

26 September 2024

Complaint reference:
24 000 463

Complaint against:
Broxtowe Borough Council

The Ombudsman's final decision

Summary: We have completed our investigation. The Council was at fault. It failed to use its discretion when assessing Miss X's homelessness. It failed to evidence its decision making and its communication with Miss X about her housing banding was confusing and contradictory. The Council should apologise to Miss X and make a symbolic payment in recognition of the distress caused. It should confirm Miss X's child can be included in her homelessness application, should she choose to make one, and remind its staff about best practice in assessing homelessness.

The complaint

1. Miss X complains about the handling of her housing and homelessness applications. She said the Council failed to:
 - assess her as being homeless and in priority need, therefore awarding her the wrong banding,
 - allow her child to be included in her homelessness application,
 - allow her access to bid on two-bedroom properties.
2. Miss X said the council's failures have led to her being homeless and she is fearful its actions will have an impact on shared custody of her child.

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 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)
4. When considering complaints we make findings based on the balance of probabilities. This means that we look at the available relevant evidence and decide what was more likely to have happened.
5. An organisation should not adopt a blanket or uniform approach or policy that prevents it from considering the circumstances of a particular case. We may find fault in the actions of organisations that 'fetter their discretion' in this way.

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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)

How I considered this complaint

7. I considered the complaint and information provided by Miss X.
8. I made written inquiries of the Council and considered its response along with relevant law and guidance.
9. I referred to the Ombudsman's Guidance on Remedies, a copy of which can be found on our website.
10. Miss X and the Council had an opportunity to comment on the draft decision. I considered any comments before making a final decision.

What I found

Law and Guidance

11. If someone contacts a council seeking accommodation or help to obtain accommodation and gives 'reason to believe' they 'may be' homeless or threatened with homelessness within 56 days, the council has a duty to make inquiries into what, if any, further duty it owes them. The threshold for triggering the duty to make inquiries is low. The person does not have to complete a specific form or approach a particular department of the council. (Housing Act 1996, section 184 and Homelessness Code of Guidance paragraphs 6.2 and 18.5)
12. Someone is threatened with homelessness if, when asking for assistance from the council on or after 3 April 2018:
 - 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))
13. A Section 21 notice marks the start of legal proceedings made by a landlord to regain possession of a property from a tenant. A reason for eviction is not needed (Housing Act, 1988 Section 21).
14. A council must secure accommodation for applicants and their household if it has reason to believe they may be homeless, eligible for assistance and have a priority need. This is called interim accommodation. (Housing Act 1996, section 188)
15. Examples of applicants in priority need are:
 - people with dependent children;
 - pregnant women;
 - people who are vulnerable due to serious health problems, disability or old age;
 - care leavers; and
 - victims of domestic abuse

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16. The law said councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of their household. This duty applies to interim and temporary accommodation. (Housing Act 1996, section 206 and Homelessness Code of Guidance 17.2)
 17. 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. (Housing Act 1996, section 166A(1) & (14))
 18. An allocations 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;
 - people who need to move to avoid hardship to themselves or others; (Housing Act 1996, section 166A(3))

What happened

19. Miss X shares custody of her child, on a 50/50 basis, with her child's father, agreed through a child contact court order.
20. There is a history of domestic abuse perpetrated towards Miss X by her child's father. Miss X said the Council was aware of the domestic abuse because it helped her to source accommodation at the point of fleeing abuse, some years earlier.
21. For many years no contact took place between Miss X's child and her father, as ordered by a court.
22. In March 2023 Miss X made a housing application. In a free textbox in the application Miss X informed the Council she was concerned her landlord was due to sell the property she was living in. Miss X also told the Council she was concerned her child's father now knew where she lived because information had been accidentally shared with him during child contact court proceedings.
23. The Council awarded Miss X Band 4. It did not make inquiries into homelessness, or any attempt to assess risk to her due to domestic abuse.
24. In September 2023 Miss X received a Section 21 notice from her landlord. She approached the Council to inform it of her homelessness. The Council advised Miss X that the notice was invalid.
25. The Council say that it awarded Miss X Band 3 in September 2023.
26. However, at the end of September Miss X received a band registration email saying she was awarded Band 4 and had access to bid on 1-bedroom properties only.
27. On the date Miss X received this email she wrote to the Council and asked for a review of the banding and bedroom allowance decision. She explained there was a court order in place that showed she had her child in her care 50% of the time and therefore needed to be able to bid on two-bedroom properties.
28. Four weeks later Miss X provided the Council with copy of a valid Section 21 notice. Miss X was classed as being threatened with homelessness.
29. At the start of November 2023 Miss X received a review response, from the Council, about her application to join the housing register.

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30. The response was contradictory. It said 'I believe that your application is correctly assessed in Band 3. It has been assessed in Band 4 as you meet the Band 4 criterion'.
 31. However, the Council's position in this review response was that Miss X remained in Band 4 with access to bid on one-bedroom properties only.
 32. At the end of November Miss X attended a housing options appointment. The housing options team told Miss X that whilst she was at risk of homelessness, she was not in priority need. She was advised that because she is not in receipt of child benefit, she would only be entitled to bid on one-bedroom properties.
 33. The Council told Miss X this was also the reason her child could not be included in her homelessness application. She became distressed and left the appointment. The Council did not try to contact her.
 34. Miss X made a complaint to the Council at the start of December 2023.
 35. Within the complaint made to the Council she reminded it about the domestic abuse. She shared with the Council details of matters that took place within the last three years, predating the child contact court order.
 36. Miss X told the Council her child was taken by her father, at one of their supervised contact sessions, and he refused to return her to Miss X for several months. During this period, she said the child benefit claim was changed by Miss X's child's father from her name to his, without her consent.
 37. The Council say Miss X's banding was changed to a Band 3 mid-December due to the valid Section 21 notice being received. However, this was uploaded to 'Homesearch' the Council's housing application system, almost 8 weeks prior to this date. The Council said the delay was due to it waiting for validation documents.
 38. In mid-January 2024 the Council made its response to Miss X's complaint, at stage one. It accepted partial fault. It said she can bid on two-bedroom properties, as her situation is exceptional, yet the Council would not include her child in her homelessness application.
 39. The eviction process progressed through February. An advocate for Miss X kept the Council updated. Miss X requested her complaint be progressed to stage two. She remained unhappy about being in Band 3 and not in priority need.
 40. In mid-February 2024 the Council provided Miss X with its final response to her complaint. It maintained its position about Miss X's banding being correct. It said Miss X 'has not or is not willing' to approach the homelessness team. The Council invited Miss X to contact the homelessness team to review her application.
 41. Miss X was evicted in April 2024.

My findings

42. Miss X's situation is complex. Miss X and her child have experienced domestic abuse. Miss X described the post separation abuse she has withstood and how this impacted her child's living arrangements and her access to child benefit.
43. Miss X has shared with the Council the domestic abuse suffered predating the current court order that should have given the Council a full understanding of the potential for future risk of harm.
44. The Domestic Abuse Act, 2021 validates Miss X's experiences of post-separation abuse. Domestic Abuse, Statutory Guidance, 2022, explains perpetrators of

abuse may use children to maintain control over their victims. Post separation abuse often takes place through child contact and use of the courts.

45. In Miss X's application to join the housing register in March 2023 she shared information that suggested she may be threatened with homelessness, and it may be unsafe for her to remain in her home. This reached the threshold in paragraph 11 and should have triggered the Council's duty to make inquiries.
46. There is no evidence to suggest the Council made inquiries into what duty it owed Miss X at this time. Nor did it consider whether Miss X and her child needed interim accommodation. This was fault by the Council.
47. Section 6.24 of the Homelessness Code of Guidance advises it is not reasonable for a person to continue to occupy accommodation if it is probable it will lead to domestic abuse or other violence. Chapter 21 of the Homelessness Code of Guidance sets out clear guidelines for Councils about providing homelessness services to people who are at risk of or have experienced domestic abuse. The Council had a duty to 'seek to obtain an account' of Miss X's experiences of abuse, at the point she said she was fearful of her ex-partner. This did not happen and was fault by the Council.
48. The Council's housing allocation policy says 'where the applicant has access to their children, but whose main home is with the other parent or another carer they will not be counted as permanent members of the household. This will need to be evidenced through the main applicant having proof of child benefit to show who is responsible for the main care of the children for housing purposes.'
49. Miss X told the Council the child benefit was changed, without her permission, by her child's father, into his name. This was done prior to the child contact court order being put in place. The Council was aware of Miss X being the sole carer for her child, for most of the child's life, prior to this. It was also aware of the domestic abuse suffered by Miss X.
50. Section 6.9 of the Homelessness Code of Guidance says the Council, when dealing with a family that is split up, should decide who is included in the homelessness application based on which members of the family normally reside, or expect to reside with the main applicant. Miss X's child normally resides with her, 50% of the time.
51. Section 8.6 of the Homelessness Code of Guidance says applicants have a priority need if they have a child living with them. It says the child is not expected to be solely dependent on them, but they should have 'residence with a degree of permanence'. It was not a temporary arrangement for Miss X's child to be living with her. The child is in her care 50% of the time.
52. Section 8.11 of the code says how the Council should determine its homelessness support for a child, when the child is living between separated parents. The Council should consider the specific needs of the child and the circumstances of the case when making a decision. Its failure to do that was fault.
53. The Council should have considered the domestic abuse suffered by Miss X both predating the court order, and since the child's father reinstated contact. It should have considered the child contact court order in place ordering Miss X have her child with her 50% of the time.
54. On balance, if the Council had properly considered these circumstances, it would likely have decided for her child to be listed as a part of her household when providing homelessness assistance.

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55. The code also refers to cases where court orders dictate where a child lives, and the attention a Council should pay to this. The code notes that in many cases there will not be a court order in place. However, In Miss X's case, there is.
 56. If Miss X sought homelessness accommodation as a single person, without being able to accommodate her child, she would be in breach of the child contact arrangement order. The Council were aware of this. Miss X was forthcoming in providing evidence to the Council.
 57. The Council gave clear advice to Miss X that her child could not be part of her homelessness application. It did so repeatedly, both verbally and in writing. It is not surprising therefore, that Miss X decided not to pursue her homelessness application.
 58. The Homelessness Code of Guidance, Section 6, refers to how a Council should act when someone is threatened with homelessness. When Miss X shared the Section 21 notice with the Council this was evidence that she was threatened with homelessness.
 59. There are opportunities available to a Council, at the point of someone being threatened with homelessness, aimed to prevent, or delay the pending homelessness and help the applicant and their family.
 60. Miss X did not complete her homelessness application in full and left the housing options appointment in November 2023. The Council would require Miss X's consent to take certain action such as contacting her landlord for example, following that appointment.
 61. However, it is evident that the Council missed opportunities to support Miss X in November 2023. It failed to attempt to contact her following the appointment, despite witnessing her distress and knowing about her pending homelessness.
 62. The Council said many applicants attend triage appointments each month. It said many of them leave the appointments distressed. The Council deem it unreasonable for it to attempt contact with each person that 'makes the choice not to make a homelessness application'.
 63. However, the onus is on the Council to make inquiries, when it has reason to believe an applicant may be threatened with homelessness. As explained in paragraph 11, the threshold for triggering this duty is low. The Council should ensure its approach does not reverse the burden onto the potentially homeless person. It should ensure its understanding of relevant law and guidance and apply it to practice.
 64. The Council was at fault for failing to fulfil its duties to prevent homelessness.
 65. Miss X's banding history is confusing. Documentation supplied by the Council to Miss X and the Ombudsman is poor. It contains errors and shows a 'back and forth' approach between Band 3 and Band 4 from March 2023 to December 2023.
 66. The Council have commented on the errors in Miss X's documentation. It has informed us it has changed its software provider this year. The online system used previously to generate letters for applicants has been updated. Letters to housing applicants are now automatically generated. This should reduce the chance of errors in future correspondence with applicants. We welcome this change.
 67. The actions of the Council have resulted in Miss X feeling she has no option but to remain homeless. If she was to access interim accommodation from the

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- Council as a single applicant, the only option available to her, she would be in breach of the child contact court order. She would be unable to care for her child.
68. Miss X has been sleeping at friends' and family members' properties with her child. She says renting privately is not an option due to the cost. Miss X is concerned about the uncertainty ahead.
 69. On balance, had the Council made its inquiries and accepted a homelessness application for Miss X and her child it would have accepted they were homeless.
 70. The Council would likely have reached the point of accepting homelessness main duty, assessing Miss X as unintentionally homeless, eligible for assistance and in priority need.
 71. Interim accommodation would likely have been offered to Miss X and her child alongside homelessness support being put in place.
 72. Failure to do this was fault by the Council. This fault forced Miss X to choose between accepting homelessness assistance for herself and continuing to have care of her child.
 73. The injustice suffered by Miss X is ongoing as she remains homeless.

Agreed action

74. To remedy the injustice caused by the Council, to Miss X, within four weeks of a final decision the Council has agreed to take the following action:

Personal remedy

- Apologise to Miss X in line with our guidance on Making an Effective Apology. We publish [Guidance on Remedies](#) which sets out our expectations for how organisations should apologise effectively to remedy injustice. The organisation should consider this guidance in making the apology I have recommended in my findings.
- To recognise the lack of homelessness assistance offered to Miss X and her child, since September 2023, make a symbolic payment to her of £250 per month. This is a total of £3,000.
- Invite Miss X to proceed with a homelessness application for her and her child, and make an offer to them both of interim accommodation.

Service improvement

75. Within eight weeks of issuing a final decision the Council has agreed to:
 - remind Council officers of the importance not to adopt a uniform approach (fetter its discretion) when referring to Council policy and procedure,
 - ensure Council officers are reviewing free text boxes within housing applications made via its online system when making decisions, and
 - remind Council officers about the low threshold for making inquiries about homelessness and assessing risk in relation to domestic abuse.
76. The Council should provide us with evidence it has complied with the above actions.

Final decision

77. I have completed my investigation. There was fault by the Council. The action I have recommended is a suitable remedy for the injustice caused to Miss X and her child.

Investigator's decision on behalf of the Ombudsman