

The Ombudsman's final decision

Summary: The Council wrongly ended its duty to provide interim accommodation and delayed in making a homelessness decision.

The complaint

1. Mrs X complains the Council was wrong to end its section 188 duty after her family was evicted from bed and breakfast temporary accommodation; that it delayed in providing a decision on a homelessness application and incorrectly downgraded her re-housing band.

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)*)

How I considered this complaint

4. As part of the investigation, I have:
 - considered the complaint and the documents provided by the complainant;
 - made enquiries of the Council and considered the comments and documents the Council provided;
 - discussed the issues with the complainant;
 - sent my provisional view to both the Council and the complainant and invited their comments.

What I found

5. Mrs X and her family were evicted from private rented accommodation. Mrs X sought help from the Council. The Council provided interim accommodation at a bed and breakfast in Peterborough as there was no available accommodation in Cambridge.
6. On 5 August the owner of the bed and breakfast accommodation contacted the Council saying there had been an incident involving Mr X and she wanted the

family to leave that day. The Council negotiated a further nights stay for Mrs X and her family.

7. On 6 August Mrs X and her family had to leave the bed and breakfast. The Council told them it no longer had a duty to provide interim accommodation. The Council told Mrs X the County Council had been informed of the situation and that the County Council would accommodate the children in line with its duties under the Children Act. Mrs X refused this offer. She chose to keep her family together and so took them to Yorkshire to stay with her mother.
8. The Council was in the process of making the decision on the family's homeless application. A draft letter dated 5 August was prepared. The letter said the Council considered the family to be intentionally homeless and so it had no duty to re-house them. The letter did state that it had a duty to provide accommodation for a reasonable period of time. It also said it would help with rent in advance and the deposit to secure private rented accommodation. The letter also gave Mrs X a right of review if she wished to challenge the decision. The Council never sent the letter.
9. The Council says the eviction of Mrs X and her family from the bed and breakfast accommodation triggered a switch in focus. It says it focussed on helping Mrs X secure private rented accommodation which she did from 30 August with the help of money from the Council to cover the rent in advance and deposit.
10. On 6 September the Council wrote to Mrs X with a decision on her homeless application. It said that she was not homeless because she had secured suitable accommodation.
11. Mrs X was unhappy with the way the Council had treated her family so she made a formal complaint. The Council responded explaining its actions. It refused to comment on whether it had a duty in law to continue to provide accommodation after the family was asked to leave the bed and breakfast accommodation but did acknowledge this must have been a difficult period for Mrs X and her family. It said it was a coincidence that the draft homelessness decision letter was dated the same day as the eviction. It said there were further checks to be done before it could send the letter and it would normally have invited Mrs X to an interview. It decided not to do this because it would have been difficult for Mrs X to attend an interview when she was living in Yorkshire. It said it was easier to complete a not homeless decision and so did this after it helped Mrs X to secure private accommodation.
12. Dissatisfied with the Council's response, Mrs X complained to the Ombudsman.

Analysis

13. If someone makes a homelessness application the Council must provide interim accommodation while it considers the application if it has reason to believe the applicant may be homeless and in priority need. This duty ends when the Council notifies the applicant of its decision on the homelessness application. In this case the Council did not notify Mrs X of the decision on her homelessness application until 6 September and so its duty to provide interim accommodation did not end until that date.
14. The Council stopped providing interim accommodation on 6 August following an incident between Mr X and the hotel owner. The owner of the bed and breakfast was entitled to ask the family to leave but this in itself would not end the duty. There is case law which implies that if an applicant loses their interim accommodation because of their own actions the Council need not provide

alternative interim accommodation. However, this case law indicates the Council can discharge its interim duty when the applicant's behaviour is persistent and there is an unequivocal refusal to observe reasonable requirements in respect of the occupation of the accommodation.

15. The information provided shows the Council did not investigate the incident between the hotel owner and Mr X but simply took the word of the hotel owner. I consider the Council was at fault for not properly investigating the incident. While I cannot say what the outcome of any investigation would have been, the hotel owner's own account of the incident indicates it was minor in nature.
16. The Council was at fault for ending its interim duty to accommodate on 6 August without carrying out a proper investigation into the incident and without issuing decision.
17. The Council delayed in issuing the homelessness decision after the family were evicted from the bed and breakfast. A decision letter had been drafted the day before and the Council says it would normally have invited Mrs X in for an interview. The Council says it would have been difficult for Mrs X to attend an interview as she was staying in Yorkshire. However, case law requires the Council to give the applicant a chance to have a say before it issues an adverse decision. I consider the Council was at fault for not offering Mrs X an interview. She may have been willing to travel for the interview. If she could not attend in person the Council could have sent a "mind to find" letter or it could have conducted the interview over the telephone. The Council was at fault for not looking at how this could have been achieved even though Mrs X was living away from the area.
18. By its own admission in its letter of 27 January 2014, the Council says "a not homeless decision is easier to complete". As a result of the delay in completing the homelessness decision, Mrs X lost her opportunity to challenge the issue of her being intentionally homeless. I cannot say whether any appeal against this decision would have been successful but the Council's fault resulted in a lost opportunity for Mrs X.
19. Mrs X also complains the Council incorrectly downgraded her re-housing band. There have been faults in this case but I am not persuaded these faults resulted in Mrs X being downgraded incorrectly. Mrs X and her family are now living in suitable private accommodation and so will have less priority for social housing.

Agreed action

20. To remedy the fault in this case I recommend the Council provides a written apology to Mrs X and pays her £350 to recognise her missed opportunities and uncertainty. This payment can be offset against outstanding debt owed to the Council.
21. I would also ask the Council to review its procedures to ensure it is properly meeting its duty to provide interim accommodation.

Final decision

As an appropriate remedy is agreed the complaint will not be pursued further.

Investigator's decision on behalf of the Ombudsman