

25 January 2024

**Complaint reference:**  
23 005 103

**Complaint against:**  
Broxtowe Borough Council

## **The Ombudsman's final decision**

Summary: there was fault in the way the Council carried out its homelessness duties to Miss X and informed her about offers of accommodation. This caused her some uncertainty and frustration. The Council has agreed to apologise and make a payment to Mrs X. It also agreed to make the service improvements we recommended.

---

## **The complaint**

1. Miss X complained about the way the Council handled her homelessness application and matters relating to her bids for, and offers of, social housing. She also complained about the Council's poor communication with her and its failure to adequately address her complaint. She says this caused her significant distress, frustration and worry.
2. Miss X also complained about delay in completing works to a property the Council had allocated to her which prolonged her stay in bed and breakfast accommodation. She was also upset by calls from officers in the Income Collection team to request payment of rent in advance on this property.

## **The Ombudsman's role and powers**

3. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
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. 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 significant injustice, or that could cause injustice to others in the future we may suggest a remedy. (Local Government Act 1974, sections 26(1) and 26A(1), as amended)
6. If we are satisfied with an organisation'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)

---

## What I have and have not investigated

7. I investigated Miss X's complaints about the way the Council handled her homelessness application and bids for, and offers of, social housing. I also considered the way it responded to her complaint.
8. I did not investigate Miss X's complaint about:
  - the time it took to complete void works and repairs at the property the Council allocated to her; and
  - telephone calls from officers in the Income Collection team about payment of rent in advance.

These concern the management of social housing by the Council in its role as a registered provider of social housing. We cannot investigate these matters and Miss X has been informed of her right to complain to the Housing Ombudsman Service.

## How I considered this complaint

9. I have spoken to Miss X and considered all the information she sent me. I considered the Council's response to my enquiries and relevant documents from Miss X's housing records.
10. Miss X and the council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

## What I found

### The Council's Housing Register: priority bands and auto-bidding

11. Applicants who qualify to join the Housing Register are placed in one of four priority bands – 1 to 4. Band 1 is the highest and Band 4 the lowest. Applicants can bid for suitable social housing advertised every week on the Council's choice-based lettings scheme (called Homesearch).
12. For applicants who are threatened with homelessness, or homeless, the bands are:
  - **Band 3** – where the applicant has been served with a Section 21 notice by their landlord but has not yet approached the Housing Options team to request homelessness assistance;
  - **Band 2** - where the applicant is owed the homelessness prevention duty and has a local connection to the Council and where all measures to try to prevent homelessness have been exhausted;
  - **Band 1** – where the applicant is owed the main housing duty **or** is owed the relief duty and is likely to be owed the main housing duty if the relief duty ends unsuccessfully.
13. The Council's housing allocations policy says it routinely places all applicants with Band 1 priority on automatic bidding to ensure a property is found as quickly as possible.

### Relevant homelessness law and guidance

14. Part 7 of the Housing Act 1996 and the Homelessness Code of Guidance for Local Authorities ("the Code") set out councils' powers and duties to people who

---

are homeless or threatened with homelessness. The Code is statutory guidance which means it is not legally binding but councils must have regard to it.

15. The Act says someone is threatened with homelessness if:
  - they are likely to become homeless within 56 days; or
  - they have been served with a valid Section 21 notice which will expire within 56 days. (Housing Act 1996, section 175(4) & (5))
16. The Code says councils should note that because a tenant has a right to remain in occupation does not necessarily mean that they are not homeless. In assessing whether an applicant is homeless in cases where they are a tenant who has a right to remain in occupation pending execution of a warrant for possession, the council must consider whether it would be reasonable for them to continue to occupy the accommodation in the circumstances.
17. Where an applicant remains in occupation while the landlord is taking possession action, the Code says **the council should keep the reasonable steps in the applicant's personalised housing plan (PHP) under regular review**. It should also maintain contact with the tenant and landlord to find out if there is any change in circumstances which affects whether or not it continues to be reasonable for the applicant to occupy.
18. The Code says that a PHP agreed during the prevention stage will need to be reviewed if the applicant subsequently becomes homeless to focus on steps required to help secure accommodation. In our Focus Report [More Home Truths](#) we said councils should review the PHP regularly, and at least every time there is a change in the duty owed.
19. The Code says where an applicant is:
  - (a) an assured shorthold tenant who has received a valid Section 21 notice; and
  - (b) the council is satisfied that the landlord intends to seek possession and further efforts from the housing authority to resolve the situation and persuade the landlord to allow the tenant to remain in the property are unlikely to be successful; and
  - (c) there would be no defence to an application for a possession order;then it is unlikely to be reasonable for the applicant to continue to occupy the property after a valid Section 21 notice has expired unless the council is taking steps to persuade the landlord to allow the tenant to continue to occupy the accommodation for a reasonable period to provide an opportunity for alternative accommodation to be found.

The Code goes on to say that it is highly unlikely to be reasonable for the applicant to continue to occupy after the date on which the court has ordered them to leave the property and give possession to the landlord. And councils should not consider it reasonable for an applicant to remain in occupation up until the point at which a court issues a warrant or writ to enforce an order for possession.

---

### **Storage of property for homeless applicants**

20. Where the council owes a housing duty, it must protect the applicant's personal property if there is a risk it may be lost or damaged. This duty applies if the applicant is unable to protect or deal with it and no other suitable arrangements have been made. The term "personal property" includes pets.
21. A council may make a reasonable charge for storage of property and reserve the right to dispose of the property if it loses contact with the applicant. (Housing Act 1996, section 211)

### **What happened**

22. Miss X has a severe mental health condition. She has a support worker and is in contact with the crisis team at the local mental health trust. She receives Universal Credit.
23. In June 2022 Miss X's landlord served a Section 21 Notice giving notice to end the tenancy of her private rented accommodation. Miss X applied to join the Council's Housing Register and was awarded Band 3 priority. She was also advised to contact the Housing Options team, who deal with homelessness, for advice about the Section 21 Notice.
24. On 30 August 2022 an officer in the Housing Options team completed a housing assessment based on a telephone interview with Miss X. On the same day the Council accepted the prevention duty because Miss X was eligible for assistance and threatened with homelessness. It sent her a Personal Housing Plan (PHP) which set out the steps she and the Council would take to try to resolve her housing needs. The PHP said Miss X needed a one bedroom property but it did not identify any specific areas in the borough.
25. The PHP said Miss X would get one offer of accommodation. It said she must check Homesearch every week and bid for all suitable one bedroom properties in every area of the borough.
26. On 6 September 2022 the Council informed Miss X it had increased her priority to Band 2 because it had accepted the prevention duty. It would automatically bid for suitable properties. It told Miss X she must consider accommodation in all areas and accept the first offer of accommodation.
27. On 23 September 2022 the Council accepted the homelessness relief duty. It did not review or update Miss X's PHP at this point.
28. On 4 October the case officer asked the Lettings team to increase Miss X's priority to Band 1.
29. On 11 October the County Court granted a Possession Order which required Miss X to leave the property by 22 November. The Order explained the landlord could apply for a warrant for eviction by a bailiff if she did not leave by then. Miss X's legal adviser informed the Council on 14 October and Miss X provided a copy of the Order on 20 October.
30. On 11 October the Council had matched Miss X to a property through auto-bidding. I shall call it Property 1. The Lettings team sent the provisional offer letter to the case officer on 14 October. However, the case officer was on leave and did not send the letter to Miss X until she returned to work on 25 October. There was no arrangement to provide cover and send offer letters in the case officer's absence.

- 
31. As this was a final offer of accommodation to end the homelessness relief duty, the Council said the case officer had to send it. It could not be sent direct to Miss X by the Lettings Officer in the case officer's absence.
  32. Miss X received the offer letter on 25 October and was asked to make a decision by 31 October. Property 1 was not in Miss X's preferred area of the borough. The Council agreed to extend the time for Miss X to consider the offer. She then submitted medical evidence from her GP and refused the offer on 2 November. After considering this evidence, the Council decided she had reasonable grounds for refusal and the next offer would be in the south of the borough.
  33. While Miss X was under offer for this property, she could not bid for other advertised properties and auto-bidding also stopped. Miss X missed three weekly bidding cycles. She is concerned she may have missed out on other potential offers of suitable properties in this time.
  34. The Council says the only other property Miss X could have been matched to between 11 October and 2 November was a studio flat in the south of the borough. Miss X had been bidding for one bedroom properties rather than studio flats.
  35. On 15 November Miss X contacted the Council to ask where she might be placed in emergency accommodation because she had to leave the property the following week. She said she also needed to make arrangements for storage of her belongings and care of her pets.
  36. The case officer in the Housing Options team replied on 18 November. She could not say where Miss X would be placed because it would depend on what accommodation was available on the day she needed it. She said most hotels were in Nottingham City centre but the Council was also placing some homeless applicants outside Nottingham.
  37. In response to Miss X's enquiry about storage, the case officer told Miss X she must make her own storage arrangements and pay the costs. If she could not afford to pay the upfront costs, she should submit three quotations. The Council would then consider paying the upfront costs and invoice her so she would have to repay the full amount. She advised Miss X to submit quotations as soon as possible if she could not afford to pay the upfront costs.
  38. Miss X says this was the first time the Council had told her about possible financial assistance with storage costs. She received this information four days before she was due to leave the property. By then she had already made arrangements for her cat to go to a boarding cattery and for storage of her belongings. It was too late to get three quotations. She understood that if the Council had paid the storage costs upfront, she would have had to repay this amount. But she says it would have put her under less pressure and she would not have had to apply for a Universal Credit payment to meet these costs. She could then have repaid the money later.
  39. The case officer also replied to an email from Miss X expressing interest in a particular social housing property advertised on Homesearch. The case officer explained the Council could not allocate properties in this way. Miss X would be considered for the property along with all other Band 1 applicants on the waiting list. The property would be offered to the person registered in Band 1 for the longest. She told Miss X she did not need to email to express a preference because the Council allocated all properties fairly. The case officer also explained that it took, on average, four months between allocating a property and it being ready for occupation.

- 
40. The case officer told Miss X she had made enquiries about pet fostering services but had found none. She said it was Miss X's responsibility to make arrangements for her pets and she could not take them to the emergency accommodation.
  41. Miss X replied on the same day. She said her landlord had refused a request from Adult Social Care to let her stay in the property after 22 November. She had already made arrangements for storage of her belongings and was organising removals. She did not send any quotations to the Council or request financial assistance. She said she had found a temporary home for one pet and was looking for a cattery.
  42. On 22 November 2022 the Council placed Miss X in bed and breakfast accommodation in Nottingham.
  43. Two days later Miss X was told her bid for a one bedroom property in her preferred area had not been successful. But she was matched to another property on 24 November. The offer letter was dated 24 November and the case officer sent it to Miss X on 29 November. Miss X was given 48 hours to respond. She accepted the property on the same day and asked for financial assistance with the rent in advance.
  44. The case officer sent Miss X the final offer letter for this property on 29 November. She explained it may be at least four months before the property was ready to move into. She advised Miss X to tell her as soon as possible if she would find it difficult to pay the required four weeks' rent in advance. The case officer could then apply for financial assistance towards the costs.
  45. On 29 November the case officer applied for three weeks' rent in advance from the Homelessness Prevention Fund. The Council says the Fund guidance sets this as the maximum amount that can be paid to an applicant in priority need, who is owed the relief duty and not intentionally homeless. The payment was approved on 1 December which left Miss X to pay the balance of one week's rent in advance.
  46. Miss X says she was not informed how much the Council would pay towards the rent in advance or how this had been assessed. The first she heard was when an officer in the Income Collection team called her on 6 December to demand a payment of £81.35 (one week's rent in advance). Miss X paid this amount when she received her next Universal Credit payment one week later.
  47. Miss X stayed in the same bed and breakfast accommodation until 19 January 2023 when she moved to the allocated property.

### **Miss X's complaint to the Council**

48. The Council considered Miss X's complaint at both stages of its complaints procedure.
49. On 6 January Miss X sent the Council a timeline of events with her comments. On 9 January she confirmed she wanted it to be treated as a complaint. Part of the complaint was about the conduct of officers who had telephoned to request the rent in advance payment, the failure to respond to her complaint about these calls, and the time taken to complete works at the property allocated to her. We have not investigated these matters for the reasons given in paragraph 8 so I cannot comment on the Council's response to these parts of the complaint.
50. The Council sent Miss X the Stage One reply on 19 January.
51. Almost two months later, on 13 March, Miss X informed the Council she was not satisfied with this response and asked for it to be considered at the next stage.

---

The Council replied on 12 May. At this stage, it apologised for the delay in communicating with Miss X about the offer of Property 1 due to the case officer's absence and for any distress this had caused. It also explained the delay in sending the Stage Two response was due to Miss X's request not being passed promptly to the Complaints team. Apart from apologising for the delayed communication, the Council did not uphold the rest of her complaint.

## **My analysis**

### **Review of PHP**

52. The Council did not review and update Miss X's Personal Housing Plan when it accepted the relief duty on 23 September. That was fault. It should have been reviewed and updated then to refocus on steps the Council and Miss X could take to help her secure alternative accommodation.

### **Failure to consider Code of Guidance**

53. Miss X's solicitor told the Council on 14 October that the Court had made a Possession Order. Miss X sent the Council the Order on 20 October. But the Council did not contact Miss X or her landlord at that point and it did not consider whether it was reasonable to expect her to remain in the private rented accommodation. I have seen no evidence officers explicitly considered the advice in the Code of Guidance which says it is unlikely to be reasonable to expect someone to remain in these circumstances (paragraph 18). The failure to have regard to the statutory guidance was fault. It was also fault not to contact Miss X to offer further support at this critical stage in her homelessness journey.
54. If the Council had considered the relevant guidance, and considered Miss X's circumstances, it may have offered to move her to interim accommodation sooner. It is likely this would have been a hotel room. Miss X may not have wanted to move to a bed and breakfast hotel while she had the legal right to occupy the flat. So, although it was fault not to have regard to the advice in the Code of Guidance, I cannot say this necessarily caused injustice to Miss X.

### **Notification of offers of accommodation**

55. There was delay in notifying Miss X of the offers of Property 1 and 2 after she was matched to these properties. The case officer was on leave when Miss X was matched to Property 1. There was a shorter delay at the time she was matched to Property 2. I understand the Council must send the appropriate letter when it makes a final offer of accommodation to a homeless applicant. However, to minimise delays and the period applicants are suspended for further offers, it is good practice to arrange cover to ensure offer letters are sent promptly when the case officer is unavoidably absent.
56. Overall, the evidence does not show the delay in notifying Miss X of these offers caused significant injustice. She requested an extension to the deadline to make a decision on the offer of Property 1. This gave her time to get medical evidence which supported her reasons for refusing the offer. It is normal practice to suspend bids while someone is under offer for a property. In this case Miss X was not considered for other properties between 14 October and 2 November and she missed a potential offer of a studio flat in that time. The evidence from Miss X's bids suggest she preferred one bedroom properties to studio flats. And Property 2 was offered about three weeks after she refused Property 1 so there was no significant delay in making the next offer.

---

### **Help with rent in advance**

57. The Council paid three weeks' rent in advance for Property 2. But it did not inform Miss X of the outcome of the application, explain how much had been awarded and the balance she had left to pay. She only found out when the Income Collection team called her to request payment of the balance.
58. It was fault not to inform her in writing of the outcome of the application so she could plan and budget for what she had to pay. But even if she had received that information, she would still have had to find one week's rent in advance and pay it from Universal Credit. So the failure to communicate the outcome in writing did not leave her any worse off but the lack of communication did cause some frustration.

### **Storage costs and pet care**

59. Miss X did not ask about assistance with storage costs until 15 November. The case officer replied on 18 November so there was no delay. Miss X received this information just four days before she was due to leave the property which left little time to get three quotations. But it was not fault for the Council to ask for quotations before it decided whether to pay the upfront storage costs. As I do not intend to find fault, I cannot ask the Council to pay Miss X's storage charges.
60. The Council would have had to step in and make arrangements for the care of Miss X's pets if she had not made arrangements in time herself. If the Council had arranged pet care, Miss X would have had to meet the reasonable costs of their care, including boarding fees. I do not intend to find fault because the Council had no duty to make arrangements when Miss X was able to make suitable arrangements herself.

### **Complaint-handling**

61. There was no delay in responding to Miss X's complaint at the first stage of the complaints procedure. The reply was sent within 10 working days after Miss X confirmed she wanted her timeline of events to be registered as a complaint. That was within the target timescale.
62. The delay at the second stage was fault. The Council took two months to reply when the target timescale is 20 working days. The delay was caused by a failure to pass Miss X's request to the complaints team. This caused Miss X some uncertainty and frustration.

### **Agreed action**

63. Within one month of my final decision, the Council will apologise to Miss X for:
- a) the failure to review her PHP when it accepted the relief duty;
  - b) the delay in replying to her complaint at the second stage of the complaints procedure.

It will pay £150 to recognise the distress this caused.

64. Within one month it will also issue a written reminder to staff in the Housing Options team to:
- keep PHPs under regular review, particularly when there is a change in the duty owed to the applicant;
  - have regard to the guidance in the Code and consider in every case whether it is reasonable to expect the applicant to remain in occupation of private rented



---

accommodation when the landlord has issued a Section 21 Notice or applied for a Possession Order;

- inform applicants of the outcome of any application for financial assistance with rent in advance before the Income Collection team contacts them to request payment of any balance due.
65. It should also review whether it can make arrangements to provide cover when a case officer is on leave or otherwise absent to ensure offer letters are sent promptly to applicants.
66. The Council should provide us with evidence it has complied with the above actions.

### **Final decision**

67. I have completed the investigation with a finding of fault causing injustice to Miss X.

### **Investigator's decision on behalf of the Ombudsman**