

The Ombudsman's final decision

Summary: Mrs X complains about the way the Council handled her housing application. Based on the evidence seen, we have found fault in how the Council considered Mrs X's medical priority, but this did not cause her an injustice. We have found no fault in the way the Council responded to Mrs X's reports of disrepair in her property. We find the Council failed to properly respond to Mrs X's concerns about energy costs and affordability. The Council has agreed to make a financial payment for the injustice this caused.

The complaint

1. Mrs X complains about the way the Council handled her housing application, particularly, how it considered her medical needs and the medical needs of her children.
2. Mrs X says because of this they have continued to live in a property that was unsuitable due to mould and overcrowding, which has impacted their health.

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. 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*)
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 have spoken to Mrs X and considered her complaint. I have made enquiries of the Council and considered the comments and documents it provided.

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7. I sent Mrs X and the Council a copy of my draft decision and invited their comments. I considered all the comments I received before reaching a final decision.

What I found

Law and guidance

Housing Act 1985

8. 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.

Housing Act 1996

9. 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.
10. 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

11. 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.
12. The policy says it assesses medical need based on the effect of the applicant's present housing and 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.
13. 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.
14. 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 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.

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15. 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

16. 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.

What happened

17. Below is a brief chronology of key events. It is not meant to detail everything that happened.
18. Mrs X joined the Council's housing register in October 2017. She lives in a one-bedroom property with her partner and young daughter. Mrs X's stepson stays at the property at weekends.
19. In early 2019 Mrs X contacted the Council about the amount of mould in her property. An independent surveyor visited the property in March 2019. The surveyor confirmed that in their opinion the mould was from internal moisture hitting colder surfaces on a regular basis, caused by the residents' behaviors. The surveyor recommended windows should be closed after midday when moisture was not being produced to keep the room surfaces warm and the Council should look into the option of overriding the electric storage heaters within the property to provide more consistent heating.
20. On 19 November 2019 Mrs X reported further problems with damp and mould. The Council carried out an internal inspection. Mrs X explained she had not been using the heating as previously recommended due to financial difficulties. The Council explained why the heating was important in treating the issues and advised Mrs X to keep the heating on a lower temperature for a consistent time. The Council also identified an issue with overcrowding in the property. Four people were sleeping in the bedroom, however, one of them was only there at weekends. The Council said the space in the bedroom was very limited and did not help with heat circulation to the walls causing cold spots for mould and condensation to form.
21. Mrs X complained to the Council on 29 November 2019. Mrs X said the property was suffering from unmanageable amount of mould and this was due to overcrowding. She attached photographs which showed the mould had worsened over time. Mrs X said she had a weakened immune system and her and her daughter had asthma. She said the damp and mould was affecting their health.
22. The Council responded to Mrs X's complaint at stage one of its complaints procedure. The Council acknowledged the mould and damp issues had got worse and said this was due to the family not using the heating as suggested. The Council also acknowledged that Mrs X had told them she could not afford the increased heating costs. The Council understood that Mrs X required a larger

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- property and confirmed she was currently placed in Band C. The Council said an extra person staying at the property at weekends was only likely to make the situation worse.
23. Mrs X remained unsatisfied and in January 2020 asked for her complaint to be escalated to stage two. On 14 February 2020 the Council and an independent mould specialist carried out an inspection of the property. Equipment was provided to monitor condensation levels for two weeks. On review of the results the surveyor confirmed air moisture was still in the risk zone and Mrs X would continue to get mould growths unless they:
- further reduce the air moisture by using cross ventilation when creating moisture, and use cross ventilation from the bedroom to the living room on blue sky days for an hour or so;
 - increase airflow by ensuring the bedroom furniture is not against the end wall; and
 - increase the average bedroom temperatures by 2 degrees centigrade but they must improve ventilation at the same time, or this can lead to a further build-up of air moisture and would encourage mould growths to spread.
24. Following recommendations from the surveyor's report, the Council agreed to carry out repair work to one of the bedroom walls. A provisional appointment was booked for 20 April 2020.
25. The Council responded to Mrs X's stage two complaint on 19 June 2020. It apologised for the delay which it said was due to a change in management structure and the impact of Covid-19. As part of its investigation the Council said it had considered:
- information provided by Mrs X with her complaints;
 - history of repair work carried out at the property in relation to mould;
 - inspection reports completed by the Council and independent surveyors;
 - stage 1 complaint response; and
 - the housing register and Mrs X's current banding.
26. The Council explained the repair work was postponed due to Covid-19 but could now be scheduled and this would help in resolving the mould issues. In addition to this the Council advised the property should be heated and ventilated as suggested by the independent surveyor in February 2020. The Council explained it had:
- asked the housing partnership team to contact Mrs X and explore ways of reducing energy costs;
 - reviewed Mrs X's circumstances and decided Band C was correct; and
 - passed the medical information provided by Mrs X to the housing allocations team for review to determine whether this had an impact on her housing need.
27. On the same day Mrs X responds and informed the Council she was pregnant and at high risk due to existing medical conditions. The Council asked Mrs X to explain why her pregnancy was considered high risk. It also asked her to clarify who occupied the property. Mrs X said her stepson stayed at the property at weekends. She says she was diagnosed with cancer in 2004 and provided a factsheet with details of the condition. She also provided a copy of a medical report dated October 2019 regarding her daughter who was prescribed antibiotics for a respiratory infection.

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28. On 15 July 2020 Mrs X asked for her complaint to be escalated to stage three. She said the repair work had been carried out previously but did not resolve the problem in 2017. She said she had the windows open all day, but this had not alleviated the mould in the bedroom.
 29. A week later the Council carried out repair work at Mrs X's property and as a gesture of good will paid for the bedroom to be redecorated.
 30. The Council responded to the stage three complaint on 20 August 2020. It apologised for the delay due to Covid-19. The Council accepted fault in relation to two issues. Firstly, the delay in carrying out the repair work and secondly it had not investigated or implemented the ability to override the electric storage heaters within the property to provide more consistent heating.
 31. The Council explained that current occupancy of the property did not meet the statutory definition of overcrowding. The Council explained that because Mrs X's stepson only resided at the property at the weekend, this would not increase her banding. The Council considered the medical information Mrs X provided but said it did not demonstrate that the current living conditions had a significant detrimental effect on Mrs X or her daughters health. The Council said Mrs X's banding was correct.
 32. However, considering the family's circumstances and Mrs X's pregnancy the Council applied discretion and placed Mrs X in Band B backdated to October 2017, when she joined the housing register. In addition to this the Council offered Mrs X a payment of £50 for delays she experienced during Covid-19 and £40 to cover increased heating costs.

Analysis

33. 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.
34. I cannot find fault with the way the Council responded to Mrs X's complaints about mould and damp. It carried out its own inspection and sent an independent surveyor to the property who considered the mould was the result of internal moisture which could be resolved with repair work and improved ventilation and heating by the family. The Council decided that Mrs X did not qualify for additional priority due to unsatisfactory housing conditions.
35. The Council agreed to carry out the recommended works but there was a delay due to the Covid-19 restrictions. There was also a delay in investigating the electric storage heaters as recommended by the surveyor during this period. The Council apologised for this delay which I consider is sufficient action to put matters right.
36. There is no evidence the Council contacted Mrs X to complete a housing review as it said it would in its stage two complaint response. I find the Council did however consider Mrs X's circumstances in terms of overcrowding and medical needs as part of its stage three complaint response.
37. The Council recognised that Mrs X required a two-bedroom property but did not consider the property was statutorily overcrowded. Mrs X's stepson did not reside with the family permanently and there was no requirement for the Council to include him in their assessment. There was no fault in the way the Council reached this decision.

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38. The Council considered whether the family's circumstances are such that additional priority should be awarded on medical grounds. It considered the medical information provided by Mrs X but did not consider it was significant enough to qualify for additional preference in the Council's housing allocations scheme. The Council acknowledged Mrs X's pregnancy but said she did not require priority banding as any risks were not related to the property. Mrs X's application was already assessed as Band C. It did not consider Mrs X's medical circumstances sufficient to award a higher priority banding.
39. It is important to stress here that I do not have a view on what banding Mrs X's medical circumstances merited. That is a judgment for the Council that it must make on the facts. However, I find the Council failed to show how it reached this decision and why it decided the information did not demonstrate the current living conditions had a significant detrimental effect on Mrs X or her daughters health. Because I cannot see what weight it gave to the medical information provided by Mrs X with her complaint, I am not satisfied that it made its decision properly. That merits a finding of fault. But this did not cause Mrs X an injustice because the Council applied its discretion and moved Mrs X into Band B. The Council has confirmed that Mrs X did not meet the criteria for Band A.
40. Mrs X repeatedly told the Council that she could not afford to heat the property as suggested by the surveyor. The Council said that it would contact Mrs X and explore ways of reducing energy costs. I can see no evidence that this happened. Nor is there any evidence the Council carried out an affordability assessment based upon the heating costs Mrs X would have to pay to minimise the damp and mould. This is fault. It is clear that Mrs X was distressed by the likely increase in her energy bills. If the Council had spoken to Mrs X as it said it would and completed an affordability assessment, this would have alleviated some of her distress and uncertainty. I understand the Council has offered Mrs X a payment of £40 towards her heating costs. I recommend a further payment of £100 to remedy the distress and uncertainty caused.
41. I note the Council has apologised to Mrs X for the delay in responding to her complaints at stage two and three during Covid-19 pandemic. I am satisfied with this. While there was a delay in sending a formal response, the Council was aware of the issues Mrs X was facing and was taking steps to address them by inspecting the property. I note the Council has offered Mrs X a payment of £50 as a gesture of good will for the delays.

Agreed action

42. Within four weeks of my final decision the Council will pay Mrs X £100 for the fault and injustice identified in paragraph 40. This is in addition to the payments the Council offered Mrs X in its stage three complaint response.

Final decision

43. I have found fault by the Council causing an injustice to Mrs X. The Council has agreed to my recommendation and I have completed my investigation on this basis.

Investigator's decision on behalf of the Ombudsman