

01 September 2022

Complaint reference:
21 011 626

Complaint against:
Gravesham Borough Council

The Ombudsman's final decision

Summary: The Council is at fault for failing to consider medical evidence Miss X provided in support of her housing application. The Council is also at fault for failing to consider any reasonable adjustments it could have made when corresponding with Miss X. We find this caused her distress and uncertainty. To remedy this, the Council has agreed to apologise to Miss X, reconsider her application, make a payment to her and circulate guidance to staff regarding the Council's duties under the Equality Act 2010.

The complaint

1. The complainant, whom I shall refer to here as Miss X, complains the Council failed to properly consider her mental health and the evidence she provided in support of her application for priority for re-housing. Miss X also complains the Council corresponded with her in a manner that exacerbated her stress levels.

The Ombudsman's role and powers

2. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word fault to refer to these. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)
3. 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

4. I considered Miss X's complaint and the information she provided.
5. I considered the information I received from the Council in response to my enquiries.
6. Miss X and the Council had an opportunity to comment on a draft of this decision. I considered their comments before making this final decision.

What I found

Legislation and Guidance

7. Every local housing authority must publish an allocation 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 (Housing Act 1996, section 166A(1) & (14)).

The Council's Housing Allocation Scheme

8. The Allocation Scheme allows the Council to place applicants into priority bands following its assessment of their housing need. It operates a banding system based on the level of urgency of the applicant's housing need.
9. All qualifying households are placed into one of four bands, A, B, C and D. Applications in Band A are given the highest priority for re-housing, Band B the next highest, then C with Band D applicants having the lowest priority.
10. When assessing medical and welfare priority, the Council's assessment is not based on the nature or severity of any medical condition or disability but it focuses on the direct impact that the current housing has on any condition or disability, and whether this could be alleviated by a move to a more suitable home.
11. Priority on medical grounds is assessed based on the confirmation of the Applicant's diagnosis from a GP or other medical professional/specialist. Applicants can provide independent verification from a doctor, nurse, hospital consultant, occupational therapist, or other health care professional. The Council may ask Applicants to provide further evidence or refer the case for independent medical advice.

Reasonable adjustments

12. The Equality Act 2010 makes it unlawful for organisations carrying out public functions to discriminate on any of the nine protected characteristics listed in the Equality Act 2010. The protected characteristics referred to in the Act include disability.
13. The reasonable adjustment duty is set out in the Equality Act. It applies to any body which carries out a public function. It aims to make sure that a disabled person can use a service as close as it is reasonably possible to get to the standard usually offered to non-disabled people.
14. Service providers are under a positive and proactive duty to take steps to remove or prevent obstacles to accessing their service. If the adjustments are reasonable, they must make them.
15. We cannot decide if an organisation has breached the Equality Act as this can only be done by the courts. But we can make decisions about whether or not an organisation has properly taken account of an individual's rights in its treatment of them.

What happened

16. This chronology includes key events in this case and does not cover everything that happened.
17. Miss X is a housing association tenant. She lives in a two bedroom flat with her partner and three children. In April 2021, Miss X submitted an application to be re-housed. On the application she stated she had 'severe depression and anxiety and this resulted in her being a danger to herself'.

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18. Miss X explained that her current property was contributing to the decline of her mental health. She said the property was small, it made her feel claustrophobic, and there was no privacy. She said the noise from neighbouring properties disrupted her children's sleep and this impacted on her anxiety as she was unable to settle her children. There have also been several incidents of anti-social behaviour that has made her feel unsafe.
 19. The Council assessed Miss X's application and awarded her priority Band C due to overcrowding and with a need for 3 bedrooms. Miss X was unhappy with the decision and was advised by the Council she would need to submit new medical evidence with her appeal as the evidence she provided with her application had already been reviewed. The Council asked Miss X to provide independent verification her medical condition was adversely affected by her current housing.
 20. Miss X advised the Council she felt it was undermining the severity of her mental health condition. The Council advised her that it takes all health cases seriously and that it mainly looks at whether the current housing is making the health condition worse and how a move could solve the problem.
 21. Miss X submitted a stage one complaint to the Council because she felt the Council had ignored her mental health, she was unhappy that the allocations panel members were not medically qualified and that she felt discriminated against.
 22. In its response, the Council acknowledged Miss X's mental health conditions and the circumstances that led up to her diagnosis of Borderline Personality Disorder (BPD). It highlighted the medical report it had said the primary stressors impacting on her mental health were due to work and finances.
 23. The Council also explained that priority on medical grounds, including grounds relating to mental health, is determined by assessing the medical evidence provided and how the current health problems are linked to the current housing, it is not based on the nature or severity of any medical conditions. As it is not a clinical decision, it said the housing allocations team have knowledge and training in how to apply the housing allocations scheme to ensure that all such decisions are made in the same way and are based on the evidence available. If officers are unclear as to whether priority should be awarded, cases can be referred to independent medical advisers for advice.
 24. The Council advised Miss X that it would be happy to request a review of the level of priority awarded to her application by an independent medical adviser if she had any further evidence for it to consider.
 25. Miss X escalated her complaint to Stage 2 of the Council's complaints process. A council officer, Officer B, called Miss X to discuss her Stage 2 complaint. Miss X was 'agitated' on the call so Officer B terminated the call. Miss X told the Council she had to contact the mental health crisis team following this call.
 26. Officer B responded to Miss X's stage 2 complaint and said that it was clear their call caused her some distress which was not their intention. Officer B said that although Miss X's application had been assessed in accordance with the housing allocations scheme, they would have expected her case to be referred to the allocations appeal panel when she first queried the banding.
 27. Officer B arranged for Miss X's case to be considered by an appeal panel and once a decision had been made, the Council's independent medical adviser would then check this decision, regardless of the outcome, to complete the process. Officer B apologised this had not been done sooner.

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28. The Council's appeals panel reviewed the priority awarded to Miss X's housing application on medical grounds. It said it considered all the medical information Miss X had submitted and also the information it had on file. The Council decided Miss X's application met the criteria for Band C on medical grounds. However, as she had already been awarded Band C on the grounds of overcrowding, there was no change to her overall priority. The Council advised Miss X that she could request the decision to be reconsidered if there was a change in her circumstances that meant that her need to move became 'urgent or life threatening'.
 29. On 6 October 2021, the Council's independent medical adviser considered Miss X's application and supporting evidence. The report listed the information it considered, it stated that Miss X suffered from depression and anxiety and that there were 'no other current or relevant medical issues'. The independent medical adviser's conclusion was that 'further medical priority does not apply'.
 30. Miss X escalated her complaint to stage 3 because she felt the independent medical adviser had not considered her medical evidence because there was no reference to her diagnosis of BPD. The Chief Executive of the Council responded to Miss X's stage 3 complaint and stated that they were satisfied her case had been considered in line with the Council's housing allocations scheme and whilst she may not agree with the Council's decision making, no further medical priority would be applied and the priority of Band C is correct.
 31. Miss X remained unhappy and frustrated by the Council so she brought her complaint to the Ombudsman.

Analysis

Miss X's housing application

32. The Ombudsman is not an appeal body. It is not our role to decide what banding priority or bedroom eligibility councils should award to applicants. Our role is to decide whether the Council followed guidance and considered relevant information when it made its decisions in relation to Miss X's application.
33. Miss X complains the Council did not accept her supporting evidence and it sought advice from an external body who do not specialise in psychiatry and have not discussed her health with her.
34. I appreciate the footer of the medical report states the applicant's medical records have not been reviewed and an examination of the applicant has not been carried out. However, I have seen no evidence the Council refused to accept the supporting evidence Miss X submitted.
35. The Council is required to assess each applicant's case on its own merit and seek medical advice if necessary. In Miss X's case, the Council did seek independent medical advice when reviewing the decision not to award further priority. However, I have concerns about the report produced by the medical adviser.
36. In April 2021 Miss X submitted her application to the Council. In the application she listed her medical conditions as 'severe depression and anxiety'. In August 2021, Miss X was assessed by her Consultant Psychiatrist and their report specifies a diagnosis of BPD and change of medication from Fluoxetine to Venlafaxine.
37. The medical adviser's report is dated October 2021 and it states the report from Miss X's Consultant Psychiatrist dated August 2021 was considered. However, it

does not reference Miss X's diagnosis of BPD and it incorrectly states 'the applicant suffers from depression and anxiety which is treated with fluoxetine'. The medical adviser goes on to say 'there are no current or relevant medical issues'. Based on this, I find the Council did not consider the new medical evidence from Miss X and this is fault.

38. I appreciate the Council's assessment of priority is not based on medical conditions themselves but is focussed on the impact of the current housing. My concern is that the Council has used the incorrect information from the independent medical adviser to support its decision.
39. From the emails Miss X sent to the Council highlighting the Council's failure to acknowledge her diagnosis of BPD, her frustration and distress is apparent.
40. Although a new assessment of priority may not change the decision of the priority band awarded to Miss X, the Council has not shown it properly considered the information it had available and I recommend it should remake this decision.
41. In respect of the ASB Miss X referred to in her housing application, the Council advised her to work with her landlord and the Police. This is not fault. Miss X may disagree with this, but the Ombudsman will not question the merits of decisions taken without fault.

The Council's complaint handling

42. I also have concerns about the way the Council has handled Miss X's complaint. As explained above, under the Equality Act 2010, councils are under a duty to make reasonable adjustments for disabled people. This is to make sure people with disabilities can access their service as easily as people without disabilities. While the adjustments some people need might be obvious, for those with 'hidden disabilities' it may not be immediately apparent that they need extra help. In our focus report, "Equal Access: Getting it right for people with disabilities", we have explained that this means it is vital councils anticipate people's needs, as the law requires, and proactively ask sensitive questions about any help people may need.
43. In August 2021, a senior council officer, Officer B, called Miss X to discuss her complaint. The Council was unable to provide me with a recording of the call therefore I am unable to ascertain the details of what was said. However, it is apparent Miss X was distressed on this call and Officer B terminated the call. Following the termination of the call, Officer B sent Miss X an email to say it was not their 'intention to cause any undue stress or anxiety'.
44. The Council was aware of Miss X's mental health conditions from her initial application. Based on the correspondence between the Council and Miss X, I find the Council failed to ask Miss X if she needed it to make any reasonable adjustments in the way it communicated with her.
45. We would expect the Council to ensure people are routinely asked or prompted about reasonable adjustments. Any decision on reasonable adjustments should be clearly communicated to the individual concerned. The Council's failure to do so in Miss X's case is fault. The fault caused Miss X distress in that it exacerbated her mental health condition and she spent a significant amount of time and trouble in bringing this complaint. In my view, if the Council had asked sensitive questions at an early stage in the process about Miss X's disability-related needs and clearly set out any agreed reasonable adjustments, this would have avoided some of the injustice Miss X experienced.

Agreed action

46. To remedy the injustice caused by the fault, within six weeks of this final decision, the Council has agreed to:
 - Offer Miss X the opportunity to submit any new information or evidence she wishes it to consider;
 - Provide all the evidence the Council has on Miss X's file from April 2021 to its independent medical adviser to consider and ask them to produce a fresh report;
 - Advise the independent medical officer of the reason why a fresh assessment is required and ensure the allocated medical officer has had no previous involvement in Miss X's case.
47. If, after considering the independent medical adviser's report, the Council changes Miss X's priority band, it has agreed to backdate the new priority band to when she submitted her original application (April 2021).
48. Within four weeks of this final decision, the Council has agreed to apologise to Miss X for the faults identified above and pay her £250 in recognition of the distress caused and her time and trouble pursuing this complaint.
49. Within six months of this final decision, the Council has agreed to ensure staff who deal with members of the public are aware of the Council's duties under the Equality Act 2010. A reminder should be circulated to all relevant staff about ensuring people are routinely asked or prompted about any reasonable adjustments. The service should not wait for the person to tell them what adjustments they require. This reminder should include information on how the Council expects decisions on reasonable adjustments to be communicated to the individual.
50. The Council has agreed to show the Ombudsman evidence that these actions have been completed.

Final decision

51. There is fault by the Council which caused injustice. The Council has agreed to my recommendations to remedy this. Therefore, I have completed my investigation and closed this case.

Investigator's final decision on behalf of the Ombudsman