Full house: Councils’ role in allocating social housing

Focus report: learning lessons from complaints
January 2016
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Introduction

Demand for social housing is high and far outstrips the supply available to local housing authorities. Many councils – particularly those in the south east of England and in larger urban areas – have long waiting lists where most applicants have little prospect of successfully bidding for housing.

The Localism Act 2011 aimed to give councils more freedom to better manage their waiting lists to meet local needs. It allowed them to set tighter requirements for applicants applying for social housing in their area. Many have made use of these new powers to change their housing allocation schemes accordingly.

The Local Government Ombudsman (LGO) has recently seen a rise in complaints and enquiries from people unhappy with the way their housing application has been dealt with. A significant proportion of these are from applicants who have been denied access to their council’s housing register as a result of the new qualification requirements introduced to allocation schemes. In many cases we have found councils at fault in the way they have implemented these changes.

By drawing on some case studies from our complaints, this focus report highlights the severe impact on people when councils have got it wrong and the common issues we find in our investigations into housing allocations. The cases include a woman and her two young children who had to spend more than two years in a one bedroom flat and a woman with epilepsy who had to spend six months longer than necessary climbing steps to her home, putting her safety at risk.

To help authorities learn the lessons from our investigations, we set out what we consider to be best practice in deciding housing applications.

The report also acts as a timely reminder to councils that their allocation schemes should not exclude those groups that fall into a protected category - including the homeless, those in overcrowded accommodation and those needing to move for welfare reasons. We cannot decide that an allocation scheme is unlawful or not, however a small number of councils have recently seen their amended housing allocation schemes successfully challenged in court for excluding some vulnerable groups.

Local councillors have an important role in scrutinising authority policies. To support this process, the report offers a set of questions that councillors can consider asking if significant changes are proposed to their authority’s housing allocation scheme.

Finally, this report will help highlight to the general public the Local Government Ombudsman’s ability to give a fair and independent review of an individual’s complaint, and the type of actions we recommend to put things right if someone has been let down by a council service.

1 In this report we often use the term councils when referring to English local housing authorities - those councils with housing responsibilities. These are unitary authorities, district councils, the Isles of Scilly, London Borough councils and the Common Council of the City of London.
Local housing authorities are required by law to have an allocation scheme for assessing and prioritising applications they receive for social housing. The scheme must also set out the procedure the authority follows when allocating housing. Some no longer have any housing stock, but they are still required by law to have an allocation scheme.

A number of councils choose to operate an allocation scheme in partnership with neighbouring authorities and housing associations. Equally, many use Arms Length Management Organisations (ALMOs) to manage the allocation scheme on their behalf. However, councils remain responsible for housing allocation decisions made on their behalf. Councils must allocate housing in line with their allocation schemes.

A council allocates accommodation when it:

> selects a person to be a secure or introductory tenant of accommodation held by that authority; or

> nominates a person to be a secure or introductory tenant of accommodation held by another housing authority; or

> nominates a person to be an assured tenant of a housing association.

Not all people who apply for housing are eligible for an allocation of accommodation. For example, some people subject to immigration control are not eligible. On receipt of a housing application, the council must first consider if the applicant is eligible for housing. Once satisfied the applicant is, the council must decide what housing priority, if any, to award.

Most councils’ allocation schemes use either a banding or points system to decide what priority, if any, should be awarded to an applicant.

For example a council may place an eligible housing application into one of four priority bands (Band A to Band D) where Band A is the highest priority and Band D is the lowest. Councils often use an effective date or priority date, which may be the time spent on the housing register or within a priority band, to help decide priority between applicants in the same band.

Councils have some discretion to decide which categories of person should be awarded priority in their area. But, all councils must give some priority, what the law refers to as ‘reasonable preference,’ to the following:

> people who are homeless (within the meaning of homelessness law)

> people owed a duty as a homeless person under certain sections of the Housing Act 1996

> people occupying insanitary, overcrowded or unsatisfactory housing

> people who need to move on welfare or medical grounds

> people who need to move to a particular area to avoid hardship to themselves or others.

Councils are not required to give equal weight to each of the reasonable preference categories. Also they are not required, but may choose, to award a higher priority to applicants who meet more than one of the reasonable preference categories.

Any decisions made about a housing application can be challenged by seeking a review with the authority. Councils should have review procedures in place that include the timescales for each stage of the process. Government guidance says eight weeks is a reasonable timescale for making a review decision. However, unlike homelessness decisions, there is no right to challenge review decisions in court except by Judicial Review.
Housing allocations background

The Localism Act 2011

The Localism Act 2011, which came into force in June 2012, gives councils greater powers to decide which groups of people, within their areas, should qualify for housing. Many councils, particularly those in Greater London, have changed their housing allocation schemes, resulting in significant numbers of applicants being removed from their registers.

Councils should state in their allocation schemes the qualification criteria that must be met for an applicant to join their housing register. We have seen that some of the main factors they take into account include whether the applicant:

- has a local connection to the area;
- has sufficient financial resources to secure alternative housing;
- has been involved in anti-social behaviour or has breached the conditions of their tenancy; or
- is lacking at least two bedrooms (for those applicants who apply for housing on the basis of overcrowding).

Reasonable preference

Although councils now have greater scope to decide who qualifies for housing in their area, some priority must still be given to the groups of people defined by the reasonable preference categories detailed earlier. Several councils have had their amended allocation schemes successfully challenged in court for excluding applicants who meet the reasonable preference categories.²

It is for the courts to decide whether a housing allocation scheme is unlawful. But we want to remind councils of the need to ensure their allocation schemes do not exclude those groups of people protected by the reasonable preference categories.²

Exceptional circumstances

Government guidance says that whatever general criteria housing authorities use to define the types of people who do not qualify for social housing, there may be exceptional circumstances where it is necessary to not apply them for individual applicants. The guidance encourages housing authorities to have a clear policy for dealing with exceptional cases, but a recent High Court decision (Hillsden v Epping Forest District Council) held that they are not required to.

Our experience has been that many councils are including exceptional circumstances provision in their policies. We take the view that, whether or not a council has included an exceptional circumstances provision in its policy, if an applicant’s exceptional circumstances have not been considered, we are likely to find it to be at fault.

² See: R (Jakimaviciute) v Hammersmith and Fulham LBC [2014] EWCA Civ 1438; R (HA) v Ealing LBC [2015] EWHC 2375 (Admin); and R. (Hillsden) v Epping Forest District Council [2015] EWHC 98 (Admin)

The role of the Local Government Ombudsman

Number of complaints

During the year 2014/15 we received 978 complaints and enquiries about housing allocations. This is a 13% increase on the previous year. Where we carried out a detailed investigation, we found fault in 42% of cases.

Common issues

We usually expect a complaint to be made to the council to give it opportunity to put things right before we will investigate. This is normally through the council’s internal review procedure but sometimes a council may also decide to investigate a complaint using its corporate complaints procedure. We would not normally investigate a complaint unless it has been made within 12 months of the person becoming aware of the issue they are complaining about.

We investigate many types of complaint about housing allocations. We consider whether the council has done something wrong in the way it handled an application. However, we cannot question the decisions of a council if they are taken properly and in line with its allocation scheme.

Some of the main areas of fault we have identified during our investigations include:

- delay dealing with an application, a change in circumstances or a request to review a local housing authority’s decision;
- decisions which are not in line with the local housing authority’s allocation scheme;
- failure to take relevant information into account in reaching a decision, for example medical evidence provided by a housing applicant;
- failure to notify an applicant of their right of review against decisions affecting their application; and
- removing a housing application from the register or reducing an applicant’s priority without giving proper consideration to the applicant’s circumstances.
Jurisdiction over complaints

The Localism Act changed who considers complaints about housing. The Housing Ombudsman looks at complaints about councils in their role as social landlords. It covers areas such as property repairs, tenant behaviour, leasehold services and some situations where tenants move to different properties. We deal with complaints about most other council housing services including homelessness, housing allocations, housing benefit and home improvement services.

In terms of housing allocations, we deal with complaints from people who are not currently in social housing who have applied to join the housing waiting list. We can also consider complaints from social housing tenants who want to move because they meet one (or more) of the reasonable preference categories. For example, they have applied because their property is overcrowded. If they do not fall into a reasonable preference category but want to move because, for example, their property is underoccupied or because they want to exchange with another tenant, they can complain to the Housing Ombudsman if things go wrong.

We encourage councils to carefully consider which Ombudsman to signpost a complainant to once their own internal review or complaint procedures have been completed. We often see complaints where the council has signposted the complainant to the wrong Ombudsman. This can delay the complaint being investigated.

Putting things right

Where a council is at fault, we consider whether this caused the complainant a significant injustice. Where people live, and the conditions they live in, significantly affect day-to-day life. So, fault by the council can add to the already long wait for a suitable property, or mean that people are not able to access social housing at all.

Where we find fault which has caused significant injustice, we will recommend that the council takes action to put things right. For example we may ask them to:

> Backdate an application or priority award;
> Correctly allocate priority or waiting time;
> Enhance priority or waiting time (particularly appropriate if there has been a delay);
> Carry out a medical assessment and make appropriate provision;
> Carry out a review of a decision; or
> Allow a person to go on the housing list.

Where a person has missed out on a property, we may recommend the council allocates the next suitable property available. Where it is not possible to put right the injustice suffered, we will normally recommend that the council makes a payment to the complainant. We often make such a recommendation when a household has had to remain in unsuitable housing because of the fault.

We also want to ensure that councils learn from complaints, so we may recommend they take action to avoid the same problem affecting others. For example, reviewing relevant policies or procedures, or providing staff training.
Stories from our complaints

### Simon’s Story
Simon lived with his teenage son in a one bedroom flat. He complained to us about the council’s delay removing a suspension on his bidding account. The council suspended Simon’s housing application because he had accrued rent arrears. But, the council delayed lifting the suspension after Simon cleared the rent arrears. We found that Simon had missed the opportunity to bid for two suitable properties in his preferred area. We also found that Simon’s bids would have been successful because he had a higher priority than the successful bidders. We recommended that the council make Simon a direct offer of housing in his preferred area. We also asked the council to pay Simon a financial remedy because he had to live in overcrowded conditions for five months longer than necessary.

### Juliet’s Story
Juliet complained that the council had allowed her and her family to stay in unsuitable and overcrowded housing for too long. We found that the council failed to place Juliet’s housing application in the correct band when she told it about the birth of her first baby. We also found that Juliet had missed out on suitable properties which she could have successfully bid for. During the time she had another child. Because of the council’s fault, Juliet and her two young children had to spend 27 months in an overcrowded one bedroom flat. By the time Juliet complained to us she had moved to alternative housing. But, we recommended that the council pay Juliet a financial remedy in recognition of the 27 months she spent in unsuitable housing because of the authority’s fault.

### Reena’s Story
Reena has a range of physical and mental health problems, leaving her with limited mobility. She complained to us that the council had reduced her housing priority because of her alleged anti social behaviour. Our investigation found the council was at fault for removing Reena’s housing application from the housing register for four months. When the council reinstated Reena’s application it reduced her priority from Band A to Band B for 12 months because of her behaviour. This decision was in line with the council’s policy. But, we found the council was at fault for not reviewing its decision during this period. Also, the council did not consider Reena’s mitigating circumstances or her improved behaviour which it had observed during the 12 month period. So, we found the council was fettering its discretion. Because of the fault, it is likely Reena missed out on suitable offers of housing and spent longer in unsuitable housing than necessary. We recommended that the council should take a range of actions to put right the injustice suffered by Reena including a direct offer of housing. We also asked the council to amend its reduced preference policy to ensure it does not fetter its discretion in the future.
Stories from our complaints

Poor handling of request for medical priority

Kate’s Story
Kate has epilepsy. She lived in a flat with her two young children. Kate and her children had to climb 32 concrete steps to enter the flat and there were also 13 steps inside the flat. Kate put in a housing application because she considered she was at risk if she had an epileptic fit while climbing the stairs to access the flat. The council passed Kate’s application and the information she provided to its medical advisor for assessment. The medical advisor suggested that the council ask Kate to keep a seizure diary which could be reviewed a few months later. At a later date, the council took advice from an external medical consultant, who told the council to ask Kate some questions about her condition and bidding history. We found the council was at fault for not acting upon either of the medical specialists’ requests. We also found on balance that if the council had asked Kate to complete a seizure diary and respond to the medical consultant’s questions, this would have resulted in the council offering Kate a suitable property. Kate has since moved to more suitable housing. But, we recommended that the council pay her a financial remedy because she spent six months longer than necessary in unsuitable housing.

Nicola’s Story
Nicola, who is a council tenant, put in a transfer application. She asked the council to award her application medical priority because her medical condition meant she could not use the stairs at her property. Nicola completed a medical application form and sent the form with supporting documents to the council. The council did not award any medical priority to Nicola’s application. We found the council was at fault because its medical advisor did not complete a Medical Assessment Referral Form, as required by the council’s policy, or record how he had made his decision. This was fault. Also, the council failed to tell Nicola that she could ask for a review of its decision. Nicola suffered an injustice because she received a decision based on unclear information. Also, Nicola only found out about her right of review after being put to the time and trouble of complaining to us. We asked the authority to: apologise to Nicola; reconsider her application for medical priority; pay her a financial remedy; and change its medical application decision letter template to explain an applicant’s right to request a review.
Stories from our complaints

**Poor advice**

**Ethan’s Story**

Ethan has a disability and lived in a two bedroom housing association flat, but wanted to move into a larger property with his new partner and her four children. The couple approached the council for advice as they were now overcrowded. The council said they could not bid for properties as a couple because of the partner’s previous rent arrears, but did not tell Ethan that he could apply for a larger property in his own right. It was not until a few months later that Ethan realised he could apply for a property on his own, but by then two properties which might have been suitable were offered to other families, who had a lower priority than Ethan. Additionally, when a council officer received Ethan’s sole-name transfer application, they mistakenly cancelled his application because of his partner’s previous arrears. Following our investigation, the council agreed to apologise to Ethan and offer him the next property on which he placed a bid, even if he is not the bidder with the highest priority. The council also agreed to pay a financial remedy for the failure to offer them one of the houses and for the five months till they were re-housed.

**Oliver’s Story**

Oliver complained that the council’s delay removing his application from the housing register raised his expectations about finding a property. Oliver was on the housing register and met the council’s requirements that an applicant must have a local connection to the area. But, after the Localism Act came into force, the council introduced stricter local connection rules. Oliver did not meet the new local connection rules but the council did not remove his application from the housing register. The council only discovered that Oliver no longer qualified to remain on the housing register after he successfully bid for a property. The council then withdrew the offer and removed Oliver’s application from the register. Oliver had spent considerable time searching and bidding for properties and thought he had successfully found a suitable home to which, only later discover, he no longer qualified. We found that the council was entitled to make this decision because Oliver did not meet its new local connection requirements. But, because the council delayed removing Oliver’s housing application from the register, this raised his expectations about securing a property. We asked the council to pay Oliver a small financial remedy in recognition of the injustice he suffered.

**Not notifying applicant of changes to scheme**

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Stories from our complaints

Not considering exceptional circumstances

Darren and Amanda’s Story

Darren and Amanda had been on the council’s housing register for two years when the council changed its allocation scheme in response to the Localism Act. After asking Darren and Amanda to provide an update on their situation, the council told them their housing application would be removed from the register once the new policy took effect. This was because they did not have a local connection to the area as defined under the new policy. Darren and Amanda complained to the council and provided a detailed account of their situation in which they explained why a move to the area was needed. The council treated the complaint as a review request and responded by saying it had not changed its decision. We found that the council’s decision on Darren and Amanda’s review request was flawed. The council’s new allocation policy said that a local connection may be awarded if there are special circumstances that warrant an award. But, the council’s review decision did not address any of the special circumstances Darren and Amanda asked the council to consider. This caused Darren and Amanda an injustice because their review request had not been given proper consideration. We asked the council to carry out another review of its decision addressing the special circumstances.

Inconsistent decision-making by partnership authorities

Aisha’s Story

Aisha lived in a two bedroom house. She applied to the council for re-housing as she could no longer manage the stairs in her property. Aisha said she needed two bedrooms because her brother occasionally stayed with her overnight to help with her care needs. The council runs its allocation scheme in partnership with several housing associations. A Housing Association (Housing Association A) considered Aisha’s application on the council’s behalf. Housing Association A gave Aisha a high priority to move and said she could bid for two bedroom properties. Aisha bid on a property owned by a different housing association (Housing Association B). But, Housing Association B decided Aisha only required a one bedroom property and changed her housing application accordingly. Aisha wrote to Housing Association A to query the change and it changed her application back to a two bedroom need. When Aisha bid on another property with Housing Association B, it again changed her application back to a one bedroom need. We found fault with the inconsistent way the council’s partners dealt with housing applicants. We asked the council to pay Aisha a financial remedy in recognition of her uncertainty and time and trouble pursuing her complaint. We also asked the council to remind its partners to work together and not to overturn decisions unless new information comes to light.
Getting things right first time

From our investigations we have identified the following examples of good practice:

> Clear allocations policies which are easily accessible and easy to follow.

> Prompt decisions in response to applications, change of circumstance forms, requests for priority, and review requests.

> Clear written decisions which explain the information considered and the reasons for the decision.

> Notifying applicants of rights of review against decisions including medical priority decisions.

> Notifying affected applicants in advance of introducing changes to an allocations policy.

> Considering whether there are exceptional circumstances which warrant a grant of priority.

> Referring requests for medical priority to a medical advisor where appropriate.

> Acting in accordance with the recommendations of medical advisors and panels set up by the local housing authority, unless there are good reasons not to do so which should be explained to the applicant.

> Providing accurate information about the consequences of refusing an offer of housing.
We expect significant changes to a local housing authority’s allocation scheme to be considered by a committee of councillors before being implemented. Councillors play an important role in scrutinising proposed changes to an allocation scheme and have the opportunity to question relevant officers. The types of questions councillors may ask will vary depending on the changes proposed, but relevant considerations will normally include:

- Has the council consulted all relevant internal and external stakeholders?
- Has the council given proper consideration to government guidance on housing allocations?
- Are any departures from government recommendations properly considered and justified?
- Has the council considered its duties under the Equalities Act 2010?
- What assessment has been made of the impact of the proposed changes on existing applicants?
- Are the proposed changes in line with the council’s wider objectives including policies relating to planning and affordable housing?
- How will the impact of the changes be assessed and when will the scheme be reviewed?
About the Ombudsman

For more than 40 years the Ombudsman has independently and impartially investigated complaints about councils and other bodies within our jurisdiction. Our services are free of charge.

If we find something wrong, we can ask the council to take action to put it right. What we ask them to do will depend on the particular complaint, how serious the fault was and how the complainant was affected.

We have no legal power to force councils to follow our recommendations, but they almost always do.

Some of the things we might ask a council to do are:

- apologise
- pay a financial remedy
- improve its procedures so similar problems do not happen again.

Further information

Visit our website at www.lgo.org.uk

If you have a complaint you would like to make about a council you can contact us on: 0300 061 0614.

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