

The Ombudsman's final decision

Summary: Miss X said the Council offered her and her young family unsuitable accommodation. She said when she appealed the Council's decision, it failed to properly review her case. There is fault with the way the Council carried out its review, and with the advice it provided Miss X over the past two years. The Council has agreed to remedy Miss X's injustice.

The complaint

1. Miss X complained the Council offered her and her young family unsuitable accommodation.
2. She said when she appealed the Council's decision, it failed to properly review her case.
3. Miss X thinks she should be placed in a higher priority banding. She said this would give her a better chance of finding a suitable property for her family.

The Ombudsman's role and powers

4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
5. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)
6. 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*)
7. 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

8. I have considered
 - Miss X's complaint and supporting information;
 - the Council's responses to Miss X's complaint; and
 - the Local Government and Social Care Ombudsman's Guidance on Remedies that is available to view on our website.
9. I have written to Miss X and the Council with my draft decision and considered their comments.

What I found

Background

10. The Local Government and Social Care Ombudsman would not normally investigate a complaint where the complainant had the opportunity to take the matter to court. I have exercised my discretion in Miss X's case. This is because she was admitted to hospital with a heart condition after giving birth at the time she would have had to appeal. Therefore, I do not consider it reasonable for Miss X to have appealed in February 2017 when she received the Council's review decision.
11. We would not normally investigate late complaints (more than 12 months after the event) unless we decide there are good reasons. Given Miss X's ongoing issues with her accommodation, it was not reasonable to expect her to complain to us sooner. Therefore, I have decided to consider Miss X's complaint starting from when she submitted a homelessness application in September 2017.

The Council's Housing Allocation Policy

The banding scheme

12. The Council operates a banding scheme. It considers and assesses the housing needs of each household. It will place all home seekers who are eligible to join the register in one of four priority bands. These are Low Housing Need (band 4), Medium Housing Need (band 3), High Housing Need (band 2) and Priority Housing Need (band 1). Each band has a set of criteria that a home seeker must meet to be eligible for that band.
13. There are different categories in each band. For example, in band 3, the categories are:
 1. homeless households;
 2. those living in poor housing conditions;
 3. those with a medical need to move;
 4. those with a welfare need to move; and
 5. those in short term accommodation.
14. There are also criteria under each of the categories.
15. A home seeker who has been assessed as having two or more needs from the first four categories of Medium Housing Need, could move up to Higher Housing Need.

Moving between bands

16. The Council's allocation policy says a home seeker's housing band will change if their level of need changes. It says when a home seeker moves up to a higher housing need band, their effective date will change to the date they moved into the higher category.

What happened

Accommodation offer

17. In September 2017, Miss X made a homelessness application and the Council accepted it. The Council acknowledged it had a duty to provide Miss X and her family with suitable accommodation.
18. In November, the Council made a first and final offer to Miss X. The property was a second floor maisonette. Miss X said it was not suitable due to the flights of external stairs. Following advice, Miss X felt she had no option other than to accept the accommodation and then ask for a review. The Council wrote to Miss X and said as she had accepted the property, its homelessness duty had ceased.

The Council's review

19. In December 2017, Miss X asked the Council to review its decision that the accommodation was suitable. She wanted to be placed on a higher priority banding due to her, and her children's medical issues. She said the difficulty in managing three young children with sight problems, and a pushchair up and down two flights of external stairs whilst she was heavily pregnant made her heart condition worse.
20. On 6 February 2018, an independent assessor working on behalf of the Council contacted Miss X. He said he had considered all the information available and had reviewed the Council's decision about the suitability of Miss X's accommodation.
21. He said the reasons Miss X gave for the accommodation being unsuitable, were not significant enough. The assessor said he appreciated once Miss X gave birth, she would have four children to look after and as a single parent this would no doubt be a challenge. He went on to say that she could purchase a baby carrier to leave her hands free and it would get easier as the children became older and more independent. He also suggested she bought her groceries online and had them delivered to avoid carrying heavy bags up the stairs with the children.
22. The assessor concluded he was satisfied that the property was suitable for Miss X and it was also reasonable for her to have accepted the offer. He upheld the Council's decision to offer permanent accommodation in this property.

Miss X's complaints

23. Over the following months, Miss X contacted the Council on a number of occasions to report:
 - her child finding a needle in the communal garden of the property;
 - general disrepair of the communal areas of the property including a broken door with screws protruding;
 - the conduct of a housing officer;
 - her continued difficulty managing the stairs with four children and a heart condition; and

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- the Council's handling of her transfer application and the banding in which she had been placed.
24. On the advice of her local MP, in June 2019, Miss X made a formal complaint covering all the issues above and provided the Council with further letters from medical professionals.
25. In July 2019, the Council dealt with Miss X's complaint in two ways:
- through the corporate complaints process; and
 - as a service request to prioritise her housing banding on medical grounds.

Complaint process

26. The Council addressed the issues raised by Miss X. It said Miss X had missed the opportunity to appeal to county court about her review decision so it would not deal with the issues she had raised in relation to this. It said there was no evidence that the housing officer did anything wrong. It advised it had informed the relevant Council departments to deal with issues surrounding the maintenance and repair of the property. The Council explained the housing department was considering her new medical information in relation to her banding.
27. Miss X escalated her complaint to Stage 2.
28. In its stage 2 response, the Council maintained its refusal to revisit the review decision as Miss X had missed the 21 day appeal period.

Council's review of Miss X's medical information

29. The Council said it had considered all the letters including those from the cardiology department about Miss X's heart condition, and those from an optometrist about her children's eye conditions. The Council decided it would not increase the banding on her housing application as the letters did not confirm how her current address was affecting her, or her children's medical conditions.
30. Miss X wrote to the Council to disagree with the decision the medical information she provided did not meet the requirement to increase her banding.
31. In August 2019, the Council dealt with Miss X's disagreement as a request for a review of the decision. It considered the same medical information against the Council's Housing Allocations Policy. It upheld the Council's original decision; the information did not qualify Miss X's application for an increase in banding on medical grounds.
32. The Council went on to consider Miss X's other comments regarding the difficulties she has getting all four children, a pushchair and other heavy items up the stairs and into the property safely. It considered Miss X's comments that the strain of this worsens the symptoms of her heart condition. For these reasons, the Council decided to move Miss X's application into the medium band under the following section of the allocations policy:
- *Band 3: Medium Housing Need*
 - 5. *Short term housing*
 - (5) *Transfer home seekers seeking a like for like transfer who have a medical, mobility or social need to move.*
33. The Council concluded its policy did not allow for a further review of this decision where the facts remain the same. It said if Miss X had additional information, she could submit it for assessment.

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34. Miss X submitted a further medical letter to the Council in September 2019. In response to this, the Council decided her heart condition met the criteria for the Medium Band on medical grounds as follows:

- *Band 3: Medium Housing Need*

3. Medical need to move

(1) Verified high medical need where a move will improve or prevent the deterioration of a condition. This will apply when a home seekers condition is currently directly affected by their accommodation and a move is needed to have a positive effect on their condition, or whereas as a result of their condition their current accommodation is not suitable to their needs.

35. It confirmed Miss X's banding on her choice base lettings would remain on Medium as Medium Medical band cannot be combined with her existing Medium Banding for being in short term accommodation. Miss X was unhappy with this and could not understand why the categories could not be combined so that she could be moved to the High Housing Band 2.

My findings

Miss X's review

36. The independent assessor said he considered the information provided by Miss X including letters from medical professionals. He concluded Miss X's accommodation was suitable. His reasons included the fact that as her children get older and more independent, it will be easier to manage the flights of external stairs.
37. There is fault with this. The assessor should base his decision on Miss X's circumstances at the time of the review, not what they might be in the future.
38. In a later review, the Council decided to move Miss X into a higher banding based on her circumstances. On the balance of probabilities, if the assessor had correctly reviewed Miss X's case at the time, she would have been moved to Band 3 in February 2018.

Conclusion

39. The initial review of Miss X's housing allocation decision was flawed as the assessor failed to base his decision on Miss X's current situation. This failure resulted in Miss X and her young family living in unsuitable accommodation for a longer period than necessary.
40. If the Council had reviewed Miss X properly, she would not have been put to time and trouble in pursuing the Council for higher priority.
41. The Council should have been clearer when it said it required medical evidence from Miss X. The Council's latest decision to move Miss X on medical grounds shows that her heart condition should have qualified her for medical priority in 2017 as her condition has not changed. The Council did not make it clear what medical information it required.
42. The homeless priority can be considered with the medical priority which would likely have resulted in the Council placing Miss X's application in Band 2 from February 2018.

Agreed action

43. Within 4 weeks of my final decision, the Council will:

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- Pay Miss X £500 for the avoidable time, trouble and distress she experienced whilst contesting her housing allocation and pursuing the complaint;
 - Pay Miss X £2400 to remedy the injustice of her family living in unsuitable accommodation for two years after the fault occurred during the review of the Council's decision; and
 - Backdate Miss X's Band 2 priority on the housing register to the date of the review decision (6 February 2018) to ensure she receives priority for suitable accommodation.

Final decision

44. I have found fault with the way the Council handled Miss X's review and the advice it gave. This resulted in Miss X and her young children remaining in unsuitable accommodation for nearly 2 years.

Parts of the complaint that I did not investigate

45. In Miss X's case, the fault occurred during the independent review of the Miss X's housing decision.
46. I have not therefore investigated the actions of the Council after this point. I have referred to events after the review to illustrate what the Council would have been likely to do if it had not been for the fault.

Investigator's decision on behalf of the Ombudsman