

Complaint reference:
16 001 620

Complaint against:
Slough Borough Council

The Ombudsman's final decision

Summary: The Council took too long to provide temporary accommodation to Mrs X when she was homeless. The Council did not clearly explain how it considered Mrs X's representations when deciding not to exercise discretion to admit her to its Housing Register because of exceptional circumstances. It has agreed to have the decision reviewed by its Housing Needs Panel. When reviewing the matter, the Panel will explain how it considered Mrs X's representations.

The complaint

1. Mrs X complains there was fault in the way the Council dealt with her homelessness and housing register applications since July 2014.

The Ombudsman's role and powers

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, the Ombudsman considers whether it has caused an injustice and if it has, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
3. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
4. The law says the Ombudsman cannot normally investigate a complaint when someone could take the matter to court. However, she may decide to investigate if she considers it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c)*)

How I considered this complaint

5. I have:
 - considered the complaint and the copy correspondence provided by the complainant and their representative;
 - made enquiries of the Council and considered the comments and documents the Council provided;
 - discussed the issues with the complainant's representative; and,
 - written to Mrs X's representative and the Council with my draft decision and considered their comments.

What I found

6. Mrs X applied to the Council as homeless. She was being evicted from her mother's council flat, Property A. She had no right to occupy the flat after her mother's death. The household was Mrs X, Mr X, and their son and daughter. The Council gave her a housing register application form.
7. At the time Mr X still had a private tenancy at Property B. He handed back the keys for this property sometime in August 2014.
8. On 16 October 2014 the Council accepted a full duty to secure accommodation for Mrs X as a homeless person, under the Housing Act 1996. Mrs X was continuing to occupy Property A. The Council had issued her a notice seeking possession of the flat. In its homelessness decision letter, the Council told Mrs X it would provide her with suitable temporary accommodation when she had to leave Property A.
9. The Council told Mrs X she would need to agree a plan to repay an overpayment of Housing Benefit, and in the mean time she should pay the "Use and Occupation" charges for Property A. It reminded her to complete and return the housing register form it had given her. Mrs X says she did not receive all the correspondence the Council sent.
10. Mrs X says she returned a housing register application to one of the Council's satellite offices on 18 November. She says she included a second son (Y) on this application. She says her adult daughter contacted the Council about this application on 21 November. The Council has no record of this form. But Mrs X says she has sent the Council a copy of the receipt for this form.
11. On 18 November the Council told Mrs X she was in arrears of £2451.15 for "Use and Occupation" charges at Property A.
12. In early December 2014 a Temporary Accommodation Officer discussed temporary accommodation with the adult daughter. The officer recorded that Mrs X preferred to stay where she was, rather than move to somewhere temporary. Mrs X says the officer suggested they move to a one bedroom property, which would not be suitable. She says she was asking for suitable temporary accommodation.
13. On 9 December the adult daughter called the Council again. She says she was told the housing register application was being processed. The Council says it had not received the form. It sent Mrs X a new housing register form with a return envelope. The Council called Mrs X's sister on 29 December. The family say this was the first time they knew the Council had not received the form. Mrs X was in hospital at the time until January 2015.
14. In January 2015 Mr X asked the Council about temporary accommodation. Mrs X told the Council her son Y had rejoined the household. Mrs X was advised to visit the Council with Y and evidence of his identity and health condition. The Council asked her to complete a new housing register application including Y in the household.
15. On 12 February 2015 the Council received Mrs X's housing register application.
16. In February 2015 the family moved into a 3 Bedroom Housing Association House (Property C). But with Y in the household they now needed 4 bedrooms.
17. The Council rejected their housing register application on 13 April 2015. It said they had accommodation large enough for their household. The Council says

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- although Y had been included on the application form, Mrs X had not provided evidence of Y's identity and residence that it had asked her for.
18. On 7 May the Council wrote to Mrs X ending its homelessness duty as she had been rehoused.
 19. On 8 June the Council changed its decision about Mrs X's housing register application. The new decision letter said it had rejected her application because she, or a member of her household, had housing related debt at their current or previous accommodation. It said she could ask for a review within 21 days. It said;
 - Mrs X had a court judgement against her for rent arrears of £6,800 for former tenancy (property D), and no evidence it had been cleared;
 - owed £4872.30 for "use and occupation" charges for Property A;
 - had a Housing Benefit overpayment of £3704.92 for a previous property (Property E); and,
 - Mr X owed £1739.00 rent arrears on Property B.
 20. The Council also referred to Mrs X's application form signed on 11 February 2015. It said she had declared that neither she, nor any member of her household, has or had any housing related debt in the last 10 years.
 21. On 9 July 2015 the Council told Mrs X that she was out of time to ask for a review of its decision, made on 8 June, that she was not eligible to join the housing register.
 22. In August 2015 Mrs X's representative asked the Council to withdraw its decision made on 7 May 2015, ending its homelessness duty. The reason was the property they had been offered, and accepted, was only for a six month tenancy. The Council withdrew the decision. It said it had not been aware the Housing Association had started giving six month tenancies.
 23. Between 7 and 21 September the Council tried to contact Mrs X and arrange a viewing of a property (F). When the family viewed it, they said it was unsuitable. It needed adaptations disability. The Council said the adaptations could be made. Adaptations would need to be made before the family could move in.
 24. Mrs X complained through her representative, about how her applications had been dealt with. She asked the Council to admit her to the register, on Band A, because of "extenuating circumstances". The representative said Mr and Mrs X now had debt relief advice and were considering applying for a Bankruptcy or Debt Relief Order. She did not say explicitly what extenuating circumstances she wanted the Council to consider in connection with this request. But earlier in the letter she had mentioned Y suffered from epilepsy, needed 24 hour care and was awaiting brain surgery. Mrs X's representative says the Council was aware of the family's medical circumstances and should have taken these into account.
 25. In its response the Council said "*I can find no reason in your request why the Council should consider Mr & Mrs [X] as an extenuating case. Furthermore there is no evidence to suggest that any attempt has been made to address the serious nature of the past arrears of rent that have accrued on rental properties.*" It said if Mrs X was dissatisfied with the response, she could "*refer the matter to a Complaints Review Panel. The panel is made up of Tenant representatives and Council members who will re-consider your complaint*".

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26. Mrs X's representative says the Council did not say how it had reached this decision. She believes it should have been referred to the Council's Housing Needs Panel before the decision was made.
 27. On 10 November the Council left messages on both the family's mobile phone numbers about a property (G) it wanted to offer Mrs X. Mrs X did not respond.
 28. On 30 November and 2 December the Council left messages on Mrs X's phone about a 4 bedroom property. Mrs X did not respond.
 29. The Council told Mrs X's representative it was prepared to reconsider its decision Mrs X was not eligible for its housing register. Mrs X was applying for a debt relief order. And the Council agreed to consider a report about Y's medical conditions when he was discharged from hospital after brain surgery. It would hold on responding to the complaint at stage 3 of its complaint procedure until these things had been done.
 30. On 5 January 2016 the representative sent an Occupational Therapist (OT) report about Y to the Council. On 21 January the representative met the Council and agreed the complaint response should be put on hold until the Council found suitable accommodation.
 31. The Council found a property on 22 February, but it needed repairs. The family viewed and accepted Property (H) on 29 February 2016. They signed a tenancy agreement to start from 7 March 2016. On 10 March the Council sent a letter discharging its homelessness duty.
 32. The representative wrote asking for the stage 3 complaint response. The Council responded on 26 April saying that as the family's circumstances had changed it wanted the representative to clarify what parts of the complaint were outstanding before it could respond. The representative brought the complaint to the Ombudsman.

The Law and Council policy

Homelessness and temporary accommodation

33. If a council is satisfied someone is eligible, homeless, in priority need and unintentionally homeless it will owe them the main homelessness duty. It must secure suitable accommodation for them. Generally the Council carries out the duty by arranging temporary accommodation until it makes a suitable offer of social housing or private rented accommodation. (*Housing Act 1996, section 193*)
34. 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. (*Housing Act 1996, section 208*)
35. Homeless applicants may request a review within 21 days of being notified of the decision on their homelessness application. There is also a right to request a review of the suitability of temporary accommodation provided once the Council has accepted the main homelessness duty. If the applicant wishes to challenge the review decision, or if a council takes more than eight weeks to complete the review, they may appeal on a point of law to the County Court (*Housing Act 1996, sections 202 and 204*)

Housing Allocations

36. Every local housing authority must publish an allocations scheme that sets out how it prioritises applicants, and its procedures for allocating housing. All allocations must be made in strict accordance with the published scheme. The

Ombudsman may not find fault with a council's assessment of a housing application if it has carried this out in line with its published allocations scheme. (*Housing Act 1996, section 166A(1) & (14)*)

37. Councils must notify applicants in writing its decision that the applicant is not a qualifying person and give reasons. The Council must also notify the applicant of the right to request a review of these decisions. (*Housing Act 1996, section 166A(9)*)
38. The Localism Act 2011 introduced new freedoms to allow councils to better manage their waiting list and to tailor their allocation priorities to meet local needs.

The Council's allocations scheme

39. The Council's housing allocations scheme says:
40. "Eligible applicants on the register will be those who (either by themselves or by the inclusion of a household member on their application form) fall within the persons accorded a statutory reasonable preference category. For these purposes, the council will apply the national categories of reasonable preference set out in the legislation. Those categories include people who are owed a duty by any local housing authority under Housing Act 1996 section 193(2) (the duty to secure accommodation where homelessness duty has been accepted)."
41. "Even if an applicant is eligible and would have satisfied the reasonable preference criteria, they will not be admitted to the housing register (and therefore will not qualify for an allocation) if they or members of their household, have any housing related debt, including rent arrears or mortgage arrears, in respect of their current property or previous accommodation. (This may be waived if agreement has been reached to clear the debt through a payment plan and this has been adhered to for a reasonable period.) The council will consider a period of up to 10 years prior to applying to the register and consideration will be given to applicants with mitigating circumstances."
42. An applicant may request a review of the decision within 21 days of the original decision that they are not a person qualifying to join the housing register
43. "In special cases where there are exceptional circumstances, the assistant director of housing and neighbourhoods, has discretionary power to award additional priority and approve offers of housing, taking into consideration all factors relevant to housing and social needs."

Analysis

Delay in providing temporary accommodation

44. Once the Council had accepted a duty to Mrs X and family under the Housing Act, it should have provided temporary accommodation to them (see paragraph 33). The Council accepted this duty on 16 October 2015. But it did not provide accommodation until 24 February 2015. This delay of four months, should have been avoided. This was fault. The injustice was the family continuing to live in overcrowded accommodation for those four months.

Delay in including Y in the household

45. There is a dispute about when the family told the Council Y had joined the household. Mrs X says she first put in a new application including Y to a satellite office on 18 November 2014. The Council says the first form it received including Y was on 12 February 2015. The family have provided details about this and their follow-up. They say they had a receipt which they have sent the Council. I have not seen evidence that provides certainty about this. But on the information I have

seen I find on balance of probability, that the family informed the Council Y had joined the family in November 2014.

46. But as the Council has decided Mrs X is not eligible to join the housing register (see section below), the failure to include Y earlier has not affected the outcome of the application. There was some avoidable time and trouble caused to Mrs X's family who were following this up for her. But not so much I would ask the Council to do more now.

Suitability of Property C

47. I will not look at whether accommodation provided as temporary accommodation or as a full ending of the Council's homelessness duty, is suitable or not. This is because there is a right of review followed by appeal to the court which I consider it would be reasonable to expect the applicant to use (see paragraphs 4 and 35).
48. The Council ended its duty to Mrs X on 7 May 2015 because it had housed her at Property C. Mrs X did not ask for a review of that decision. In August 2015 her representative asked the Council to withdraw the decision to withdraw its decision because the Housing Association had only given Mrs X a six month tenancy. The Council agreed to withdraw the decision. Mrs X was housed at Property C during that time. The 6 month tenancy might make the property unsuitable for the Council to fully end its duty. But it would not mean it could not be suitable as temporary accommodation. So notwithstanding Mrs X's right to appeal, there was not any significant injustice to her through the Council's decision, which it later withdrew.
49. Mrs X also says the property is unsuitable because it is a three bedroom house, but at the time it was offered her, Y had joined the household, so under the Council's allocation scheme she needs 4 bedrooms. Again, this is something Mrs X could challenge by review and through the Courts. Temporary accommodation must meet the room standards under the Housing Act 1985. But under those standards a living room can be counted as a bedroom. So the accommodation offered to Mrs X was not automatically unsuitable through overcrowding. Whether it was unsuitable as temporary accommodation in all the circumstances of her family, is a matter I consider it would be reasonable for her to have asked to be reviewed, and appealed to the court if necessary. So I have not looked at that.

Decision Mrs X is not eligible to join the Council's allocations scheme

50. Mrs X and members of her household have housing related debt. The Council has decided she is not eligible to join its scheme (see paragraph 40). The Council has reviewed that decision. The Council has provided evidence of the debt and explained how it reached its decision. Mrs X disagrees. But I see no fault in the way the Council reached its decision and the decision is in line with its scheme. So it is not for me to say whether the decision is right or wrong.

Consideration of exceptional circumstances

51. Mrs X's representative has asked the Council to use its discretion (see paragraph 42) to admit Mrs X to the register, because of exceptional circumstances. The Council has not agreed to do this. Mrs X complains the decision was not reached properly because:
- the decision should have been referred to the Council's Housing Needs Panel; and,

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- it has not explained why it did not agree to admit Mrs X on exceptional circumstances.
52. The Council's policy says discretion can be exercised by the Assistant Director of Housing and Neighbourhoods. So I do not find it fault not to refer this decision to the Housing Needs Panel at first. The Council has not given much information about how it reached the decision. But the representative's letter did not clearly say what extenuating circumstances she wanted the Council to consider. The Council said if Mrs X remained dissatisfied it could refer the matter to its Complaints Review Panel. This has not happened. The Council has explained to me, it is only its Housing Needs Panel that can agree changes to allocation decisions. It has agreed to do this. I think it would be reasonable to refer the matter to be reviewed by the Housing Needs Panel. When it makes its decision, I would expect the Council's Panel to explain how it reached its decision.
53. I could not decide Mrs X should be admitted to the register on exceptional and discretionary grounds. That is a decision only the Council can make. The most I could recommend would be for the Council to reconsider the matter, and explain the reasons for its decision. Reference to the Housing Needs Panel would achieve the same thing, and seems a reasonable way forward.

Failure to consider Y's medical need for housing priority.

54. As Mrs X is not eligible to be on the register the Council does not need to assess what priority she would have if she was eligible, including for Y's needs.
55. I would expect the Council to take that information into account when considering whether it should exercise discretion on grounds of exceptional need. I would expect the Housing Needs Panel to explain how it has done this when it reviews the decision.

Agreed action

56. The Council has agreed to:
- pay Mrs X £1000 to recognise the injustice caused to her through its delay in offering her temporary accommodation (see paragraph 44); and,
 - put Mrs X's continuing disagreement with its decision, not to admit her to the housing register for exceptional reasons, to its Housing Needs Panel within the next month. The Panel will explain how it has considered Mrs X's representations when making its decision (see paragraphs 52 and 53).

Final decision

57. There was fault by the Council that caused injustice to Mrs X and her family. I uphold her complaint. I am be satisfied with the actions the Council has agreed and have completed my investigation.

Investigator's decision on behalf of the Ombudsman