

The Ombudsman's final decision

Summary: Miss X complains the Council failed to accept a homeless application from her in April 2018, then again in October 2018. She says she and her children are currently living with family members and they do not have a home. She wants the Council to consider her application and provide her family with accommodation. The Ombudsman has found the Council was at fault for the way it ended its duty to prevent Miss X from becoming homeless. However, this did not cause her any significant injustice and we have not found any fault in relation to the other parts of her complaint. Nevertheless, we have made a service improvement recommendation to address the fault that was found.

The complaint

1. The complainant, who I shall refer to as Miss X, complains the Council failed to accept a homeless application from her in April 2018, then again in October 2018.

What I have investigated

2. I have investigated what the Council did after Miss X approached it for help in April 2018 and stated she anticipated becoming homeless.

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. 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*)
5. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)

How I considered this complaint

6. I have:
 - Read Miss X's complaint and discussed it with her.
 - Considered the Council's comments about the complaint and the supporting documents it provided.
 - Provided both parties with an opportunity to comment on the draft decision, and considered the comments made by Miss X.

What I found

Legislation and guidance

The Homelessness Reduction Act 2017

7. The Homelessness Reduction Act 2017 came into force on 3 April 2018. It amended Part 7 of the Housing Act 1996 and placed new duties on councils to assist any eligible homeless person and to intervene at an earlier stage to try to prevent homelessness.
8. Under the Act, if a council is satisfied a person is threatened with homelessness within 56 days, it is under a duty to help prevent that person from becoming homeless. This is known as the prevention duty. This duty applies irrespective of whether the person may be considered intentionally homeless.
9. According to the prevention duty, councils must take reasonable steps to help the person find or keep accommodation. However, this does not mean they must accommodate the person. Under the duty, they must also conduct a written assessment of the person's housing needs and create a personal housing plan, ensuring this plan is kept under review.
10. When a council decides the prevention duty has come to an end, it must notify the person in writing. The prevention duty can only end in one of the following circumstances:
 - the council is satisfied the applicant has suitable accommodation which is likely to be available for at least six months; or
 - the council has complied with this duty for 56 days (whether or not the applicant is still homeless); or
 - the applicant has refused an offer of suitable accommodation; or
 - the applicant is no longer eligible for assistance; or
 - the applicant has withdrawn the application; or
 - the applicant has deliberately and unreasonably refused to cooperate.

The Housing Act 1996 and acts of intentional homelessness

11. The Housing Act 1996 says councils have a legal duty to house homeless applicants who are eligible, have a priority need, and are unintentionally homeless.
12. If a council decides that someone is intentionally homeless, it does not have to secure accommodation for that person. The Homelessness Code of Guidance details the circumstances in which someone may no longer be classified as intentionally homeless:

“The causal link between a deliberate act or omission and intentional homelessness is more typically broken by a period in settled accommodation which follows the intentional homelessness. Whether accommodation is settled will depend on the circumstances of the case, with factors such as security of tenure and length of residence being relevant. Occupation of accommodation that was merely temporary rather than settled, for example, staying with friends on an insecure basis, may not be sufficient to break the link with the earlier intentional homelessness.”

What happened

13. At the beginning of April 2017, Miss X was evicted from her home. She submitted a homeless application to the Council and it decided she had become intentionally homeless. Miss X asked the Council to review its decision.
14. In July 2017, the Council wrote to Miss X after it reviewed its decision. It maintained she was intentionally homeless and advised her of her right to appeal to the County Court.
15. Toward the end of April 2018, Miss X approached the Council and stated she anticipated becoming homeless. She said she had been staying with one of her elder daughters but could remain there no longer. The Council subsequently assessed Miss X’s housing needs. It noted two of her dependent children were residing with her and her elder daughter, another two were staying with her other elder daughter, and the others were staying with her sister. It also noted this was a temporary arrangement.
16. After assessing Miss X’s housing needs, the Council decided she was owed the prevention duty. Consequently, it gave her advice and leaflets about how to find suitable accommodation and issued her with a personalised housing plan, which it reviewed in May 2018.
17. In June 2018, Miss X found a property therefore the Council agreed to provide the deposit and a month’s rent to help her secure it. She was unable to do this as she could not find a guarantor. She subsequently sought advice from the Council, noting her search for properties was not being successful, and it advised her to consider properties in other areas.
18. In mid-July 2018, Miss X submitted a housing application to the Council on behalf of her and her six children.
19. At the beginning of August 2018, Miss X notified the Council she had found a property she thought was suitable. However, like before the landlord would not enter into a tenancy agreement as she could not provide a guarantor.
20. In mid-September 2018, the Council wrote to Miss X to inform her it had approved her housing application. It noted she was in overcrowded accommodation and needed four bedrooms, stating she had been placed in the “Homeseeker” band. When she queried the Council’s decision, it stated she needed to submit payslips if she wanted to be assessed for a higher band.
21. At the beginning of October 2018, Miss X called the Council to discuss her homeless case. She said she had been seeking accommodation but had not found any due to not having a guarantor and many landlords not accepting benefits. Internal emails show the Council considered Miss X still to be intentionally homeless as there had not been a “material change of facts” which would warrant it accepting a new homeless application from her.

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22. A few days later, the Council confirmed it had received payslips from Miss X in support of her housing application. However, it decided she did not qualify for the Community Contribution Reward 1 (CCR1) band as she did not work 16 hours per week.
 23. At the end of October 2018, the Council wrote to Miss X and stated it had ended the prevention duty because it had been unable to contact her. It said its last contact with her was a call at the end of June 2018 and it had no record of any further contact. It added it had left a reasonable period of time for her to establish contact and as she had not done so, it assumed she no longer needed its help. It also informed her of her right to request a review of its decision.
 24. A few days later, Miss X contacted the Council and stated her daughter had asked her to leave her property.
 25. At the beginning of November 2018, the Council wrote to Miss X and said it would not consider a new homeless application as the circumstances which led to her being found intentionally homeless had not changed. It confirmed it was not under a duty to make enquiries and it had closed her case.
 26. A few days later, the Council confirmed its position during a phone call with Miss X. It also advised her that an interview she had booked to discuss her housing needs had been cancelled.
 27. In the middle of November 2018, the Council upgraded Miss X's housing band to CCR1 after conducting further checks.
 28. At the beginning of December 2018, Miss X complained to the Council about its decision to make her intentionally homeless in April 2017. It responded around two weeks later and did not uphold her complaint.
 29. At the beginning of January 2019, Miss X complained to the Ombudsman about the matter. Two weeks later, she asked the Council to escalate her complaint. At the end of the month, it sent her a second stage one response again notifying her it did not uphold her complaint.
 30. In mid-February 2019, the Chief Executive responded to Miss X's complaint at stage two. He reviewed the events which led up to her being declared intentionally homeless and those which followed. He then reviewed the approaches for assistance she had made in April and October 2018, stating the Council was correct to assert there had been "no material change of fact" in her case and thus it did not have a duty to house her.
 31. In her complaint to the Ombudsman, Miss X states she and her six dependent children have been living with various members of her family since they were evicted from their home in April 2017. She says she and her two sons are living with one of her elder daughters. Similarly, she states two of her dependent daughters are living with another elder daughter, and her last two dependent daughters are living with her sister.
 32. She adds that one of her daughters suffers from mental health issues and took an overdose last year because of the family's housing issues. She also highlights that one of her sons has been referred to Child and Adolescent Mental Health Services (CAMHS) and feels that because of her circumstances, she and her six dependent children should have their homeless application considered. Consequently, she wants the Council to consider her application and provide them with accommodation.

Analysis

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33. When Miss X approached the Council in April 2018 and said she feared becoming homeless, it decided she was owed the prevention duty. At that point, it still considered her intentionally homeless and so did not consider whether she was eligible to be housed in temporary or permanent accommodation. Miss X feels her circumstances had changed and she should no longer have been considered intentionally homeless. She refers to a letter from her daughter's psychotherapist which supports her case.
 34. I understand why Miss X feels this way but the guidance states the chain of intentional homelessness is usually broken "by a period in settled accommodation". It adds that settled accommodation does not include temporary arrangements such as "staying with friends on an insecure basis" and this is unlikely "to break the link with the earlier intentional homelessness." Consequently, I cannot find the Council was at fault because it considered her case then decided she was still intentionally homeless because she had not spent a period in settled accommodation.
 35. When the Council decided Miss X was owed the prevention duty, I see it assessed her housing needs, offered her support and advice, issued her with a personalised housing plan, then reviewed that plan. Through its Find Your Own (FYO) Scheme, it also offered her funds for a deposit and a month's rent to help her secure a property. Therefore, I am content it fulfilled its duty.
 36. However, I have found the Council was at fault for the way it ended the duty. The letter it sent Miss X at the end of October 2018 stated it had "lost contact" with her and thus had decided to end the duty. It said its last contact with her was a call at the end of June 2018 and it had no record of any further contact. This is incorrect. Miss X had visited the Council offices at the beginning of August 2018 to seek assistance through its FYO scheme, after identifying a suitable property. She also called it at the beginning of October 2018 to discuss her case. Moreover, Miss X states she attempted to contact the Council on several occasions but it did not return her calls or emails.
 37. Despite my findings, this fault did not cause Miss X any significant injustice. The Council was entitled to end the duty after 56 days at the end of June 2018, but it allowed this to continue. Moreover, when it wrote to Miss X to end the duty it informed her of her right to request a review of its decision, but she did not exercise this right. If she did, the Council could have changed its decision. Moreover, it was not then due her the relief duty as she was still living with her sister.
 38. I am concerned the Council ended the duty because it was unable to contact Miss X, yet its records do not show any instances when it attempted contact her before making its decision. Rather, it seems to have put the onus on Miss X to initiate the contact. The Code of Guidance recommends that councils put "procedures in place to attempt to maintain or regain contact with applicants who have ceased contact", before they decide whether to end the prevention or relief duty. Considering this, I have made a service improvement recommendation in the section which follows. The Council has accepted this recommendation.
 39. I note that Miss X approached the Council again at the end of October 2018 and stated she anticipated becoming homeless. It decided she was still intentionally homeless as there had been no change in her circumstances. As before, I cannot find the Council was at fault as it was following the Code of Guidance.
 40. In summary, I sympathise with Miss X's predicament and appreciate the difficulties she faces in trying to secure a new home for her and her children. But,

I cannot recommend that the Council considers a new homeless application or provides her with housing. This is because it followed the Code of Guidance before deciding she remained intentionally homeless.

Agreed action

41. The Council has agreed to introduce a set of procedures, as per the Code of Guidance, outlining the steps its officers should take to re-establish contact with an applicant before deciding whether to end its prevention or relief duty. It will do this within two months of the date of this final decision.

Final decision

42. The Council was at fault for the way it ended its duty to prevent Miss X from becoming homeless. However, this did not cause her any significant injustice and I have not found any fault in relation to the other parts of her complaint.

Parts of the complaint that I did not investigate

43. I did not investigate the Council's decision to declare Miss X intentionally homeless in April 2017. This is because it informed her she could appeal to the County Court in July 2017 after it had reviewed its decision. The law says we cannot normally investigate a complaint when someone could take the matter to court. In this case, I have found no reason why Miss X could not appeal to the County Court, therefore I did not investigate this part of her complaint.

Investigator's decision on behalf of the Ombudsman