

Report

on an investigation into
complaint no 08 008 647 against
Medway Council

23 March 2009

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Key to names used

Miss James

The Complainant

Report summary

Subject

Homelessness

Miss James complains that the Council failed to deal properly with her application for housing.

Finding

The Council has failed to maintain a full allocation scheme since September 2002 and is therefore in breach of its statutory duty. It has been allocating accommodation on the basis of an undocumented system of 'sub-bands'. The Council accepts these are complex and difficult to understand and that it has, therefore, not been allocating accommodation in line with its published scheme.

The Council failed to maintain proper records of contact with Miss James's support workers at a women's refuge and failed to reply to correspondence from the refuge and the Citizen's Advice Bureau. The Council offered Miss James temporary accommodation and subsequently discharged its duty when this was refused, although it appears that Miss James had been advised that she would be allowed to stay at the refuge whilst bidding for permanent accommodation. The Council also failed to advise Miss James of her statutory review rights before discharging its duty towards her. Further errors were made with Miss James's priority Band and priority date which have since been corrected.

Recommended remedy

In order to remedy the faults identified, including those which resulted in injustice to Miss James, the Council should:

- a. withdraw the decision to discharge its duty to her and reinstate her position as a homeless applicant when implementing its new allocations scheme;
- b. pay her £500 in compensation;
- c. make sure that in future it complies with its statutory duties by maintaining a full allocation scheme and by not introducing undocumented changes which mean it is not allocating accommodation in accordance with its published scheme;
- d. review its procedures, including its standard letters, for advising homeless applicants of their statutory review/appeal rights with a view to ensuring that they are advised of them at the appropriate stage; and

- e. take steps to ensure that records are kept of all communications with applicants and their representatives, and that written communications are responded to.

Introduction

1. Miss James (for legal reasons not her real name) complains that the Council failed to deal properly with her application for housing.

Investigation

2. My Investigator has inspected the Council's files and has interviewed the Interim Manager of Homeless Services and the Home Choice Team Leader. A copy of the factual parts of this report was provided in draft to the Council, and to Miss James and her representative at the Citizens Advice Bureau (CAB). Where appropriate their comments are reflected in the text.
3. The legal and administrative background to this complaint is set out in an appendix to this report.

Miss James moves to Medway and applies for housing

4. Miss James became homeless when she left her home in another borough following domestic violence from her ex-partner. She went to live in Medway with her daughter because she has family there.
5. Miss James applied to the Council for housing on 21 August 2006. The Council does not appear to have considered whether she was homeless at that time and simply registered her on the general waiting list. However, there is no reference to domestic violence in the Council's records for 21 August 2006, although there are references to harassment from 'unspecified parties'. She was initially given low priority for housing but after two months she was moved into Band B on the basis that she was lacking a bedroom.
6. On 1 December 2006 Miss James advised the Council that she had found herself a place in a women's refuge. She was asked to complete a change of address form. When this was returned later in the month, Miss James informed the Council that her council tenancy in the borough she had come from was ongoing.
7. On 16 January 2007 the Council received a letter from Miss James's support worker at the refuge, confirming that she was now ready to move on from the refuge. Miss James's priority was increased to Band A. This reflected the fact that, under the terms of the Council's Allocation Scheme, applicants 'moving on from supported housing' are eligible for Band A priority.
8. Early in February 2007 Miss James asked how she could be moved on from the refuge. An appointment was made for her to visit the Council later in the month, at which she was advised to continue expressing interest in (i.e. bidding for) properties via the Council's choice based lettings scheme. She raised concerns that she would soon not be eligible for Housing Benefit for both the refuge and the property in the borough she had come from.

9. The Council says she was advised about the possibility of making a homeless application but that she may not be considered homeless because of her tenancy in another borough. It says Miss James decided to continue bidding for properties and said she would make a homeless application if she was not successful.
10. The Council's notes of the meeting indicate that she was advised to keep on bidding for accommodation and was told that she could be provided with a Homebond (i.e. financial assistance for a rent deposit) if she was not successful. The notes also indicate that the Council contacted the Police about the allegation of domestic violence and got the impression that it would be safe for Miss James to return to her property in another borough. The Homeless Prevention Form, which was completed during the meeting, indicates that the Council concluded that Miss James was not homeless and that the possibility of making a homeless application had been ruled out.

The Council takes a homeless application

11. On 23 May 2007 Miss James approached the Council again. The Council made some enquiries of the Police and on 30 May 2007 it took a homeless application from Miss James. According to the Council's record of the interview with her, Miss James was advised that she would be provided with accommodation pending its enquiries on her application. Miss James says she was told she would be allowed to remain at the refuge until she secured permanent accommodation. Either way, it would appear that the Council was satisfied that her accommodation at the refuge was suitable for her, at least pending its enquiries (see Appendix 1, paragraph 6), as no offer of alternative accommodation was made.
12. On 9 July 2007 the Council wrote to Miss James to tell her it had accepted a duty to house her. Although the Council's letter does not make this clear and notwithstanding the information from the Police in February 2007, it would appear that it accepted that it would be unreasonable to expect Miss James to return to her tenancy in another borough because of the threat of violence from her ex-partner. When writing to Miss James, the Council told her only one offer of accommodation would be made and that if she refused this offer, it could result in the Council's duty being withdrawn and her eviction from any temporary accommodation she was placed in. The Council also told her it now had a duty to organise temporary accommodation for her.
13. Later in July Miss James was offered temporary accommodation in a two-bedroom flat. Her support worker at the refuge contacted the Council on 31 July 2007 to raise concerns about the temporary accommodation. The following day Miss James went to view the flat, which she refused to accept due to the state of the communal areas and the distance from the door to the flat and the nearest light switch. The Council says Miss James was advised of her right to request a review of the suitability of the accommodation on 2 August 2007 and submitted 'an appeal'. It says the review was concluded on 3 August 2007.

14. Following a visit to the flat by two officers on 2 August 2007, the Council wrote to Miss James on 3 August to tell her that it had discharged its duty towards her on the basis that she had refused 'a reasonable offer of accommodation'. The Council advised Miss James of her right to request a review of its decision within 21 days.
15. The refuge manager sent an e-mail on 10 August 2007 to the Homelessness Manager, who has since left the Council, to question why Miss James had been offered temporary accommodation. She referred to an earlier conversation with the Homelessness Manager, from which she had understood that Miss James would be able to continue bidding for accommodation from the refuge. She also said the temporary accommodation was 'clearly unsuitable' for Miss James and her daughter, given that they were both vulnerable and because of her daughter's asthma. The Council did not reply to this e-mail and did not keep a copy of it on Miss James's file. The Council also has no record of the conversation referred to by the refuge manager in her e-mail. The Council has subsequently accepted that the Homelessness Manager could have allowed Miss James to remain at the refuge as someone to whom a full homeless duty was owed.
16. Following the Council's decision to discharge its duty to provide housing under Part VII of the Housing Act 1996, Miss James returned to being a general waiting list applicant. The Council downgraded her priority to Band B. However, when the refuge reconfirmed that Miss James was ready to move on from supported housing, the Council increased her priority to Band A in line with its Allocation Scheme (see Appendix 1, paragraph 7) with a priority date of 25 October 2007.
17. On 13 March 2008 the CAB wrote to the Council seeking clarification of Miss James's position. The CAB said it understood the decision to discharge the homeless duty may have been withdrawn.

Miss James's complaint to me

18. In July 2008 the CAB complained to me on behalf of Miss James, as it had received no reply to its letter of 13 March 2008, despite having chased a response over the telephone and having been promised one several times. There is no record of the CAB's letter on the Council's file, or of the telephone calls made by the CAB's caseworker.
19. When responding to my Investigator's enquiries, the Council confirmed its view that it had discharged its duty to house Miss James under Part VII of the Housing Act 1996, as she had refused a reasonable offer of temporary accommodation.
20. The Council also provided a list of Miss James's bids for permanent accommodation, along with information on the successful applicants. This revealed that some of the properties went to applicants in Band A (like Miss James) who had not been waiting for accommodation for as long as Miss James (i.e. they had a more recent priority date than her). The Council

explained that some of Miss James's bids were unsuccessful because higher priority is given to applicants:

- a. who are homeless and in self-contained temporary accommodation; or
- b. who are in medical category 1 and have 'unreasonable to remain factors'.

21. My Investigator asked the Council to provide a copy of its full allocation scheme. When the Council failed to respond, my Investigator pointed out that the summary of the Council's allocations scheme makes no reference to priority being given to applicants within the same Band on any basis other than the length of time in the Band. He pointed out that the failure to have a full allocation scheme would be a breach of the Council's statutory duty (see Appendix 1, paragraph 4) and that to allocate accommodation in a way which is not in accordance with its allocation scheme would be illegal (see Appendix 1, paragraph 3).
22. When interviewed, the Council's Home Choice Team Leader told my Investigator that, in addition to the priority Bands identified in the summary of its allocation scheme, it operates a system of sub-bands (also referred to as 'factors') which run from O to A (the highest). The Council has been unable to provide any documentation to explain the use of these sub-bands. However, the Home Choice Team Leader explained that homeless applicants living in temporary accommodation start at sub-band O and move up a sub-band every three months; this does not apply to general waiting list applicants.
23. The Council subsequently confirmed that it does not have a full allocation scheme and that, since September 2002, it has been operating on the basis of its summary policy and some internal guidance on how to allocate applicants to the Bands (A-D) within that policy. It says the sub-bands were introduced to distinguish priority between applicants. It accepts that there is no mention of sub-bands within any of its literature, and that they are complex and difficult to understand.
24. Although there is no evidence that anyone ever explained this to her, the Council has also confirmed that Miss James was placed in Band A, sub-band O, with a priority date of 25 October 2007. The latter has recently been corrected to 16 January 2007, the date when the Council first received confirmation that Miss James was ready to move on from supported accommodation.
25. The Council has been planning to introduce a new allocations scheme since at least the start of 2006. Since then there have been various implementation dates, the most recent being 23 February 2009 but this too has now been put back to 16 March 2009 due to complications with the Council's IT system. The Council says sub-bands have been removed from the new scheme, in order to simplify it.

Conclusion

26. The introduction of sub-bands for prioritising applicants for housing and the failure to reflect this in the Council's full allocation scheme was a serious omission. This means that for at least five years the Council has not been allocating housing in accordance with its documented allocation scheme. It raises questions about the legality of those allocations and means the Council has been in breach of its statutory duties.
27. In the absence of any documentation to support the verbal explanation of how the sub-bands operate, it seems unlikely that the sub-bands have been applied consistently. This raises the distinct possibility that people have not been treated equitably. But who, or even how many, it is not possible to say.
28. However, the handling of Miss James's application appears to be in line with the Council's verbal explanation of how the sub-bands work. I am therefore not in a position to identify any specific injustice to Miss James as a result of the failure to incorporate the sub-bands into the documented allocation scheme.
29. Nevertheless, my investigation has revealed other failings in the way that the Council dealt with Miss James's application for housing.
30. It is clear that there were both written and verbal communications between the refuge and the Council's Homelessness Manager which are not reflected in the Council's records (see paragraph 15). There was also contact from the CAB which went unrecorded by the Council. The failure to maintain proper records reflects fault on the part of the Council, as does the failure to respond to correspondence.
31. Miss James and the refuge manager clearly had the impression that she would not be offered temporary accommodation and would be able to stay at the refuge until she made a successful bid for permanent accommodation, despite the fact that she had been accepted as homeless.
32. The question is whether such a promise was made by the Council or whether there was a misunderstanding on the part of the Miss James and the refuge manager. I have reached the conclusion that, because of the failure to maintain records and the failure to respond to the refuge manager's e-mail of 10 August 2007, the benefit of the doubt should be given to Miss James. This means the Council should have allowed her to remain at the refuge as someone to whom the full homeless duty was owed. Had the Council done this, it would not have offered her temporary accommodation and would not have discharged its duty to her as a homeless person in August 2007.
33. Despite what the Council's says about Miss James having been advised of her right to request a review of the suitability of the temporary accommodation she had been offered (see paragraph 13), there is no documentary evidence to

support this claim. Furthermore, had the Council carried out a review as it suggests it did, Miss James would have had a right of appeal to the County Court on a point of law. However, whilst I have no doubt that the Council considered the issue of the suitability of the offer, this was not with the context of a statutory review of suitability. Rather this was within the context of a decision to discharge the Council's duty. Miss James was advised of her right to request a review of that decision which she did not pursue.

34. The Council should have informed Miss James in writing of the consequences of refusing the offer of temporary accommodation, including her right to accept the offer as well as ask for a review of its suitability. It would be good practice to do this when writing to someone about an offer of accommodation.
35. When the Council discharged its duty to Miss James it should not have downgraded her to Band B. She was still entitled to be in Band A on the basis that she was ready to move on from the refuge, as she had been since 16 January 2007. The Council was therefore also wrong to give her a priority date of 25 October 2007, a date which had no significance in terms of a change in her circumstances.
36. I have considered whether there was any fault on the Council's part in not treating Miss James as a victim of domestic violence when she first approached the Council in August 2006. However, as the first reference to domestic violence was made in December 2006, by which time Miss James had found herself a place in the refuge, I have decided that the Council was not at fault in this regard.
37. I have also considered whether the Council should have taken a homeless application from Miss James sooner than it did. However, the evidence suggests that at most she was put off, rather than prevented, from making an application.
38. I welcome the fact that the Council is introducing a new allocation scheme. This is well overdue and it is to be hoped that there are no further delays.
39. The faults I have identified amount to maladministration. The failure to operate a proper allocation scheme is a significant one which, in itself, would warrant publishing this report. Whilst I have been unable to identify any specific injustice to Miss James as a result of this failure, other failings in the handling of her application for housing also amount to maladministration and this has resulted in injustice to her. To remedy the injustice to Miss James as a result of the failure to allow her to remain at the refuge as someone to whom the full homeless duty was owed, the Council should:
 - a. withdraw its decision to discharge its duty to her and reinstate her position as a homeless applicant when implementing its new allocations scheme; and
 - b. pay her £500 in compensation.

40. The Council also needs to:

- a. make sure that in future it complies with its statutory duties by maintaining a full allocation scheme and by not introducing undocumented changes which mean it is not allocating accommodation in accordance with its published scheme;
- b. review its procedures, including its standard letters, for advising homeless applicants of their statutory review/appeal rights with a view to ensuring that they are advised of them at the appropriate stage;
- c. take steps to ensure that records are kept of all communications with applicants and their representatives, and that written communications are responded to.

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23 March 2009

Appendix 1 – Legal and administrative background

1. General applications for housing are dealt with under Part VI of the Housing Act 1996. Applications for housing from homeless people are dealt with under Part VII of the same Act, although Part VI is still relevant when a permanent offer of housing is to be made.

2. Part VI, Section 167(1), of the 1996 Act states:

‘Every local housing authority shall have a scheme (the “allocation scheme”) for determining priorities, and as to the procedure to be followed, in allocating housing accommodation’.

3. Section 167(2) states:

‘As regards priorities, the scheme shall be framed so as to secure that reasonable preference is given to: [amongst others] people who are homeless’.

It concludes:

‘A local housing authority shall not allocate housing accommodation except in accordance with their allocation scheme’.

4. Section 168(1) of the 1996 Act states:

‘A local housing authority shall publish a summary of their allocation scheme and provide a copy of the summary free of charge to any member of the public who asks for one’.

Section 168(2) states:

‘The authority shall make the scheme available for inspection at their principal office and shall provide a copy of the scheme, on payment of a reasonable fee, to any member of the public who asks for one.’

5. Part VII, Section 184(1) states:

‘If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves –

(a) whether he is eligible for assistance, and

(b) if so, whether any duty, and if so what duty, is owed to him under the following provision of this Part.’

6. Section 188 of the Act states:

‘If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation’

pending a decision on the application.

7. Section 193 states:

‘the authority ... shall secure that accommodation is available for occupation by the applicant’

when the full housing duty has been accepted. Any accommodation must be suitable for the applicant’s needs. Under Section 202 of the Act the applicant has a right of review over the Council’s decision that accommodation is suitable for their needs and a review may be requested whether or not the accommodation has been accepted. The Homelessness Code of Guidance for Local Authorities says:

‘Housing Authorities should also advise the applicant of his or her right to request a review of the suitability of any accommodation offered as a discharge of a homeless duty, whether or not the offer is accepted’.

8. Section 193 of the Act states:

‘The local housing authority shall cease to be subject to the duty under this section if the applicant, having been informed by the authority of the possible consequences of refusal [and his right to request a review of the suitability of the accommodation], refuses an offer of accommodation which the authority are satisfied is suitable for him and the authority notify him that they regard themselves as having discharged their duty under this section’.

9. The Council has operates a choice based lettings scheme for allocating housing. Applicants for housing are put into one of four priority Bands, running from Band A to Band D (the lowest priority). Applicants are also given a priority date. The Council has published a summary of its allocation scheme. According to this summary, bids for individual properties ‘will be prioritised by banding and then the date the bidder was allocated to the band’.

10. In March 2008 the Council’s Cabinet approved a new allocations scheme which is due to be implemented in 2009.