Investigation into a complaint against
Thanet District Council
(reference number: 15 000 234)

3 August 2016
The Ombudsman’s role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

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 don’t happen again.
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Section 30 of the 1974 Local Government Act says that a report should not normally name
or identify any person. The people involved in this complaint are referred to by a letter or
job role.

Key to names used

Mr and Mrs J – the complainants
Report summary

Housing allocations

Mr and Mrs J complain the Council has wrongly calculated their family’s priority for housing so the family’s current priority did not adequately reflect their housing need.

Finding

Fault found causing injustice and recommendations made

Recommendations

To remedy the injustice caused, we recommend the Council:

- apologise to Mr and Mrs J for its failure to recognise and address the family’s exceptional circumstances
- pay them £8,400 to acknowledge the impact on the family of remaining in unsuitable accommodation between December 2013 and April 2016
- pay them a further £250 to acknowledge the avoidable stress and confusion caused by its mistaken advice in June 2014.
Introduction

1. At the time of their complaint, Mr and Mrs J lived in a three bedroom house with their daughter and three sons. Two of the children have disabilities which made this house unsuitable for their needs. But the Council had only recently moved the family’s housing application into a higher priority band, and the family did not have as much priority as those who had been in this band longer. Mr and Mrs J say the Council should have moved their application into a higher band much earlier.

Legal and administrative background

The role of the Ombudsman

2. The Ombudsman investigates complaints about ‘maladministration’ and ‘service failure’. In this report, we 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. We 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))*

Housing law

3. The law defines overcrowding by a room standard, and a space standard. The space standard says a house is overcrowded when the number of people who sleep there exceeds the ‘permitted number’. The permitted number depends on the number of rooms available for sleeping (including living rooms) and their size. Rooms smaller than 50 square feet do not count at all. *(Housing Act 1985, sections 324-326)*

4. The Council must comply with the law when allocating housing *(Housing Act 1996, section 159)*. The law says the Council must have an allocation scheme for determining priorities. The allocation scheme must give reasonable preference to certain groups of people, including those who are homeless, occupying overcrowded housing, or need to move on medical or welfare grounds. *(Housing Act 1996, section 167)*

The Council’s housing allocation scheme

5. The Council prioritises applications for housing as follows:

   **Band A – urgent housing needs**

   Applications from people who meet the following criteria:

   *Urgent medical or welfare needs*

   Where an urgent medical need has been agreed with the Council or a high priority referral has been accepted by the Council under the Kent Agency Assessment procedure.
Management transfer

Where a social landlord requires the tenant to move or the tenant needs to move due to violence, harassment, intimidation or threats of violence likely to be carried out, major works, or other urgent management reason.

Band B – serious housing needs

Applications from people who do not meet Band A criteria but do meet one of the following criteria:

- people occupying very overcrowded housing or otherwise living in very unsatisfactory housing conditions, where a household is
  - suffering from major overcrowding (lacking two or more bedrooms)
  - living in supported people funded housing when support is no longer required
  - living with a category 1 hazard under the Housing Health and Safety Rating System, which cannot be resolved within a reasonable time
- social housing tenants who are under-occupying by one bedroom or more
- members of the Armed Forces.

Band C – reasonable preference

Applications from people who do not meet Band A or Band B criteria but do meet one of the following criteria:

- people who are homeless, where the Council has accepted a re-housing responsibility
- people occupying unsanitary or overcrowded housing or otherwise living in unsatisfactory housing conditions: insecure housing; lacking bathroom, kitchen, inside toilet, hot or cold water, or adequate heating; property in disrepair, with a category one hazard; poor internal or external arrangements
- people who need to move on medical or welfare grounds, including grounds relating to a disability, where a medical need has been agreed with the Council or a priority referral has been accepted by the Council under the Kent Agency Assessment procedure
- people who need to move to a particular part of the district, to avoid hardship to themselves or others – for example, to give or receive care, or to take up employment.

Band D – general

All other applications, including those from people who are intentionally homeless, or who have deliberately worsened their housing circumstances, or who are homeless but owed a duty by another local authority.
**Medical priority**

6. The Council's allocation scheme sets out how the Council considers medical priority. If an applicant indicates in their housing application form that they think their health or disability is affected by their current housing, the Council asks them to complete a welfare and medical assessment form. The applicant can include information, for example from a medical professional, with this form. The Council may make a home visit to see how the current housing situation affects the identified medical issue.

7. All medical information is initially assessed by a medical panel consisting of at least two Council housing advisors. The Council may request medical advice for this. If the case is complex, the Council will tell the applicant about the Kent Agency Assessment process. This is a way for health and social care professionals to make a housing needs referral to the Council.

**Overcrowding**

8. The Council's allocation scheme sets out how the Council considers overcrowding. It calculates how many bedrooms the household needs depending on the number, age and sex of those in the household under 16. It then compares the number of bedrooms the household currently has, to the number of bedrooms it calculates the household needs. If the household is one bedroom short, the Council classes the household as overcrowded. If the household is more than one bedroom short, the Council classes this as 'major overcrowding'.

9. The Council's allocation scheme is based on two children of the same sex sharing a bedroom up to the age of 16. So when one of the children turns 16, the Council classes the household as needing an extra bedroom.

**Choice-based lettings**

10. The Council operates its allocation scheme within a choice-based lettings service. People on the housing list can bid for social housing as properties become available. Each available property is then offered to the bidder with the highest priority within the allocation scheme. The length of time the bidder has been in their priority band is the tie-breaker. If a successful bidder refuses two offers of housing, the Council may suspend their application for 12 months.

11. The Council's housing options manager has discretionary power within the allocation scheme to award extra priority, or approve offers of housing, outside the choice-based lettings service. This discretion recognises that the Council needs to be able to respond to exceptional needs or hardship.

**Local lettings policies**

12. The law allows the Council to operate a local lettings policy in some circumstances *(Housing Act 1996, section S167(2e) as amended).* A local lettings policy lets the Council give extra priority to some groups of people, for example:

- on new developments, where the Council wants to achieve a balanced mix of households
• to reduce anti-social behaviour

• In rural areas, where a local connection may be part of the planning permission for development.

13. The Council has a local lettings policy which allows it to put in place, with partner agencies such as social housing providers, a local lettings plan for individual housing developments in its area. The local lettings plan for some housing developments gives extra priority to working families and families with younger children. At the time this plan was agreed, the definition of ‘worker’ did not include unpaid carers. The aim of the plan was to have 50% of tenants in paid employment, to promote community stability.

14. The most recent local lettings plan says that households that are not able to be economically active through reasons such as being full time carers, not being of working age, or having a disability stopping them from working, will be treated as if economically active. This takes account of a recent court judgement about a local lettings plan elsewhere in the country.

15. Local lettings plans in the Council’s area also give priority to families with children under the age of 10, to promote long-term tenancies.

16. Where a local lettings plan gives extra priority, the identified groups of people have highest priority when properties covered by the policy become available. Priority on the housing list is then used to decide which of those people with extra priority should be offered a house. Therefore, anyone with extra priority under the local lettings plan takes precedence over everyone else on the housing register for these properties. Only if there are no bidders with extra priority does the Council consider bids from other people on the housing list.

How we considered this complaint

17. This report has been produced following the examination of relevant Council documents. We have also discussed the complaint with Mrs J and considered the information she has sent to us.

18. The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

Investigation

19. At the time of their complaint, Mr and Mrs J lived with their four children (then aged between 14 and 18) in a three-bedroom private rented house. Mr and Mrs J are full-time carers to two of their children, who have disabilities, so the household depends on benefits for its income.

20. Mr and Mrs J had been on the Council’s housing list since 2000. In 2013 the Council updated the housing list and asked Mr and Mrs J to complete a new application. In the
application, Mr and Mrs J explained why their current house was too small. Three young people had to share one bedroom, two sleeping in short bunk beds with a mattress on the floor for the third. The mattress took up all the floor space. One young person in the room has sleep problems and another, who has mobility difficulties, requires help using the toilet during the night.

21. The Council sent Mr and Mrs J a medical and welfare housing need form. The Council told Mr and Mrs J it could only assess the medical and welfare housing needs of one member of the household. Mr and Mrs J completed the form naming one young person as the occupant to be assessed, but they also referred to another young person’s disabilities.

22. In the medical and welfare housing need form, Mr and Mrs J again described the sleeping arrangements and the difficulties these presented for night-time supervision and help with toileting. They also indicated their son’s co-ordination and balance difficulties, which affect his walking, and stressed his need for a calm space within the home.

23. Mr and Mrs J expected the medical and welfare assessment to give them extra housing priority and put them in Band B. The Council placed Mr and Mrs J in Band C with a priority date of 8 March 2011. The priority date is used as a tie-break when several families from the same housing band bid on a property. Mr and Mrs J’s priority date should have been 29 November 2007.

24. In January 2014 Mr and Mrs J successfully bid on a house. When they visited the house they found it was not suitable for their family’s needs. Most of the downstairs living space had been converted into a bedroom and wetroom, and Mr and Mrs J would have to sleep on a different level to the two young people needing night-time assistance. Mr and Mrs J refused the offer and the Council accepted their reasons.

25. In February 2014 Mr and Mrs J again successfully bid on a house. When they visited the house, they found it was not suitable for their family’s needs. The house only had three bedrooms and the bathroom was downstairs, which was unsuitable for meeting the night-time needs of two of the young people in the household. Mr and Mrs J refused the offer and the Council accepted their reasons, confirming that the refusal would result in no loss of priority on the housing list.

26. The Council corrected Mr and Mrs J’s priority date in April 2014 but it did not change their banding. Mr and Mrs J complained, and they involved their MP in their complaint. In May 2014 the Council told their MP that its housing options team could help secure private rented accommodation, even though the family rely on benefits and do not have a deposit or guarantor.

27. In June 2014 Mr J contacted the Council again to discuss his family’s housing need. The Council did not explain the help it could offer to secure private rented accommodation. Mr J asked the Council to review the family’s banding on the housing list, considering their current overcrowding and the needs of their two disabled children. The Council said if it put the family into Band B, they would only be able to bid on five-bedroom houses, and there was only one five-bedroom house available in the social housing sector.
28. Mr and Mrs J wrote to the Council about this in October 2014. They said they did not understand why they would have this restriction if they were in Band B. They also said that even a different three-bedroom house, big enough for each child to have a proper bed, would be an improvement on their existing circumstances. They asked the Council to place them in Band B.

29. In January 2015 the Council placed the family into Band B with effect from the previous November when one of their children turned 16. This changed their priority date within the band. Other families, who had been in Band B for longer, would have more priority when bidding on properties.

30. Mr and Mrs J had found that some properties they had bid on had been offered to families within a lower band, or with a newer priority date. This was because the local lettings policy operating on some housing developments gives extra priority to working families and families with younger children. Mr and Mrs J complained about this in February 2015. They were not satisfied with the Council’s response and complained again in March 2015.

31. The Council said there was no evidence the family was entitled to a five-bedroom property (and therefore a higher banding) before November 2014. The Council said it would consider with its housing partners whether full-time carers should be deemed ‘workers’ for the local lettings policy.

32. Mr and Mrs J contacted us. As part of our investigation, we asked the Council to visit their home and assess whether the family had any additional housing needs arising from overcrowding, or from their children’s disabilities. A housing officer and an occupational therapist visited Mr and Mrs J’s home in August 2015. They found:

- the family was statutorily overcrowded by the terms of both the space standard of the Housing Act 1985, and the Housing Hazards and Safety Rating System (HHSRS) of the Housing Act 2004. This amounted to a category 1 hazard which requires the Council to take enforcement action

- unmet housing needs around toileting and sleeping arrangements for one of the young people with disabilities, and (to a lesser extent) the rest of the family.

33. Mr and Mrs J continued to bid on properties, particularly those on new developments because new properties better met the needs of their disabled children by providing off-street parking and appropriate bathroom facilities. But even when Mr and Mrs J had the greatest priority, and the longest waiting time, of all bidders, the properties were offered to families meeting the requirements of the local lettings plan.

34. In April 2016 a housing association offered Mr and Mrs J a four-bedroom house on a new development. Although two of their children still need to share a bedroom, all the young people can now have a bed of the correct size, and Mr and Mrs J can meet the night-time needs of their children with disabilities without disturbing the others.
The Council’s response to our investigation

35. The Council says:

- the findings of the housing officer and the occupational therapist in August 2015 would not have changed the household’s priority banding position, if the visit had taken place earlier
- its allocation scheme recognises only minor overcrowding (lacking one bedroom) and major overcrowding (lacking two bedrooms). It is not realistic to refer all cases of overcrowding for further assessment and the Council prioritised Mr and Mrs J’s application according to the number of bedrooms their household lacked. So the Council considers it acted according to its allocation scheme and therefore without fault
- within the allocation scheme, references to a category 1 hazard under the Housing Health and Safety Rating System cover only hazards caused by disrepair. Overcrowding (which can also create a category 1 hazard) is addressed separately within the scheme
- Mr and Mrs J focussed on overcrowding in the medical and welfare needs assessment form, rather than the medical needs of the household or how their current accommodation affected the occupants’ medical conditions
- the Council would not award urgent priority for medical and welfare needs without a referral from an occupational therapist
- Mr and Mrs J turned down a property in January 2014 which would have resolved their housing difficulties
- discretionary powers are included in the allocation scheme to allow the Council to give priority in exceptional circumstances that the policy does not cover. This is not the case here because Band B is an accurate reflection of the family’s housing need.

Conclusions

36. Overcrowding is not based solely on the number of bedrooms and the ages of the occupants. The size of the bedrooms is also relevant. The Council did not take proper account of this when Mr and Mrs J described their family’s crowded living conditions in September 2013. We do not expect the Council to visit every overcrowded family. But the information from Mr and Mrs J should have prompted the Council to visit in this case, to check the family were not statutorily overcrowded. The Council’s failure to do this is fault.

37. Mr and Mrs J also told the Council about the family’s additional medical and welfare needs in September 2013. The Council had wrongly said it could only consider the needs of one household member, so it is not surprising that their form focussed on the impact of overcrowding. But Mr and Mrs J also referred to:

- a second household member with disabilities
• mobility difficulties
• toileting needs
• the need for a calm space.

38. So the Council should have recognised that this was a complex case needing a cross-agency referral. Its failure to do so is fault.

39. The allocation scheme gives extra priority to households who are overcrowded or have medical needs. It does not have a mechanism to recognise households affected by both. So the Council should have considered exercising discretion to take account of exceptional circumstances and depart from the allocation scheme. Its failure to do so is fault.

40. The Council told Mr and Mrs J’s MP that it could help secure private rented accommodation. It did not explain to Mr and Mrs J how they could access this help. This was also fault.

41. The Council also provided inaccurate information to Mr and Mrs J about what properties they would be able to bid on if they were in B and B.

Injustice

42. Mr and Mrs J’s combination of circumstances is exceptional. They are a large family, two members of which have disabilities, and they were living in a house which was too small and did not meet the needs of the disabled occupants. If the Council had properly considered these circumstances, it would have given Mr and Mrs J extra priority for housing.

43. So if the Council had acted without fault, Mr and Mrs J would have been in Band B from September 2013, and they would have had higher priority much earlier when bidding for properties. And Mr and Mrs J’s circumstances provided a compelling reason for the Council to go beyond this, and approve an offer of housing outside the choice-based lettings scheme.

44. The injustice here is therefore significant, because as a result of Council fault the family has spent much longer than necessary living in unsuitable accommodation. Without fault, the family could have moved to a suitable property by the end of 2013.

45. We do not accept that Mr and Mrs J refused an opportunity to resolve their housing difficulties in early 2014. The configuration of bedrooms in the property they refused was not suitable to meet their family’s needs, because those needs include night-time support. The Council accepted the reason for refusal at the time, so it should not be using the refusal now to suggest Mr and Mrs J were responsible for prolonging their housing difficulties.

46. The Council’s failure to provide helpful and accurate information caused the further injustices of avoidable stress and confusion.
Decision

47. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr and Mrs J and their family. The Council should take the action identified below to remedy that injustice.

Recommendations

48. To remedy the injustice caused by the faults identified above, the Council should:

- apologise to Mr and Mrs J for its failure to recognise and address the family’s exceptional circumstances
- pay them £8,400 to acknowledge the impact on the family of remaining in unsuitable accommodation between December 2013 and April 2016.
- pay them a further £250 to acknowledge the avoidable stress and confusion caused by its mistaken advice in June 2014.