

The Ombudsman's final decision

Summary: Ms X complained about the Council's assessment of her priority on the Housing Register and her bids for social housing. There was fault in the way the Council communicated its housing review decision to Ms X in September 2020. It has apologised for this error and taken steps to improve the quality of review decision letters. But there was no fault in its decision to confirm her priority band on the Housing Register then. And there was no fault in the way it considered and ranked her bids for properties.

The complaint

1. Ms X complained that the Council:
 - a) did not properly assess her housing needs between 2017 and early 2019;
 - b) should have awarded Band 1 priority when it considered new evidence and reviewed her priority in September 2020;
 - c) did not carry out the review of her priority band fairly;
 - d) is taking too long to offer her accommodation and may have allocated properties to applicants who have lower priority than her;
 - e) has discriminated against her and her family.
2. Ms X and her family live in unsuitable private rented accommodation which has an adverse impact on their physical and mental health and wellbeing. She wants the Council to offer her suitable accommodation or refer her to another housing authority.

What I have investigated

3. I investigated parts b) to e) of the complaint.
4. I did not investigate part a) for the reasons given in paragraph 51.

The Ombudsman's role and powers

5. 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*)

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6. 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*)
 7. 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*)

How I considered this complaint

8. I have spoken to Ms X and considered all the information she sent me.
9. I have considered the Council's comments and relevant records. I have read the relevant sections of the Council's housing allocations policy. I examined records of Ms X's bids for properties on the Homesearch scheme and the priority of the applicants who were allocated those properties.
10. Ms X and the Council had an opportunity to comment on my draft decision. I considered their comments before making a final decision.

What I found

The background to this complaint

11. When Ms X made this complaint in late September 2020, she was living with her three children, who are all young adults, in a privately rented property. Her eldest child has since moved out.
12. Ms X, and the two children who still live with her, have disabilities. Ms X has a medical condition which limits her mobility and significant mental health disorders. Both children have autism and ADHD. Their current home is unsuitable for the family's needs for various reasons, including Ms X's mobility needs. She says one of the three bedrooms in the property is too small to be used.
13. Ms X joined the Housing Register in early April 2019. The Housing Needs team assessed her needs then and awarded Band 3 priority. Later on that month, the banding was reviewed. Ms X was awarded Band 2 priority on medical grounds which was backdated to the date she applied.

The banding review in September 2020

What should happen

14. There are three priority bands in the Council's housing allocations scheme: Bands 1 to 3. Qualifying applicants are placed in one of these bands following an assessment of their housing needs.
15. Band 2 includes applicants who have a **high** medical priority for rehousing. This applies when the applicant (or a household member) needs to move because of a serious medical condition, illness or disability which is made worse by the current accommodation and it cannot be adapted to meet their needs.
16. Band 1 is the highest band in the scheme. It includes applicants who have an **urgent** medical need to be rehoused because they have a permanent illness or disability which prevents them remaining in their current accommodation. A housing, health or social care professional must confirm that the accommodation is no longer accessible or suitable.

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17. Applicants have the right to request a review of certain decisions on their housing application, including the priority band awarded. The applicant must be notified of the review decision in writing.
 18. Statutory guidance on housing allocations says reviews should be carried out by an officer who is senior to the original decision maker, or by a panel which does not including the original decision maker. The Council's housing allocations policy reflects this guidance and says reviews will be carried out by a senior officer.

What happened

19. The decision to place Ms X in Band 2 was made in April 2019 by "Officer B" who works in the Housing Needs service.
20. In September 2020 the Council received a letter from Ms X's support worker requesting a review of her priority band. Ms X also signed the letter. The support worker described the cramped living conditions. He said Ms X was sleeping on a sofa in the living room which aggravated her medical condition. The third bedroom was very small and there was barely room for a bed. He also described Ms X's mental health issues, mobility problems and gave details of the children's needs and medical conditions.
21. The support worker enclosed a letter from Ms X's GP dated 4 July 2020. The GP said Ms X's mobility difficulties were affected by the lack of space in the house. She was under the care of a psychiatrist and had stopped attending counselling sessions due to the stress caused by her living conditions. The GP also confirmed her children's disabilities. The GP asked the Council to give her urgent priority for rehousing.
22. Officer A, a team leader in the Housing Needs team, carried out the review. On 21 September 2020 the Assistant Director of Finance wrote to inform Ms X of the review decision. When she complained to us, Ms X said it was not appropriate for an Assistant Director of Finance to be involved in a housing review. The Council has since explained that its practice at the time was for letters to be sent in the name of the relevant Director or Assistant Director for the service. In this case, the Assistant Director of Finance managed the Housing Needs service. However she was not involved in the review which was carried out by Officer A. Officer A's name appears as the contact on the letter.
23. Ms X considers Officer A should not have been involved in handling her housing application or reviews. She had made a complaint about Officer A's conduct in February 2019. The Council investigated the complaint and found no grounds to uphold it. Ms X did not take the complaint to the next stage of the complaints procedure at the time. Ms X says Officer A could not consider the review fairly because she had complained about her.
24. The review decision letter explained there would be no change to Ms X's priority band. There were some errors and omissions in the letter. The Council accepts it could have been expressed more clearly. It wrongly said Ms X did not meet the criteria for Band 1 or Band 2 when, in fact, she was already in Band 2. The Council had previously apologised for this error when it replied to an MP's enquiry. The letter also referred Ms X's review request letter when the letter was written by the support worker. And the review decision letter did not specifically state that Officer A had considered the evidence in the GP and support worker's letters.

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25. The Council says it has now instructed officers in the Housing Needs service to ensure review decision letters give clear reasons for the decision and refer to the evidence considered in the review.

My analysis

26. I am satisfied that Officer A carried out the September 2020 banding review and it was appropriate for her to do so. She was a senior officer in the Housing Needs service and she did not make the original decision to place Ms X in Band 2 in April 2019. I therefore find no fault in the choice of the reviewing officer.
27. Although Ms X had complained about Officer A's conduct in early 2019, the Council's investigation did not uphold her complaint. So there was no reason why Officer A should not have been involved in future decisions on Ms X's application.
28. However there was fault with the content of the review decision letter. It was inaccurate in one respect and it did not adequately explain the evidence Officer A had considered and the reasons for her decision. It would also have been less confusing for Ms X if Officer A had signed the review decision letter rather than the Assistant Director.
29. So there was fault in the way the Council communicated the review decision to Ms X. The Council has already apologised to Ms X for the error and issued advice to relevant officers to improve the quality of review decision letters. That was a satisfactory remedy.
30. I went on to consider whether the decision to confirm the Band 2 priority award in September 2020 was flawed. Based on the evidence the Council received at that time, it was not fault to decide the application should remain in Band 2. Although Ms X strongly disagrees with that decision, and with Officer A's assessment of the evidence, that was a decision Officer A was entitled to make.

The award of Band 1 priority

31. In March 2021 the Council awarded Ms X Band 1 priority. This is the highest priority band in its housing allocations scheme.
32. The Council says it awarded Band 1 priority then because various professionals had contacted the Housing Needs service to express concerns about a marked deterioration in Ms X's mental health. The Council also became aware that Ms X had made a reference to suicide on social media. This led to increased concerns about the welfare of Ms X and her children.
33. Following consultation with officers, Officer A decided to award Band 1 priority from 22 March 2021.
34. Ms X believes the decision to award Band 1 priority in March 2021 was not based on consideration of new evidence or information. She believes officers only had the evidence she had submitted for the September 2020 review. For this reason she believes the Council should have awarded Band 1 priority in September 2020.
35. The Council sent me the original email correspondence from March 2021 and a redacted version which I have shared with Ms X.

My analysis

36. The March 2021 emails contain new information that was not in the letters submitted for the September 2020 review. Various professionals had expressed growing concerns about a deterioration in Ms X's mental health. It was this new information, from several sources, that led to the decision to award Band 1 priority.
37. For this reason, I do not find the Council was at fault for awarding Band 1 priority in March 2021 rather than in September 2020. This decision was based on new evidence presented in March.

Ms X's bids for properties on Homesearch

38. The Council provided a spreadsheet of all the bids Ms X made for properties on the Homesearch scheme between mid-September 2019 and mid-May 2021. This covers the 12 month period before Ms X complained to us and more recent bids.
39. When Ms X was awarded Band 1 priority, she was placed on "auto-bid". This means she was automatically matched to any properties that met her assessed housing needs.
40. There are 36 bids on the Council's spreadsheet. 20 of these properties were allocated to applicants with Band 1 priority while Ms X was still in Band 2. Two properties were allocated after Ms X was awarded Band 1 in March 2021. They went to applicants who had been in Band 1 for longer than her.
41. Only three properties were allocated to applicants with Band 2 priority while Ms X was in Band 2. All of these went to Band 2 applicants with an earlier registration date than Ms X so they took priority over Ms X.
42. Most of the remaining properties were either withdrawn by the landlords or Ms X's bids were bypassed because she did not match the criteria. Ms X withdrew one bid. In one case, the landlord rejected Ms X on the grounds that she had rent arrears from a former tenancy. Ms X disputed these arrears and the Council subsequently made a payment to clear them so she would not be refused again for this reason. Some of the bids on the list are still open and under consideration.

My analysis

43. The records show that most properties allocated in this period went to applicants in a higher priority band than Ms X or who had been in the same band for longer than her. They therefore had priority over Ms X.
44. Housing Associations and other landlords sometimes withdraw properties advertised on Homesearch and the Council has no control over this. Landlords also carry out their own checks before they decide whether to accept someone as a tenant. The Council is not involved in making those decisions.
45. Having reviewed this evidence, I found no fault in the way the Council prioritised Ms X's bids for properties.

Discrimination

46. Ms X believes that the Council discriminated against her and her family. She feels it is wrong that Officer A is still involved in making decisions on her case when she complained about Officer A's conduct in early 2019. Ms X believes the Council is determined to stop her getting an offer of social housing.
47. The Council says it has not discriminated against Ms X. It says it assessed her housing application fairly and applied the criteria in its published housing

allocations scheme when deciding what priority to award. It increased her priority to Band 1 in March 2021 when professionals provided new information about a deterioration in her mental health. Ms X's bids were always ranked according to her priority band and date.

My analysis

48. I have seen no evidence that Council officers treated Ms X unfairly or discriminated against her in the period covered by this investigation. Understandably she is upset that she has not been rehoused yet. But I have seen no evidence that this results from unfair treatment or discrimination in the way officers assessed her priority and bids.

Final decision

49. I have completed the investigation and found fault with the content of the September 2020 review decision letter. This caused Ms X some confusion and uncertainty. The Council has apologised to Ms X (through her MP) for the error in the letter and taken steps to improve the quality of review decision letters. As I have not found fault with the decision to confirm Band 2 priority at that time, the Council's apology provides a satisfactory remedy.
50. I have not upheld the other parts of Ms X's complaint because I found no fault.

Parts of the complaint that I did not investigate

51. I did not investigate part a) of Ms X's complaint about the Council's assessment of her housing needs between 2017 and early 2019. Ms X complained to us in September 2020. These events all happened more than 12 months before she complained to us and it is too late to investigate them now.

Investigator's decision on behalf of the Ombudsman