

The Ombudsman's final decision

Summary: Ms X complained about the Council's decision not to provide accommodation for her and her son on the basis that her son could stay with his father while she looks for accommodation. She says the decision was unfair as it was based on a flawed social work assessment. The Ombudsman finds that the assessment was carried out properly. Without evidence of fault he cannot question the Council's decision.

The complaint

1. Ms X complained that when the Council carried out a child and family assessment it did not consider her circumstances properly. In particular she complains that Children's Services has unreasonably refused to help with accommodation for her and her son because it says her son can stay with his father.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), 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 discussed the complaint with Ms X and considered the information she provided. I considered the information the Council provided in response to my enquiries. I considered relevant law and guidance. I gave the Council and the complainant an opportunity to comment on my draft decision.

What I found

Councils' homelessness duties under the Housing Act 1996

5. Where a person asks a council for help with housing saying they are homeless, the council makes enquiries. If the council decides the person is intentionally homeless it does not have a duty to secure long-term accommodation.

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6. An applicant has a right of review against an intentional homelessness decision. The council may provide short-term temporary accommodation while it is considering a review request.
 7. If the council decides a person who has a child living with them may be intentionally homeless it must refer them to Children's Services for an assessment under the Children Act 1989, if they agree.

Duties under the Children Act 1989

8. Local authorities have a duty to safeguard and promote the welfare of children within their area who are in need by providing services appropriate to the child's needs. (*Children Act 1989, section 17*)
9. The council carries out an assessment to determine if the child is a Child in Need and what services it should provide. The council may decide the best way to meet the child's needs would be to provide temporary accommodation or a rent deposit where the family is homeless.
10. The Council has a '*Children's Services Procedure Manual*', which sets out how child and family assessments should be carried out. It gives guidance on gathering information, involving members of the family, including listening to the child, and analysing and evaluating the information gathered.

What happened

11. Ms X has a son, S, now aged eight. She is separated from the child's father, Mr Y, who is in another relationship. Mr Y still has parental responsibility for S.
12. In May 2018 the Council decided Ms X was intentionally homeless after she was evicted from her home because of rent arrears. The Housing Service made a referral to the Council's Children's Services for a child and family assessment. It provided temporary accommodation for Ms X and her son while the assessment took place.
13. A social worker, SW1, visited Ms X at her temporary accommodation and saw her and her son. Ms X explained that she had been looking for accommodation but had not been able to find any. She said Mr Y was not involved with S although he paid her child support every month.
14. A few days later, when her temporary accommodation was due to come to an end, Ms X visited the Children's Services office and asked for housing. SW1 helped her write a letter asking for a review of the intentional homelessness decision for her to take to the Housing Service. She had received an offer from a friend to stay with her for a few days but this later fell through. SW1 spoke to Mr Y over the telephone and Mr Y said he was willing to take his son into his home for those few days. The record notes that Ms X refused although she did not mention any concerns about Mr Y's ability to care for S.
15. Mr Y contacted SW1 again a few days later to find out what was happening with accommodation for S. Mr Y said he was still willing to accommodate his son and support him while Ms X finds somewhere to live. He said he had spoken to her about this but she had refused.
16. The Council received information that Ms X had attended her local MP's office and said she did not agree to S going to stay with his father because she was concerned Mr Y would take him back to his country of origin.
17. At the end of May 2018 the Council provided temporary accommodation to Ms X and her son for a further week so the social worker could complete the

assessment. The Council then agreed to extend her temporary accommodation further while it considered her request for a review of the homelessness decision and representations from an adviser. It gave her a list of landlords to help her look for accommodation.

18. In the meantime SW1 continued the assessment. He contacted S's school. He visited Mr Y and his partner at their home.
19. SW1 completed the assessment at the end of June 2018. His report concluded that S was not a Child in Need. It said he appeared well and healthy. He had a good relationship with his mother. He enjoyed school and had a good attendance record. His mother met his needs and there were no safeguarding concerns about her, although he was at risk of homelessness. Ms X had a wide support network. The report noted that it was difficult to get S to express himself but he had a positive reaction when asked about his father.
20. SW1's view was that while it would be in S's best interest to remain with his mother, it would not be against his interest to go and stay with his father while Ms X looked for accommodation. The assessment found that Mr Y had parental responsibility for S, and he and his partner were willing to accommodate S and care for him while Ms X found a place to live. Their property was suitable to accommodate S and there were no safeguarding concerns about S staying there. Mr Y and his partner had no social care involvement with their family and neither had any criminal record. Mr Y continued to provide some financial support. Ms X was working part-time and could look for private rented accommodation and then apply for housing benefit.
21. The report noted that Ms X had refused to allow S to stay with Mr Y "even though she had nothing against father's ability to care for [S] other than her not liking him and not wanting him to have the care of her son." It said she had referred to an incident when S had gone missing while in her care and, when she called Mr Y to tell him, "he did not show any keen interest". It also said Ms X alleged that Mr Y would send S away to his country of origin and she would never see him again." SW1 reported that Mr Y strongly denied this.
22. The social worker recommended that Children's Services should close the case with no further action. He explained the outcome to both Ms X and Mr Y.
23. The Council ended Ms X's temporary accommodation when it completed its review of the homelessness decision. The Council maintained its original decision.
24. Over the next few months Ms X stayed with different friends with her son. She did not take him to stay with Mr Y. She continued to ask the Council for housing. She contacted advice agencies and her MP who in turn contacted the Council. Each time the Council advised that Children's Services had closed the case as it considered Mr Y could exercise his parental responsibility to look after S while Ms X looked for private rented accommodation. On one occasion, in November 2018, Ms X said she would not take S to his father as she had concerns that Mr Y had "abandoned his son and chosen to look after someone else".
25. The Council contacted Mr Y who confirmed he was willing and able to care for his son and had been seeing him regularly over the past few months. Children's Services continued to refuse to provide accommodation for Ms X and her son on the basis that she had the option of accommodating S temporarily with his father. The Council's legal service confirmed it supported the decision.

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26. In November 2018 Ms X applied to court for a Non-Molestation Order against Mr Y and a Prohibited Steps Order to stop contact between Mr Y and S. The court decided there was not enough evidence to grant the Orders. It referred the case to the family courts for mediation between Ms X and Mr Y. I do not know the result of the mediation.
 27. Ms X has since obtained private rented accommodation and is receiving housing benefit. The Council says it has reviewed its initial assessment decision but found no new information that would lead it to change the decision.

Analysis

28. Ms X does not agree with the social work assessment and does not consider Mr Y suitable to look after S. She told the Ombudsman there was history of emotionally abusive behaviour by Mr Y towards her when her son was a baby. She explained that at the time the abuse occurred she did not recognise that it was abuse and had not reported it to anyone. More recently she had sought advice from an independent agency and had an assessment which confirmed she had suffered emotional abuse. She also said Mr Y had neglected S and had twice taken him away from her and refused to return him. She said Mr Y had lied about giving her child maintenance as he had stopped paying her. She also said although the court had found no evidence of abuse, this was because Mr Y had lied to the court.
29. The Ombudsman has no power to question the Council's decision following the child and family assessment unless there is evidence of fault in the way the decision was reached. I have considered how the Council carried out the assessment. In my view the social worker's report shows he carried out a thorough assessment, following good practice in the Council's procedures. He spoke to Ms X and her son, together and separately. His report shows he saw S at least six times during the assessment. He took account of S's views as far as possible. He visited Mr Y and assessed whether there were any risks to S in staying there. He considered the accommodation Mr Y could provide. He considered the parenting capacity of both parents. He considered Ms X's financial circumstances and support network. He obtained information from S's school. Finally, the social worker analysed the information, weighed up the risks and protective factors and gave reasons for his conclusions. I do not find that the assessment was flawed.
30. I have not seen any evidence in the records that during the assessment Ms X told the social worker about abuse or neglect by Mr Y towards her or her son. She has not provided any other evidence to show that she did so. She expressed her fear that Mr Y would remove S from the country. But the social worker discussed this with Mr Y and considered the matter. He did not consider this was a serious risk.
31. I recognise that Ms X does not wish to be parted from her son, even while she looks for longer-term accommodation. However as I have not seen evidence of flaws in the Council's assessment I am not in a position to criticise the conclusion it reached.
32. Subsequent events have not given the Council grounds to change its view. Mr Y continued to offer to look after his son. The courts did not accept there was evidence of risk to Ms X or her child from Mr Y. But if Ms X has further evidence showing Mr Y presents a risk of harm to S she may present it to the Council.

Final decision

33. I do not find fault in the way the Council assessed Ms X's child's needs. So I cannot question the decision not to provide accommodation to her and her son on the basis that S can stay temporarily with his father. I have therefore completed my investigation.

Investigator's decision on behalf of the Ombudsman