

The Ombudsman's final decision

Summary: The Council was not at fault in how it decided Mrs F's housing allocation priority. It considered the evidence she provided and acted in line with its allocations policy, so the Ombudsman cannot question its decision.

The complaint

1. The complainant, whom I refer to as Mrs F, complains about how the Council has awarded her housing allocation priority. She says it has failed to properly consider her health needs or anti-social behaviour (ASB) in her local community.

The Ombudsman's role and powers

2. 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*)
3. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
4. We cannot investigate complaints about the provision or management of social housing by a council acting as a registered social housing provider. (*Local Government Act 1974, paragraph 5A schedule 5, as amended*)
5. 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

6. I considered information from Mrs F and the Council. I wrote to Mrs F and the Council with my draft decision and considered their comments.

What I found

What happened

7. Mrs F lives in a one-bedroom flat with her daughter. Her daughter is nine years old, and they share a double bed in the property. At the time of the complaint her

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- daughter was eight years old, and the Council had placed Mrs F in Band C of its housing list, and said this was because she had one bedroom fewer than her household needed.
8. In April 2017 Mrs F asked the Council to reassess her housing priority, based on her medical needs – chronic obstructive pulmonary disease (COPD). She provided evidence of these needs, as well as a letter from her daughter’s school which said her housing – including local ASB – was having a negative impact on her daughter’s well-being.
 9. On 5 May the Council’s medical advisor considered the evidence Mrs F provided and recommended that she should not receive medical priority. The advisor commented that Mrs F’s housing was not medically unsuitable because she did not have “*any profound unstable respiratory diagnosis*”. The Council did not award Mrs F any medical priority.
 10. On 23 May the Council held a multi-agency meeting, after Mrs F’s daughter’s school had made an ‘early help’ referral to the Council. Mrs F told the Council that her condition had worsened. The Council said it did not know this, as the medical evidence it had was not recent (this evidence included an occupational therapist (OT) assessment dated 2015, which said Mrs F had limited mobility but could walk around 400 yards on the flat). The Council agreed during the meeting that it would put the case to its housing allocations panel.
 11. After this meeting Mrs F asked the Council for a reassessment of her housing priority, and said she not only had COPD, but also anxiety, depression and anorexia. The Council’s medical advisor considered this information on 1 June but decided, again, that Mrs F should not receive medical priority. However, the advisor said future accommodation should be ground floor if there is no lift available.
 12. On 6 June Mrs F put in a stage 1 complaint, and set out her dissatisfaction with the Council’s decision on her housing priority.
 13. The Council responded on 13 June. It said it had correctly placed her in Band C in line with its allocations policy, and its medical advisor had not recommended medical priority.
 14. The Council said it had visited Mrs F to discuss her ASB concerns, but – as she had chosen not to report ASB incidents to the Police – the Council could not gain any clear evidence to prove the allegations.
 15. The Council also said it would tell her what happened when the housing allocations panel hearing had taken place.
 16. After the Council had sent its stage 1 response, Mrs F provided more medical information, and asked the Council to consider it. The Council’s medical adviser did so on 20 July. He said that, although Mrs F had COPD, which caused some mobility issues because of breathlessness, she still had independent mobility on the flat over a reasonable distance (400 yards) and could therefore manage some stairs. He recommended that she be placed in Band C on medical grounds.
 17. Mrs F put in a stage 2 complaint on 30 July and said her anorexia was making her COPD worse. She said the Council had not properly considered her conditions when deciding her housing priority.
 18. The Council’s Assistant Director (to whom Mrs F’s letter had been addressed) responded to Mrs F on 23 August. However, the Council then accepted that it

should have responded at stage 2 of its complaints procedure. It also referred Mrs F's case to its housing panel, which it had not done in May.

19. The panel heard Mrs F's case on 21 September, and considered Mrs F's ASB issues (including Police evidence), medical evidence, overcrowding, and evidence from her daughter's school and children's services.
20. The panel decided that Mrs F should remain in Band C for her medical issues and overcrowding, but that there was "*no evidence to suggest that [her] situation [was] such that [she was] a greater priority to move than other applicants on the waiting list*".
21. The Council responded to Mrs F's stage 2 complaint on 5 October, and referred to the panel's decision. It said that, while it did not dispute that there was ASB in Mrs F's local area, this was no greater than elsewhere in the Council's area.
22. The Council also referred to the 2015 OT report, which said Mrs F had limited mobility but could walk around 400 yards on the flat, although she struggled on inclines and hills (and, the Council admitted, presumably stairs).
23. The Council recognised that Mrs F's housing was not meeting her needs, and said that this was why she was in Band C rather than Band D. However, it did not decide to increase her priority.
24. A new OT report was completed in November. However, it said the same about Mrs F's mobility as the 2015 report had said.
25. Mrs F put in a stage 3 complaint and said the Council had not properly considered her medical needs in making its decision. However, the Council did not change its mind. In its stage 3 complaint response, it said that, if there was any new medical information which suggested her condition had worsened, she should send it to the Council for consideration.

Law and guidance

Housing Act 1985

26. This Act sets out the legal definition of statutory overcrowding within a household. It says a property's *room* standard is contravened if two people of the opposite sex who are not living together as partners must share a room. Children under 10 years old are disregarded from this standard.
27. The Act says a property's *space* standard is contravened if the number of people living in a property exceeds the permitted number. For a one-bedroom property this number is 2; however, no account is taken of children aged under 1, and children aged between 1 and 9 count as half-units.

Housing Act 1996

28. This Act says 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.
29. The Act says an allocation 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; and
 - people who need to move to avoid hardship.

The Council's housing allocations policy

30. This policy sets out the Council's rules on how it allocates properties and awards housing priority to applicants. It says any application for medical priority must be supported with evidence from a health professional.
31. The policy says it assesses medical need based on the effect of the applicant's present housing on the current state of their (or any other applicant of the household's) health. Depending on the medical assessment, the Council can allocate medical priority within the following bands:
 - Band A – high priority, where the applicant or one of the household has a life-threatening condition which is seriously affected by their current housing;
 - Band B – medium priority, where the current housing conditions are having a major adverse effect on the medical condition of the applicant or one of the household;
 - Band C – low priority, where the current housing conditions are having an adverse effect on the medical condition of the applicant or one of the household that creates a particular need for them to move; or
 - Band D – no priority.
32. The policy says the banding structure is not cumulative, so an applicant who satisfies more than one criterion within a band will remain in that band.
33. The policy says the Council will consider a priority transfer in exceptional circumstances, such as when an applicant is experiencing severe harassment or violence.
34. The policy says that, where there are serious welfare needs connected with an applicant or any of their household, the Council will consider the recommendations of the County Council social care teams and any other statutory and voluntary agencies, particularly taking into account evidence of the applicant's multiple needs.
35. The policy says the Council will place an applicant in Band B if they have two or more bedrooms fewer than they need, or if they are statutorily overcrowded as defined by the Housing Act 1985. It says the Council will place an applicant in Band C if they have one bedroom fewer than they need.
36. The policy says the Council will use the 2012 statutory guidance, 'Allocation of accommodation: guidance for local housing authorities in England' to decide how many bedrooms an applicant needs.

Allocation of accommodation: guidance for local housing authorities in England

37. This guidance sets out how councils should allocate property size (i.e. number of bedrooms) when assessing applications. It says applicants should be allocated one bedroom for each:
 - married or cohabiting couple;
 - other adult aged 21 or over;
 - pair of adolescents aged between 10 and 20 and of the same sex;
 - pair of children aged under 10 regardless of sex; and
 - other child or adolescent.

Analysis

38. The Ombudsman recognises that the demand for social housing far outstrips the supply of properties in many areas. We may not find fault with a council for failing to re-house someone if it has prioritised them according to its published allocation scheme.
39. I also cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. I must consider whether there was fault in the way the decision was reached.
40. The Council placed Mrs F in Band C. She says she should get higher priority because of medical needs and because she is a victim of ASB. The Council was under a duty to consider this information and to allocate priority according to its allocations policy.
41. The Council considered medical evidence provided by Mrs F on 5 May, 1 June and 20 July 2017. On the first two occasions it decided she had no medical priority, and on the third it decided she *did* need to move for health reasons, and any future move should be to a ground floor property (or to a building with a lift). However, it decided her priority was low, and therefore it placed her in Band C.
42. The Council appears to have taken regard of a 2015 OT report in making its decision. This report said Mrs F could walk, on the flat, a distance of around 400 yards. The Council decided that, because of this, she could walk up one flight of stairs. At the time of the medical assessments there were no more up-to-date OT reports. A new report was completed in November 2017, but did not contain relevant new information about Mrs F's mobility.
43. The Council considered Mrs F's medical evidence, allocated her priority in line with its allocations policy, and fully explained its reasoning. I have found no fault with how the Council made the decision on Mrs F's priority so, although she disagrees with the decision, I cannot question it.
44. The Council also responded to Mrs F's claims that she was a victim of ASB. It visited her in early 2017, but she said she had not reported any incidents to the Police. The Police advised her in May 2017 to report any ASB incidents. In responding to Mrs F's stage 2 complaint, the Council consulted its community safety unit, which said the ASB in Mrs F's local area was not significantly worse than in the rest of the Council's area, and was better than in some areas.
45. For the Council to agree to a priority transfer because an applicant is experiencing harassment or violence which reached a 'severe' threshold, it must be satisfied that there is evidence to support the transfer. It decided, in the absence of Police evidence to show that Mrs F was the victim of such harassment or violence, that she should not receive a priority transfer.
46. Again, although Mrs F disagrees with this, I have found that the Council acted in line with its allocations policy and therefore I cannot question its decision.
47. The Council's allocations policy also places the Council under the duty to consider information from other agencies, including social care, in deciding whether an applicant has other serious welfare needs which are being affected by current housing.
48. The Council held a multi-agency meeting on 23 May 2017 which was attended by the Mrs F, the Council, the Police, Mrs F's daughter's school, and the County Council's social care early help team. In this meeting the Council agreed that, in

light of Mrs F's situation, it would refer the case to its housing allocations panel for consideration.

49. Although the Council agreed to refer the case, it did not actually do so. This meant the Council did not act in line with the policy.
50. The Council identified this itself and, four months later, referred Mrs F's case to its housing allocations panel. The panel considered evidence about Mrs F's medical needs, overcrowding and ASB. It also considered information from children's services and Mrs F's daughter's school. However, it decided there should be no change in Mrs F's priority. I have found no fault with how the panel considered Mrs F's case and therefore I cannot question its decision that she should remain in Band C.
51. In light of this, I do not consider Mrs F to have suffered a significant injustice from the delay in the Council referring her case to the panel, and I will not recommend that the Council takes remedial action.
52. Although the Council decided that Mrs F had housing priority for two reasons – overcrowding and medical needs – it decided that both those reasons were enough to justify a placement in Band C. According to the allocations policy, this does not mean that Mrs F gets a higher banding, and the Council was not at fault for continuing to place her in Band C.

Finding

53. The Council acted in line with its allocations policy in deciding Mrs F's priority, and considered evidence Mrs F provided, so I have not found it to have been at fault.
54. If Mrs F has any new medical information (or evidence of ASB) which the Council has not already considered, and which she considers relevant to her housing priority, she should send it to the Council.

Final decision

55. The Council was not at fault in how it decided Mrs F's housing allocation priority. It considered the evidence she provided and acted in line with its allocations policy, so I cannot question its decision.

Parts of the complaint that I did not investigate

56. I did not investigate any part of Mrs F's complaint which was about the disrepair of her property. This is because I cannot investigate complaints about the provision or management of social housing by a council acting as a registered social housing provider.

Investigator's final decision on behalf of the Ombudsman