longer entitled to it the Council can recover the HB paid as an overpayment

A tenant may, in law, bring a tenancy to an end either by serving upon the landlord a notice to quit (unless there are specific additional requirements within the tenancy agreement itself), or by surrender of it. A notice to quit must be in writing and give at least one rent period of notice to take effect and be for not less than four weeks duration[5]. Where a council is the landlord the

---

[3] Decision CSH/1363/2006 and CSH 149/2006 [reported as R(H) 4/07] – Commissioner May

[4] CH / 3857/ 2004

[5] s5(1A) Protection from Eviction Act 1977 (as amended)

tenancy is, in most cases, a secure tenancy and the law governing such a tenancy[6] contains no specific requirement over and above this so far as giving notice is concerned. Thus four weeks is also required.

Surrender of a tenancy takes place where action is taken by the tenant clearly intending to bring the tenancy to an end where there is an unequivocal acceptance of this by both the landlord and the tenant. This could, for example, be by the handing over of the keys to the tenanted property to the landlord.

Decision

My decision is that I am partly upholding your complaint in relation to a certain period, but not for the entire period you dispute on behalf of your mother. I will explain below the reasons why I have taken this decision.

Relevant evidence considered and reasons for my decision

Key events and documents

Your mother, Mrs [redacted] was a Council tenant at [redacted], Caerphilly, where she had previously lived with her late husband who passed away in February 2008. Shortly thereafter she was admitted to hospital for surgery to her leg. Whilst still an inpatient an assessment concluded that Mrs [redacted] would not be able to return to live at [redacted] as she required ground floor accommodation (which [redacted] did not provide).
On 1 May 2008, a formal transfer request was submitted to the Council.

On 12 June 2008, the Council's panel met to consider the application and supporting evidence in accordance with its policy. As a result, Mrs [redacted]'s application was awarded sufficient points to make her eligible for an immediate transfer.

On 28 July 2008, a possible suitable property ([redacted]) was identified as becoming vacant. An inspection of it took place on 14 August 2008, by an Occupational Therapist ("OT"), to assess its suitability. Mrs [redacted]'s and you also visited to view the property the same day and were content,

[6] ss 82&83 Housing Act 1985 (as amended)

subject to adaptation, that it would be suitable, accepting an offer of it, on those terms, on 20 August 2008.

The Council provided a list of the OT recommended works to a contractor on 19 September 2008. The Council letting section was notified that those requested works were completed by 3 October 2008.

On 6 October 2008, (a Monday) a housing officer visited your mother at Ystrad Mynach Hospital and the tenancy agreement for [redacted] (property x) was completed and signed. A notification of change of address form for HB (bearing the date 6 October 2008) was issued to Mrs [redacted] J

On 19 October 2008, the HB change of address form (referred to above) was completed for return to the Council. The date stamped on the form acknowledges the Council's receipt of it, within the HB section, on 22 October 2008. The relevant information recorded on the form read as follows:

> "1. **What date did you move into your new address?** – [the date boxes are blank]
>
> 2. **Is your household make-up the same at the new address as it was at the old address?** [the YES/ NO boxes are blank but the comment box is completed as below]
> No- my husband has passed away. Now moving into property (level access 1 bed). Unable to move in until work has been completed including level access shower. I am still paying rent on [redacted] (property y) [redacted] I am currently in Hospital –Aberbargoed-delayed discharge.
>
> 3. **Are your income and savings details the same at the new address as they were at the old address?** –[the YES option is ticked]
>
> 4. **Where appropriate have you told the DWP or The Pension Service that you have moved?** – [The NO option is ticked and further comment added:
> Will do this when I have a discharge date from Hospital."

Re-plastering works identified by a decorator were completed on 23 October 2008. The decorator had been engaged by the Council to assist Mrs [redacted] J (as an exceptional case, it said, to the norm, where no practical help is given).

On (or around) 27 October 2008 the recommended works relating to the Tunstall alarm equipment was completed.

3 November 2008, the Council maintains that this is the week when rent became payable by Mrs [redacted] (and could not be met via HB as she had not moved in- see its comments below).

On 5 November 2008, the relocation of a door intercom handset to the living room was completed.

On 7 November 2008, a pre-discharge visit of [redacted] was conducted by an OT from Ystrad Mynach Hospital. A request was made to the Council for attention to a number of matters including provision of a low working surface in the kitchen. The file note from the visiting OT (which I have obtained from the Hospital) recorded as follows:

> "Summary and Recommendation:
> Mrs [redacted] will need a lower working service [sic] in the kitchen, her bedroom and bathroom doors made to fit, the pull cord alarm cords made longer and a key safe for her internal front door (referral to minor works). She will also need a reablement service in order for her to reach optimum functional level in her own environment (Referral to be made to reablement)..."

On 12 November 2008, the Council's OT Team Manager approved a recommendation form for the works. The form is a standard form used by the Council and is headed "Social Services Recommendation for Minor Works of Adaptation". It has been manually marked with the word "Urgent" and relevant boxes ticked to denote the work as both "Priority" and as being "Required to Facilitate Hospital Discharge". The form provides for a narrative to be completed of the works required. This is preceded by a standard phrase (left intact in this case as denoted in bold below). The relevant part of the form (as then completed) reads as follows:

> **"The following recommendations for works of adaptation are necessary and appropriate to meet the needs of the client:**
> Please [...] make a lower part of a kitchen unit so that patient can reach from her wheelchair to make a cup of tea or sandwich..."

On 13 November 2008, the above work was completed. On the same date (a Thursday) the keys to the property [redacted] were handed back to the Council (the tenancy was ended on 16 November 2008, a Sunday).

On 19 November 2008, (a Wednesday) Mrs [redacted] moved in to [redacted].

On 26 November 2008, the Council HB section notified Mrs [redacted] that her HB claim for [redacted] had been assessed and that she was entitled to a rent rebate award of £56.45 per week payable from 24 November 2008 (a Monday).

What the Council says in response to your complaint

The Council provided comments on the complaint in addition to providing documents. It maintained that in light of the delay in fitting the Tunstall alarm (recommended by the first OT assessment visit of 14 August 2008) that it had made a "concession" in respect of rent liability and felt that the property was ready for occupation by Mrs [redacted] and fully adapted to meet her needs as from 3 November 2008. On that basis the Council maintained full rent liability was owed from then for the following three weeks until the HB claim was determined as payable from 24 November 2008 (see above).

It maintains the sum owed by Mrs [redacted] to be £216.59 (weeks 3, 10, 17 November 2008). In addition the natural shortfall (see above) in respect of water charges (£8.29) was due from the tenancy start date (6 October) totalling, it said, £74.61. The full total the Council now claimed was due from Mrs [redacted] was £274.83. It acknowledged some payments received on behalf of Mrs [redacted], in the sum of £58.24, thus making the balance due, in its view, of £216.59.

Further comments on the provisional report

Your comments

You maintained that you disputed owing the Council any money. You presented photographs taken at the property which you say showed that it was "not fit" for your mother to move into. However, I have no means of knowing from the photographs when they were actually taken and, in the main they depict some debris left presumably by workmen.

The Council's comments

The Council maintained its belief that the work to the kitchen was "minor work" (in light of the form dated 12 November 2008 –see above) and so that the property was fit for Mrs [redacted] to move into and so rent payable. It maintained that provision of a small table could have achieved the same purpose as the work and was the view of the OT. [It has not provided any evidence to this effect]. It further clarified that the Council had agreed to a concession which it was in any event prepared to abide by. This, given the term "rent" included water rates for the Council's purposes (see above) meant that it was not seeking the water rates either for that period. It accordingly said it accepted the sum to be £91.61 for the disputed period (i.e. before Mrs [redacted] took up occupation).

In addition, the Council maintained there was an element of water rates also outstanding for the tenancy period after Mrs [redacted] had moved in. It said the account showed a sum totalling £99.69 unpaid.

Findings and reasons

The evidence provided to me confirms that Mrs [redacted] was a tenant at [redacted] when she entered hospital. Being absent from her home, by reason of being in hospital, meant that Mrs [redacted] was entitled to have her rent liability for [redacted] met by HB (see above). The Council paid HB and formally ended the tenancy on Sunday 16 November 2008 (being the end of the tenancy week as set out above) some three days after the keys were handed in. This was (again set out above) an act of surrender and brought the letting to an end on 16 November without the need for a formal notice to quit (that would otherwise have required a period of four weeks notice- again see above).

The evidence provided to me confirms that the full weekly rent for [redacted] was £66.74. This sum was made up of £8.29 water charges, £2.00 support charges and £56.45 rent. As set out above, the law governing HB deems only £56.45 as eligible rent for HB. Therefore, Mrs [redacted] was personally responsible for the difference (£10.29 pwk- albeit the support charges of £2.00 would be eligible for payment from another funding regime – see above). On the basis of her income, she was otherwise subject to no HB deduction.

The tenancy agreement for [redacted] was signed on 6 October 2008 and, from what I have seen, effective for rent liability purposes from that date.

despite the fact that Mrs [redacted] had not yet taken up occupation of it as her home.

I am not persuaded by the argument advanced by the Council, notably in its further comments, that it was the OT's view that a table could have done the same job as the work to the unit. So, the Council claimed, the work was not a requirement to meet disability. That a table would have been sufficient may, in fact, be true, it is not for me to say. Crucially, however, I have seen no evidence to show that the OT asserted this or that a discussion to that effect, as claimed by the Council, took place. Even if it did, the fact remains that the OT recommended the work (as set out in the form above) as "adaptations" to meet Mrs [redacted] disability. There would have been no need to do so if it was felt the property was suitable for her needs as it was. The very words which, in my view, makes the work fall within the meaning of "adaptation" (that I have bolded in the extract above) could have been erased / struck out if the form was simply used as a convenient means internally of recording the instruction. That sentence was not deleted. That may be an administrative failing but, as it stands, and in the absence of anything to record the OT's view that a table would have sufficed, I accept the document as worded.

I am told by the Council that this work recommended by the OT was actually completed on 13 November 2008. I have, incidentally, no evidence the property was inspected by an OT then either. However, as Mrs [redacted] then did move in I accept that all recommended works were fully completed and that it was suitable for her from then.

Even though Mrs [redacted] did not physically move in until 19 November, the liability period for that tenancy week began on Monday 17 November 2008. Her HB claim has since been assessed and paid as from 24 November 2008 (see above) being, presumably, the time by which the relevant department had received the necessary fully completed HB claim form and information after Mrs [redacted] moved in. (I note that the initial form referred to above had not been fully completed as to a move in date and so could not count as a completed claim in itself).The Council has made what it calls a "concession" for rent liability for the period up to the week commencing 3 November 2008 in part, it says, because of the contractor's findings and the delay in completion of the Tunstall alarm fitting (see above). Had it not done so, I would in any event have been of the view that Mrs [redacted] rent should have at that time have been met by HB for the reasons outlined above.

Based on what I have set out above it is my finding that rent became payable by Mrs [redacted] the week commencing 17 November 2008 (even though she

moved in later on 19 November) as from that date she could no longer avail herself of the rule permitting HB payment before taking up occupation. Given the HB claim following taking up occupation came into payment from the following week, I find that this week (17 -24 November 2008) is the extent of her personal liability for the full rent (a total of £66.74).

Thereafter, her personal liability from 24 November 2008, whilst she remained the tenant, reduced to the sum of £10.29 per week (see above – in actual fact she personally would pay the water rates element only - of £8.29 - for the reasons I have explained above)[7]. In addition, Mrs [redacted] remained personally, contractually, liable before 17 November 2008 for her water rates contribution over and above the HB payable (as explained above), given HB could never have met such sums. This is confirmed by the Council's figures, as applied to my finding above, to be 6 weeks@ £8.29 = £49.74 (from 6 October 2008, the tenancy start date). It is limited to water rates as this was already supplied to the property whereas the support provision, had it been payable directly by Mrs [redacted], was chargeable until the receiving tenant could physically move in, and so would only have become payable from the week commencing 17 November 2008. [Being not entitled to HB for that week under the regulations Mrs [redacted] would not be able to avail herself of the fund for meeting the support costs.]

This would have made a total sum of £116.48 [£66.74 +£49.74] outstanding. Against this must be credited the sum acknowledged by the Council as already having been paid for the period (of £58.24). However, given the Council's confirmation it was prepared to stand by the concession it had made earlier, irrespective of the final outcome of this investigation, a further adjustment is required as this represents 3 weeks of water rates@ £8.29 instead of the 6 weeks set out above).

Therefore, the final amount due **for the period in dispute** (until Mrs [redacted] moved in) I conclude to be £ 91.61.

I note that the Council has recently claimed that there are unpaid water rates arising from the period Mrs [redacted] occupied (after 17 November 2008). I have not been provided with any evidence of that but it is in any event not a period with which I have been concerned in this investigation and so I cannot say if this is true or not. I will do no more than reiterate the comment that I have made above: the term "rent" for the purposes of the tenancy from the Council

[7] The support charges of £2.00 were eligible to be met from the Supporting People fund

includes a specific sum for water rates (collected by the Council) which must be paid over and above the "traditional rent" sum that might be met by HB.

Conclusion

For the reasons set out above it is my view, on the evidence I have seen, that the Council failed to take into account relevant information in the OT's recommendation (and the relevant Commissioner's decision) in improperly calculating the amount it said was owed by your mother. A failure to take into account relevant information is an example of maladministration. Part of the reason for the difficulties which have arisen in this case, in my view, stems from the Council not having obtained an OT inspection of the works after their apparent completion before Mrs [redacted] was signed up to the tenancy. This is especially given there was, by its own admission, a delay in completing integral work as had been recommended (the Tunstall alarm).

To the extent, therefore, that the above amount is neither the £400 complained about by you, on behalf of your mother, nor the sum initially advanced by the Council as owed (of £216.59 - see above), I partly uphold this complaint.

I am recommending that the Council accepts and limits the sum it claims to be "arrears" for the tenancy, before Mrs [redacted] moved into occupation, to the amount above. Whilst I have not seen the letter you cite as "threatening", I am sure that an elderly lady in ill health, such as your mother, would find a demand for money she believes she does not owe distressing.

Given I am of the view part of the problem was caused by the failure to ask the OT to confirm satisfaction with the property, before Mrs [redacted] signed the tenancy agreement, I am recommending the Council apologises for the distress that claiming a higher sum has caused you and your mother. It is a matter entirely for the Council however as to whether it elects to demand payment of the remainder of the sum set out above.

I also recommend that in future the Council ensures that where works of adaptation are to be carried out that, unless their completion (and an inspection arranged) can be guaranteed within 4 weeks, a prospective tenant is not asked to sign the relevant tenancy agreement rendering them liable for rent for a period that could not be met by HB. This might avoid the problems and dissatisfaction which resulted here from happening again.

I have sent a copy of this letter, which constitutes a formal statement of reasons for concluding the investigation of your complaint as I have, to the Council.

The Council has also confirmed that it accepts the conclusions and recommendations set out above.