

The Ombudsman's final decision

Summary: The Council failed to give a housing application the correct priority. If it had given the right priority the complainant could have made a successful bid by the end of 2014. The Council caused injustice as the complainant continued to live in a flat that was too small. Since 2016 the complainant has suffered anti-social behaviour from a neighbour which the Council did nothing to help her with. The Council should apologise to the complainant, give her the correct housing priority backdated to July 2014 and make a payment to the complainant to reflect the injustice its actions caused her.

The complaint

1. The complainant, whom I will call Miss X, complains the Council did not give her housing application a community contribution award in March 2015. She says this meant she lost the opportunity of rehousing. Miss X also complains the temporary accommodation the Council provides her with is no longer suitable because of harassment from a neighbour.

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. I considered information from Miss X and discussed the complaint with her. I asked the Council for information and considered this.
5. Miss X and the Council had the opportunity to comment on a draft version of my decision. I considered their comments before I made a final decision.

What I found

Allocations law

6. Every local housing authority must publish an allocations scheme that sets out how it prioritises applicants, and its procedures for allocating housing. It must make all allocations in strict accordance with the published scheme. (*Housing Act 1996, section 166A(1) & (14)*)
7. An allocations scheme must give reasonable preference to applicants in the following categories:
 - homeless people;
 - people in insanitary, overcrowded or unsatisfactory housing;
 - people who need to move on medical or welfare grounds;
 - people who need to move to avoid hardship to themselves or others. (*Housing Act 1996, section 166A(3)*)
8. Housing applicants can ask the council to review a wide range of decisions about their applications, including decisions about their housing priority.

The Council's allocation policies

9. The Council is a partner in a local choice-based lettings scheme which enables housing applicants to bid for available properties which it advertises.
10. In October 2010 the Council had an allocation's policy that gave band C to applicants sharing a kitchen or bathroom and with no security of tenure.
11. If the Council had a full housing duty to a homeless applicant it offered the applicant a private sector property it leased from a landlord. It then put the housing application in band D, low housing need, and changed the effective date to the date it accepted the duty. The effective date is the date the Council uses to choose between applicants in the same band.
12. If the applicant's needs change when in the private sector leased property, the policy says the Council will assess if it needs to move the applicant or change the priority band.
13. In November 2013 the Council changed its allocations policy. It now placed most eligible applicants with a housing need in emergency or home seekers band. It gave 10 categories of housing need including medical or welfare, overcrowding and homelessness.
14. The policy introduced a community contribution award for an applicant or household member who works 16 or more hours a week and has done so for at least twelve months. The Council allowed a six-month break for maternity leave without losing the award. An applicant with a community contribution award had priority over applicants in home seekers band. The policy said applicants had to apply for the award.
15. The Council now gave PSL band (private sector leased) to homeless applicants it had placed in a private sector leased property. The applicant stayed in this band for 2 years from the date they moved into private sector accommodation. Applicants in this band could not get a community contribution award. After two years the Council moved the application into home seekers band and gave this as the new effective date. The applicant could then apply for a community contribution award.

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16. The Council considers bids for accommodation in the following order, emergency band, community contribution, home seeker band, PSL band. The PSL band replaced the previous band D, low housing need but with a time limit for the reduced priority.
 17. The policy says the Council will assess medical and welfare need and who it might consult. It says the outcome might be registering the application in the emergency or home seeker band. However, it says this does apply to applicants in private sector leased property as it will address medical and welfare needs under homeless legislation.
 18. In June 2016 the Council made changes to its allocations policy. To get a community contribution award the applicant needed to work six of the preceding twelve months. The Council now would assess if a homeless applicant had a severe medical need made worse by their accommodation.
 19. The policy says if an applicant is unhappy with a decision he or she can ask for a review and a senior officer will review the decision within 56 days. An applicant can agree a longer time scale.
 20. The policy says if an applicant can complain to the Housing Ombudsman.

The Anti-Social Behaviour, Crime and Policing Act 2014

21. The Act replaced the ASBO (introduced by the Crime and Disorder Act 1998) with six new powers available to a council and the police:
 - civil injunction (a court ordered injunction for up to 12 months.)
 - criminal behaviour order (an order made after conviction for a criminal offence.)
 - Community Protection Notice.
 - Public Spaces Protection Order.
 - closure power.
 - dispersal power.

The Council's anti-social behaviour policy

22. The Council has a policy for dealing with housing related anti-social behaviour. The policy says it applies to all private sector properties it manages including leased properties. It defines antisocial behaviour as:
 - Conduct that has caused, or is likely to cause harassment, alarm or distress to any person.
 - Conduct that could cause nuisance or annoyance to a person's occupation of residential premises, or
 - Conduct that could cause housing-related nuisance or annoyance to any person.
23. The policy goes on to say:

"Our normal approach is to ensure that troublesome families or individuals receive support to assist them in modifying their behaviour, and then we will act against those who continue to cause a nuisance. We will:

- Use all the new legal powers available in the Anti-social Behaviour, Crime and Policing Act 2014 and work closely with partners to access non Local Authority/ Registered Landlord powers to tackle ASB.*

We will be professional and transparent in all our handling of ASB reports, including:

- Adopt a victim orientated approach and ensure that reports of ASB are taken seriously, taking full account of the risk to the victim and the level of harm to the wider community.
- Ensure reports of ASB are recorded, acknowledged and addressed by trained staff.
- Investigate complaints quickly through the given set timescales.
- Ensure reports are investigated thoroughly and fairly.
- We will visit contact victims of other ASB within five working days of receiving their report.
- We will work with the victim to agree an Action Plan during this visit, and write to them with a copy of the Plan within five working days of the visit.
- We will keep victims informed of the progress of their complaint at least every 10 working days but in some cases weekly.

Staff Training

- We are committed to training our staff and will ensure that all staff dealing with ASB are aware of this policy and procedures.
- We will provide refresher training and updates, particularly where legislation changes.
- Where our response to any incident shows the need for further staff training, this will be provided.”

Temporary accommodation

24. The law says councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of his or her household. This duty applies to interim accommodation and accommodation provided under the main homelessness duty. (*Housing Act 1996, section 206 and (from 3 April 2018) Homelessness Code of Guidance 17.2*)

What happened

25. In July 2012 Miss X was pregnant and living with relatives. She made a housing application to the Council. The Council registered the application and gave Miss X band C with an effective date of 31 July 2012.
26. Miss X's relatives asked her to leave and she made a successful homeless application to the Council. The Council placed Miss X in a hostel.
27. The Council has provided a letter it sent to Miss X dated 2 August 2012. This says under its allocation policy she now was in private sector leasing band with an effective date of 31 July 2012.
28. In December 2012 Miss X had her baby.
29. In March 2013 the Council moved Miss X to a one bedroom self-contained private sector leased flat.
30. In April 2013 the Council changed its policy and put Miss X in the new PSL band. I have not seen a copy of a letter sent by the Council to Miss X explaining how the change in policy affected her application.

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31. In July 2015 the Council asked Miss X for documents to update her application and check she still qualified. It wanted birth certificates, housing benefit award letters, bank statements, evidence of child tax credits and a signed declaration. Miss X sent the Council what it wanted. This included a housing benefit decision showing her earnings, working tax credit and child tax credit; her NHS exemption certificate because she had working and child tax credits; and her bank statements showing her weekly earned income.
 32. I have not seen a letter from the Council to Miss X confirming the result of this review.
 33. On 23 September 2015 Miss X wrote to the Council. She said she had asked it to review her accommodation in September 2014 but had heard nothing. She wanted the Council to move her to a two-bedroom property. She said she tried to make a community contribution and had worked over 16 hours a week since returning to work in 2013 following maternity leave. She said she worked unsocial hours and getting in late was waking her child up as they shared a bedroom.
 34. A Council Officer (Officer 1) responded on 23 November 2015. He said the property was suitable. He said Miss X could put her daughter's bed in the living room. He did not mention the community contribution award.
 35. In June 2016 the Council introduced a new allocations policy. It wrote to Miss X to say how this affected her. It said she was in home seekers band but does not give the effective date.
 36. On 15 October 2016 Miss X wrote to the Council to say she faced increasing difficulties. She said a neighbour shouted obscenities at her daughter and put notes through her door. She was concerned for her daughter's and her own safety. She said her daughter had sensory problems and was upset by noise, leading to her crying and vomiting. She said the neighbour then shouted at her and called her names. She said because of the problems she had reduced her working hours. Miss X said she had worked continuously since she was 16 with only a short break for maternity leave. Miss X did not get a reply.
 37. Miss X wrote again on 5 March 2017. She wanted a response to her previous letter. She said her housing situation had affected her mental health and she was receiving treatment for depression and awaiting therapeutic intervention.
 38. Officer 1 responded on 14 March 2017. He apologised the Council had not responded to her letter of 15 October 2016. He said he had considered all her new information; including what she said about her neighbour, but he did not think her property was unsuitable. He said she could ask for a full review of suitability. He said even if the Council agreed she needed to move on welfare grounds she would stay in home seekers band.
 39. In October 2017 Miss X contacted the Council again. She handed in a letter which said her and her daughter's health was suffering. She said the neighbour frightened her and she did not want to be alone in her flat. She said she either slept at relatives or they stayed with her. She said she had contacted the police but was too frightened of retaliation to take this further. Miss X provided medical information for herself and her daughter. This included a letter from their GP which told of Miss X's severe anxiety and depression and her fear of going home because of her neighbour.
 40. Miss X also saw her MP who wrote to the Council.

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41. On 20 November 2017 Miss X wrote to the Council again. She had received a telephone call from the Council telling her about a possible community contribution award if she received carer's allowance. Miss X said she did not get carers allowance. She said the caller said the Council did not have her letter of October 2017. She said this concerned her as it contained personal medical information. She sent the Council a copy of her letter and supporting documents.
 42. Officer 1 responded on 21 November. He said no-one had passed him Miss X's letter. He said he appreciated Miss X had problems where she lived. He said the information Miss X provided did not make a difference as the health and other problems she reported placed her in home seekers band and she already had this. He said the Council could only give Miss X's application emergency band if there was an immediate risk to her or her daughter's life and limb.
 43. There followed a series of emails between Miss X and Officer 1. Miss X said she had recently found out more about the Council's allocation scheme. She had provided information to help her get emergency band. She was about to increase her working hours and asked about a community contribution award for this. She considered it unfair that when she wrote to the Council explaining her situation and that she worked, it did tell her she was eligible for a community contribution award. Officer 1 replied that in 2015 he reviewed if the accommodation the Council provided to Miss X as a homeless person was suitable. He said he did not give advice about her housing application as this was a separate issue not relevant to a suitability review.
 44. Miss X also said her neighbour had found her telephone number and left her a voicemail at one in the morning asking her to open her door. She asked the Council to explain why he did not pose a risk to her and her daughter.
 45. The Council decided Miss X's emails did not qualify as a complaint. It said it would ask the Housing Manager to telephone her.
 46. In February 2018 the Council responded to Miss X's MP. It said Miss X had told it she was returning to work. Once she had worked more than 16 hours a week for six months she could apply for community contribution award. She would then have a higher priority than those with home seekers band.
 47. In March 2018 Miss X asked for a review of her housing application and to deal with this as a complaint. She said if the Council had told her about the community contribution award in 2015 she would be in a different position now. She said all it told her was to put her daughter's bed in the living room when this was not safe as it was not separate from the kitchen. She sent the Council supporting documents.
 48. Officer 1 sent his review decision in April 2018. He said Miss X's effective date of 27 March 2015 was correct as she moved into her current home in March 2013 and had to wait two years for an increase in priority. He said Miss X could complain to us.
 49. The Council says it does not have the supporting documents Miss X provided.
 50. The Council did not respond to Miss X's complaint including her complaint about the community contribution award. Miss X contacted the Council on 31 May 2018 to ask if it would give her the community contribution award now rather than waiting six months. Officer 1 replied he would ask a senior manager to consider this. Miss X heard no more.

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- 51. I asked the Council for a printout of Miss X's housing bids from 2015 and the band and effective date of the successful bidder. The Council has only provided a list of Miss X's bids. It has not given the band and effective date of the successful bidder. It says it is not "practical" to identify the effective date of the successful bidder.
 - 52. The Council says Miss X's neighbour is not a council tenant so it has no power to intervene.

Analysis

- 53. In the Council's 2010 allocations policy it gave band D, reduced priority, to homeless applicants it provided private sector accommodation to. This was not time limited. It gave Miss X this band on 31 July 2012 as she was in accommodation it provided. It called this the private sector leasing band.
- 54. In 2013 the Council changed its policy. The Council introduced a separate category called PSL, that had the same priority as when called band D. The difference was that it was now time limited. The Council also introduced a community contribution award.
- 55. I have seen no evidence the Council informed Miss X of the change in policy and how it affected her application.
- 56. As the Council gave Miss X private sector leasing band on 31 July 2012 it should have moved her application to home seeker band in July 2014, the two-year anniversary. It did not do this. It moved her application in March 2015, the two-year anniversary of when it moved her from one temporary home to another. This is fault.
- 57. Miss X qualified for the community contribution award in 2014. The Council did not award this as it says she did not apply for it. As the Council had not told Miss X about the new policy and introducing the award I do not see how the Council could expect her to know about it and apply for it. It is not a reasonable expectation that housing applicants will regularly search the Council's website to see if there is any update in policy that could be of advantage.
- 58. The Council asked Miss X for information in July 2015 which she provided. This information included details of her income and tax credits. This was evidence Miss X was eligible for the community contribution award. The Council did not award this or tell Miss X she could apply for it.
- 59. The Council missed a further opportunity to add the award or advise Miss X to apply for it in September 2015. In her letter Miss X said she tried to make a community contribution and that she worked more than 16 hours a week. The Council says it did not advise her about a community contribution award at this point as it dealt with this only as a review of suitability under homelessness legislation. Miss X did not specifically ask for a review under the homelessness legislation. The Council's allocations policy says it will review the suitability of private sector leased accommodation. The same officer dealt with this review and Miss X's later allocation scheme review.
- 60. The Council is at fault as it did not tell Miss X how she could improve her rehousing prospects when she was asking for help and advice. This caused injustice as Miss X had lower priority than her circumstances gave her under the Council's policy. As Miss X was not made aware of what she could do she acted to her detriment and reduced her working hours, unaware of the affect this had on her housing application.

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61. But for fault by the Council Miss X would have had community contribution award band from July 2014. I asked the Council for the band and effective date of the successful bidder for each property Miss X bid for. This would allow me to check if any successful bidder from community contribution band had a later effective date than Miss X. The Council had not provided this so I have reached a view on the balance of probabilities. The Ombudsman investigated a case in 2014 where the Council had not awarded the community contribution band when it should have. In this case the complainant made a bid three months later and would have succeeded if she had the correct band. On the balance of probabilities, I find that if Miss X had community contribution band in July 2014 she would have made a successful bid by the end of that year.
 62. From October 2016 Miss X told the Council the problems she had with her neighbour and how scared she and her daughter were. The Council did not reply to Miss X's first letter about this. The Council says it did not have the power to intervene because the neighbour is not a council tenant. This is incorrect. Under the Anti-Social Behaviour, Crime and Policing Act 2014 the Council has many powers to deal with anti-social behaviour. The Council can use these powers against any member of the community, not just council tenants. Added to this the Council has a policy saying what it will do when it gets reports of anti-social behaviour. The Council took none of the actions in this policy and provided Miss X with no help or support. It did not even visit her and discuss the problems. This is fault. It caused Miss X injustice as she was left scared in her home with no support from the Council. If the Council had given Miss X community contribution award she would have moved before the problems started.
 63. The Council undertook a review of Miss X's housing application in April 2018. It has not kept the supporting documents Miss X provided. Because of this I cannot say it properly undertook that review.
 64. The Council's allocations policy says an applicant can complain to the Housing Ombudsman. Complaints about allocations and allocations decisions where the applicant has reasonable preference are in the jurisdiction of the Local Government and Social Care Ombudsman. The Council's policy should also tell people of their right to complain to us.

Agreed action

65. To put matters right for Miss X the Council has agreed that within one month of my final decision it will;
 - Apologise to Miss X.
 - Give her housing application a community contribution award with an effective date of 31 July 2014. This should allow Miss X the opportunity to bid successfully for a property she wants.
 - As Miss X could have made a successful bid by the end of 2014 she has spent four and a half years longer than necessary in a one bed-roomed property. For over two years she has lived in fear of her neighbour with no support by the Council. The Council will pay Miss X £4,000 in recognition of the injustice this has caused her.
 - The Council is reviewing its allocations policy. It will take this opportunity to tell people about their right to complain to the Local Government and Social Care Ombudsman in its policy.

Final decision

66. The Council is at fault and caused Ms X injustice. The Council has agreed to my recommended remedy. I have completed my investigation and closed the complaint.

Investigator's decision on behalf of the Ombudsman