

## **The Ombudsman's final decision**

Summary: The Council is at fault for delay in responding to Mr X's communications, failing to investigate a potential hazard in his private tenancy, failing to provide suitable temporary accommodation despite agreeing to do so, and delay increasing priority on the housing register. The Council has agreed to apologise, pay Mr X £4,200, act to resolve his housing situation and improve its services.

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## **The complaint**

1. Mr X complained about how the Council have dealt with his family's housing. In particular, that the Council:
  - a) delayed responding to communication.
  - b) wrongly stopped his housing benefit claim several times despite him providing all the necessary information.
  - c) failed to investigate extensive issues of damp in their private tenancy.
  - d) failed to provide suitable temporary or permanent accommodation despite accepting the family are homeless.
  - e) delayed assessing their position on the housing register so they missed out on suitable properties.
2. Mr X and his wife have four children, three of whom have complex disabilities. Mr X says the Council has caused him and his family significant unnecessary distress which has negatively affected their mental health. He says they have spent over two years waiting for suitable accommodation.

## **The Ombudsman's role and powers**

3. 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*)
4. If we are satisfied with an organisation'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*)

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## How I considered this complaint

5. I spoke to Mr X and considered the information he provided.
6. I made written enquiries of the Council. I considered its response along with relevant law and guidance.
7. I referred to the Ombudsman's Guidance on Remedies, a copy of which can be found on our website.
8. Mr X and the organisation had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

## What I found

### Homelessness

9. Part 7 of the Housing Act 1996 and the Homelessness Code of Guidance for Local Authorities set out councils' powers and duties to people who are homeless or threatened with homelessness.
10. If councils are satisfied applicants are threatened with homelessness and eligible for assistance, they must help them to secure that accommodation does not stop being available for their occupation. This is called the prevention duty. In deciding what steps they are to take, councils must have regard to their assessments of the applicants' cases. (*Housing Act 1996, section 195*)
11. If a council is satisfied an applicant is homeless, eligible for assistance, and has a priority need the council has a duty to secure that accommodation is available for their occupation. This is called the main duty. (*Housing Act 1996, section 193*)
12. 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 206 and (from 3 April 2018) Homelessness Code of Guidance 17.2*)
13. Councils must assess whether accommodation is suitable for each household individually. Whether accommodation is suitable will depend on the relevant needs, requirements and circumstances of the homeless person and their household. (*Homelessness Code of Guidance 17.4 & 17.9*)

### Housing allocations

14. Every local housing authority must publish an allocations scheme that sets out how it prioritises housing applicants, and its procedures for allocating properties. All allocations must be made in strict accordance with the published scheme. (*Housing Act 1996, section 166A(1) & (14)*)
15. 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)*)
16. Applicants have a right to request a review of a council's decision about the priority band they have been awarded.

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## The Council's scheme

17. The Council operates a choice-based lettings scheme. This means housing applicants can express an interest in available properties. This is called **bidding**. The Council advertises new properties on a fortnightly cycle.
18. The Council places applicants who qualify to join the housing register in a **priority band** from Band A\* (highest priority) to Band C (lowest priority). This priority is the first factor the Council uses to allocate a property.
19. The **registration date** is the date on which the Council first placed an application into a priority band.
20. The **priority band date** is the date on which the Council placed the application into the priority band. This can be different from the registration date if an applicant's circumstances change, and they attract a higher priority band after registration. This date is important because the Council uses it to decide priority within a band. For example, if there are three bids for a property from applicants with Band A\* priority, the applicant with the oldest priority band date will be highest on the list.
21. So far as is relevant to this complaint, the Council awards Band A\* when:
  - the applicant has a high medical priority and requires an adapted property
  - the applicant is in exceptional need of housing that warrants placement in Band A\* (to be approved by a senior manager)
22. So far as is relevant to this complaint, the Council may directly allocate housing to applicants:
  - with multiple needs that fall within Band A
  - accepted as homeless where the Council has a duty to house
  - in exceptional circumstances, at the Council's discretion

## What happened

### Benefits

23. Mr X claimed housing benefit to help pay the rent until he transferred to Universal Credit in April 2022.
24. In April 2020 the Council wrote to Mr X asking him to provide information about one of the children, who had turned 18. In August, the Council applied the highest deduction because he had not provided it. In a call to the Council, Mr X said he did provide the information.
25. The Council did not review or amend the amount of the deduction.
26. In September 2021, the Council suspended Mr X's housing benefit. It wrote to him to ask him to provide information about his income. In November the Council cancelled Mr X's benefit because it said he had not provided the information.
27. Mr X says he did provide the information.

### Housing

28. Mr X lives with his wife and four children in private rented accommodation.
29. Three of Mr X's children have disabilities and complex needs. To preserve their privacy, I have not included any details of their particular needs in this decision.
30. In 2019, the landlord gave Mr X notice to quit the property. This is because the landlord intended to sell it.

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31. Mr X approached the Council for help. The Council assessed Mr X's circumstances and accepted the prevention duty.
  32. The Council liaised with Mr X's landlord, who agreed that the family could remain in the property until it was sold. The Council said it would provide temporary accommodation when this happened.
  33. In April 2021, the Council accepted the main housing duty. This is because the property had sold. The landlord needed the family to leave to carry out essential works before the sale could complete.
  34. In May, the Council increased Mr X's priority on the housing register from Band A to Band A\*. Mr X says this was first agreed by the Council in November 2019 but not changed until 2021. The Council backdated the priority to November 2019.
  35. In May 2021, the Council offered Mr X a 3-bedroom property as temporary accommodation. It had a reception room which could be used as a bedroom.
  36. Mr X refused the property. He asked the Council to review the suitability of the offer. The review found the property was not suitable. The evidence from the various specialists working with the family was that each of the children needed their own bedroom. This meant the family needed a five-bedroom home or one which could be adapted to have five bedrooms.
  37. Since the family had not moved, the landlord could not complete the necessary works and the sale fell through.
  38. The Council sought to agree a new tenancy with the landlord, including financial incentives towards the needed works. The landlord declined to provide a new tenancy.
  39. At time of writing, Mr X and the family remain in the property.

## **My findings**

### **Communication**

40. In response to Mr X's complaint, the Council accepted fault for delays in responding to his communications. This included a period of time when Mr X's allocated housing officer changed and the Council did not tell Mr X. Nor did the new officer contact him for several months.
41. The Council has offered to pay Mr X £150 in recognition of the distress caused by the delays in contact. In the circumstances, I do not consider this to be a suitable remedy for the injustice caused.
42. Mr X and his wife are full time carers for their children, who have complex needs. The Council's delays in communicating with Mr X caused him avoidable additional stress at an already difficult time. This is an injustice to Mr X.
43. Mr X has also noted that the Council would often email him on a Friday afternoon. He found this particularly frustrating because it meant he was unable to speak to anyone or follow up until the Monday. He describes how it would distract and frustrate him over the weekend. He would then make contact on Monday, only for the Council to delay responding to him again.

### **Benefits**

44. Mr X says the Council frequently changed, suspended or cancelled his benefits because it said he had not provided requested information. He says he did provide the information.

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45. In response to my enquiries, the Council provided evidence that Mr X contacted the Council in August 2020, after his benefit was reduced, to say he had provided the requested information to a named officer in May 2020.
46. The Council has provided a copy of this email. It does not include the necessary information. However, it does say that he has the information and asks for someone at the Council to contact Mr X to discuss it. There is no evidence the Council called Mr X back. In the circumstances, I consider this to be fault. It added to Mr X's ongoing frustrations with his communication with the Council. This is an injustice to Mr X.
47. However, in the absence of the relevant information, it was not fault for the Council to apply the deduction to Mr X's benefits.
48. The Council has provided evidence to show it dealt properly with Mr X's benefit claim when it suspended it in September 2021. It reinstated the benefit in November when Mr X provided the necessary information. Therefore, I find no fault.

### **Homelessness**

49. Mr X is homeless. The Council owes Mr X and his family a duty to provide suitable accommodation which it has not fulfilled.
50. The Council says the needs of the family mean it would be best for them to stay in their current property until alternative permanent accommodation is available.
51. However, the current property has damp and mould so extensive that it needs to be taken back to bare brick to treat. There is no evidence the Council has considered whether this means the property is unsuitable. This is fault.
52. In response to my enquiries, the Council accepts it could have referred the matter to its housing standards team to inspect and did not do so. It says this was because it had made an offer of temporary accommodation. However, a review found this offer was not suitable and Mr X and the family remain in the property. The Council did not then refer the matter to housing standards to consider whether the extent of the damp poses a hazard. Failure to do so was fault.
53. In response to a draft of this decision, the Council confirmed it referred the matter to housing standards in July 2022.
54. The Council told Mr X's landlord that if Mr X and the family could stay until the property sold, it would accommodate them when it did. The property sold in April 2021. There is no evidence the Council had taken any action to prepare or plan for accommodating the family before this happened. It did not accommodate the family as it promised to do. This was fault.
55. The Council says it is trying to find alternative accommodation for the family but the number of properties available which would meet their needs is low and this is why it is taking so long.
56. Mr X and his family need a large property with some other specific features to accommodate the needs of the children. The Council has only 3 five-bedroom properties in its stock.
57. The Ombudsman recognises that market conditions and the lack of affordable housing makes securing such properties difficult. However, the Council has a statutory duty to provide suitable accommodation to those owed the main housing duty. The Ombudsman would expect to see evidence of the efforts made to do

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so. For example, the Council has not provided any evidence to show it has considered:

- Converting or extending a property from its own stock to meet the family's needs
- Purchasing a property of the size the family needs
- Taking on a lease of a private property to let to the family at an affordable rent
- Proactively contacting households under-occupying larger council properties to invite them to downsize under the Council's Tenant Incentive Scheme

58. Therefore, I find the Council has not fully considered how it could meet its duty to secure accommodation for Mr X and his family. Failure to do so is fault.

59. As a result, Mr X and his family remain in their private rented tenancy while their landlord continues to seek possession. They must live with the ongoing uncertainty about whether and when the Council will accommodate them. This is an injustice to the family. The nature of the children's disabilities mean that dealing with uncertainty is particularly challenging. This results in an increase in some behaviours which pose a physical risk to the rest of the family.

60. Furthermore, one of Mr X's children has attempted suicide. Mr X says this was because the child thought the family would get a new home more quickly if they needed fewer bedrooms.

61. In response to a draft of this decision, the Council said it has now identified a potentially suitable property. This is welcome.

### **Allocations**

62. Internal emails provided by the Council show that it agreed to increase Mr X's priority on the housing register from Band A to Band A\* in November 2019. It did not do so. There was a second email exchange in March 2020 where the Council confirmed its decision to increase banding to A\*. Despite this, the Council did not increase Mr X's priority band until May 2021. This delay of 30 months was fault.

63. In that time, Mr X bid on a four-bedroom property which he says would have been suitable for them. The successful applicant for this property had been in Band A\* since June 2020.

64. Although Mr X would have been at the top of the list for this property, the Council said it would still have allocated to the other applicant. This is because it was capable of being adapted to suit that household's particular needs. This is in line with the Council's allocations policy, which says it will "ensure that substantially adapted properties are only allocated to applicants who require such adaptations regardless of Banding. This will also apply to properties where it is likely that substantial adaptations could be carried out."

65. I do not, therefore, find that Mr X missed out on an offer of accommodation. Nevertheless, the Council's fault caused avoidable uncertainty and frustration, which is an injustice.

### **Agreed action**

66. To remedy the injustice to Mr X and his family from the faults identified, the Council has agreed to:

- Apologise to Mr X in writing
- Arrange for an officer from housing standards to inspect the property.

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- Should the identified property prove unsuitable or unavailable, act to improve the likelihood of the Council being able to offer Mr X a permanent home by:
    - a. Writing to all 63 tenants of four- and five-bedroom properties to invite applications to downsize and providing details of the incentive scheme
    - b. Producing plans and obtaining quotes for converting or extending an existing three- or -four-bedroom property from the Council's stock to meet the family's needs
    - c. Agreeing to offer Mr X the next available four-bedroom property as a direct let, subject to confirmation it can be made into a five-bedroom home
  - Pay Mr X £500 in recognition of the distress caused by the Council's poor communication.
  - Pay Mr X £500 for the 30 months delay increasing the banding to A\*.
  - Pay Mr X £200 a month from April 2021, when the Council accepted the main duty until the date of this decision. This is 16 months and £3,200.
  - Continue to pay Mr X £200 a month until the Council makes an offer of suitable temporary or permanent accommodation or otherwise ends its duty.
67. The Council should take this action within eight weeks of my final decision.
68. The Council should also take the following action to improve its services:
- Share a copy of this decision with staff in the relevant departments to consider the lessons that can be learned from this case.
  - Refer this decision and the lessons learned outcomes to the Cabinet Member for Housing and the scrutiny committee.
69. The Council should tell the Ombudsman about the action it has taken within three months of my final decision.

### **Final decision**

70. I have completed my investigation. There is fault by the Council. The action I have recommended is a suitable remedy for the injustice caused.

### **Investigator's decision on behalf of the Ombudsman**