

**Report by the Local Government and  
Social Care Ombudsman**

**Investigation into a complaint against  
Maidstone Borough Council  
(reference number: 16 004 603)**

**1 November 2017**

## 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.

# Investigation into complaint number 16 004 603 against Maidstone Borough Council

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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 A: the complainants

Mrs X: the owner of temporary accommodation

Mr X: Mrs X's son

## Report summary

### Homelessness

Mr and Mrs A complain about the way Maidstone Borough Council handled their homeless application. They are also unhappy with the arrangements for accommodating them before and after the Council accepted the main housing duty.

### Finding

Fault causing injustice and recommendations made.

### Recommendations

To remedy the injustice to the family, the Council should, within three months of the date of this report:

- apologise to Mr and Mrs A for the fault identified;
- pay them £500 to reflect lost and broken belongings including a television;
- pay them £550 for the cost of Bed and Breakfast from 6 to 13 July 2015 (the Council has already agreed to do this);
- pay their removal and storage costs of £370;
- pay them £750 which reflects some of the cost of takeaway food for the two months the family was in the Bed and Breakfast after the eviction; and
- pay them £2,000 to reflect their avoidable distress.

Within three months of the date of this report, the Council should review and formalise its working relationship with Mr and Mrs X in writing to avoid recurrence of the fault identified and report back to us with an action plan.

## Introduction

1. Mr and Mrs A complain about the way Maidstone Borough Council (the Council) handled their homeless application. They are also unhappy with the accommodation the Council arranged for them before and after the Council accepted the main housing duty. Mr and Mrs A complain:
  - there was a failure to assist until they approached the Council in person. They had to use the out of hours' service and, despite attending the Council's offices in person at 2pm, and advising of their homelessness previously, the Council did not arrange accommodation until 7.30pm when they had two small children (including a baby of 13 months) and nowhere to go;
  - there was a failure to deal with complaints about the housing provider's son, Mr X including complaints of harassment;
  - the Council allowed an unlawful eviction;
  - there was a failure to make proper inquiries before finding Mr and Mrs A intentionally homeless;
  - there was an unacceptable delay in providing decisions in writing;
  - there was a failure to provide further accommodation after the eviction;
  - the Council provided unsuitable Bed and Breakfast accommodation; conditions were poor, there was damp, mould and insects. The room was cold and the heating did not work properly. There was dog excrement in the garden;
  - they were in Bed and Breakfast accommodation for 14 weeks;
  - there was racial discrimination; and
  - there was a failure to investigate their complaints.
2. Mr and Mrs A seek a financial remedy including repayment of £4,000 for their avoidable costs and expenses and for damage and loss of their belongings during the eviction. They feel the Council needs to change procedures so the same thing does not happen to others.

## Legal and administrative background

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. If there has been fault, we consider whether it has caused an injustice and if it has, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
4. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council or Cabinet and we will require evidence of this. (*Local Government Act 1974, section 31(2), 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*)

6. Mr and Mrs A could have taken their complaints about the Council's failure to deal with complaints about the housing provider's son, Mr X including complaints of harassment and the Council allowing an unlawful eviction to court to claim damages. And, although they have instructed a solicitor, we do not consider it reasonable for them to pursue court proceedings because the court would not recommend procedural improvements, whereas we might make a recommendation to change procedures if our findings justified this.
7. We provide a free service, but must use public money carefully. We may decide not to start or continue with an investigation if we believe it would be reasonable for the person to ask for a council review or appeal or if the person has already asked for a review. (*Local Government Act 1974, section 24A(6), as amended*)
8. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the action of these providers. (*Local Government Act 1974, section 25(7)*)

## How we considered this complaint

9. We produced this report after examining relevant files and documents from the Council and Mr and Mrs A including video and audio recordings from Mrs A taken on the day of the eviction. We gave Mr and Mrs A, the Council and Mr and Mrs X a confidential draft of this report and invited them to comment. We took their comments into account before finalising the report.

## Investigation

### Relevant law, procedures and guidance

10. If a council has reason to believe someone may be homeless or threatened with homelessness, it must take a homelessness application and make inquiries. The threshold for taking an application is low. The person does not have to complete a specific form or approach a particular council department. (*Housing Act 1996, section 184 and Homelessness Code of Guidance paragraphs 6.2 and 6.6*)
11. A council must provide interim accommodation while it considers a homelessness application if it has reason to believe the applicant may be homeless, eligible for assistance and in priority need. (*Housing Act 1996, section 188 and Homelessness Code of Guidance for Local Authorities, paragraph 6.5*)
12. A council applies four tests to decide what, if any, duty it owes to a homeless applicant. Its enquiries are to decide whether the applicant is eligible for assistance, homeless or threatened with homelessness, in priority need (including families with children) and not intentionally homeless. If a council is satisfied someone is eligible, homeless, in priority need and unintentionally homeless it will owe them the main housing duty. This means

the council must make accommodation available to the applicant. Councils usually carry out the duty by arranging temporary accommodation until making a suitable offer of social housing or private rented accommodation. (*Housing Act 1996, section 193*)

13. After completing inquiries, the applicant must receive a decision in writing. If it is an adverse decision, the letter must fully explain the reasons. Letters must include information about the right to request a review and the timescale for doing so. (*Housing Act 1996, section 184*)
14. An applicant may request a review within 21 days of being notified of the decision on their homelessness application. If the applicant wishes to challenge the review decision, or if a council takes more than eight weeks to complete the review, they may appeal on a point of law to the County Court. (*Housing Act 1996, sections 202 and 204*)
15. A council must arrange storage of belongings where:
  - it has accepted certain duties to the household including the duties described in paragraphs 10 and 11;
  - the belongings are at risk of damage or loss;
  - no suitable provision has been made.(*Housing Act 1996, section 211*)
16. The Homelessness (Suitability of Accommodation) Order (“the Suitability Order”) says privately run Bed and Breakfasts are not suitable accommodation for families and they should not be used unless there is no alternative and then for no longer than six weeks. There are no restrictions on a council using Bed and Breakfast accommodation where it is provided under a power, as opposed to a legal duty; for example the power to accommodate pending a review (see paragraph 13). (*SI 2003/3326*)
17. An applicant has the right to request a review of a decision about the suitability of accommodation provided under Section 193 of the Housing Act 1996. There is a right of appeal to the County Court on a point of law. (*Housing Act 1996, sections 202 and 204*)
18. The Council’s comments about its procedures for temporary accommodation are summarised below.
  - In 2015, there was no written temporary accommodation policy, although there is one now. The procedure was/is: for minor breaches of licence conditions, a person receives a written or verbal warning by the Council or accommodation provider, followed by a written warning if there are further breaches. For serious breaches, temporary accommodation can be ended immediately.
  - The Council gives assistance with removals and storage in line with Section 211 of the Housing Act 1996. The applicant would need to say there was a risk to their belongings and ask for assistance with storage.

- Complaints about the conduct of providers of temporary accommodation are rare but, when made, would be discussed with the provider. If upheld, the Council would cease working with a provider.
  - Complaints from a temporary accommodation provider that a person has breached their accommodation agreement would need to be evidenced by the provider; the applicant would be given the opportunity to respond to any allegations before a decision is reached on whether the housing duty would be discharged.
19. The question of whether a document is a tenancy or a licence is set out in case law. The Courts have stressed the need to look at the reality of the arrangement and to ignore labels used on documents. This is because the agreement is drafted by the owner of the property and represents only their view of the rights. Where an occupant has sole possession of premises for a period and pays a rent, then they usually have a tenancy unless there are exceptional circumstances. (*Street v Mountford [1985] UKHL 4*)
  20. The fact that accommodation is used as temporary accommodation is not an exceptional circumstance that would convert a tenancy into a licence.
  21. The Courts have confirmed that accommodation provided under Section 188 of the Housing Act 1996 (that is, interim accommodation pending a decision on a homeless application) does not have the benefit of the Protection from Eviction Act 1977. So 28 days' notice is not required. (*R (CN) v LB Lewisham and R (ZH) v LB Newham*)
  22. Housing provided under Section 193(2) Housing Act 1996 (that is, after a council has accepted the main housing duty) **is** covered by the Protection from Eviction Act 1977. This means that occupants are entitled to at least 28 days' notice and cannot be evicted without a court order.

### **Key facts**

23. Mr and Mrs A and their young children were asylum seekers who lived in Maidstone in 2013 before moving out of the area into housing provided by the Home Office. They got indefinite leave to remain in the UK, and in February 2015 applied for housing with the Council. Mr and Mrs A put on the housing application form that they needed to leave the Home Office housing by 25 February. Mr A then emailed the Council on 24 February to say they would be homeless on 9 March and not on 25 February. He submitted a letter from the Home Office accommodation provider saying he had to leave his home on 9 March.
24. On 9 March, Mr and Mrs A attended the Council's offices saying they were homeless. The Council told us they attended the office late in the afternoon and had to wait for accommodation for just under three hours before the out of hours' service opened. Mr and Mrs A told us they had to wait in a car park with their children for the out of hours' service to confirm what was happening. The out of hours' service placed them in Bed and Breakfast accommodation.
25. On 10 March, a caseworker interviewed Mr and Mrs A. On 11 March, Mr and Mrs A applied for housing benefit and applied to the County Council for money for food.

26. On 13 March, the Council accepted the main housing duty (see paragraph 12).
27. On 30 March, the Council offered Mr and Mrs A self-contained accommodation (a flat) and Mr and Mrs A moved in. Mrs X owns the flat, with day-to-day management carried out by her son Mr X. The Council told us it had no formal written agreement with Mrs X and it purchased nights as and when required, as did some other local authorities.
28. The agreement Mr and Mrs A and a caseworker (for the Council) signed said accommodation might be cancelled at short notice or there may be a requirement to move immediately if a person:
  - was asked to leave as a result of unreasonable or antisocial behaviour; or
  - failed to abide by the rules of the accommodation.
29. The agreement was called '*a licence agreement for interim or temporary accommodation*'. It was on the Council's headed paper, and gave Mrs X's name as the landlady. It was not signed by Mrs X. The agreement said nothing about inspections.
30. The Council provided us with a document called 'Bed and Breakfast rules'. It said furniture in rooms should not be repositioned, damage would be charged and the landlady would check the room every day.
31. The day after they moved in, Mr A said the flat was not suitable. He said his daughter needed a cot. He was given advice about local charities for furniture.
32. On 31 March, Mr A spoke to a customer services adviser to say the flat was not suitable as his neighbours were complaining about noise from his children. The customer services adviser noted Mr A had moved furniture around '*which was not allowed in the licence agreement*'. Mr A asked if he could move back to the Bed and Breakfast accommodation. The customer services adviser noted in the computer records that she '*made him aware that he is very lucky to be in TA [temporary accommodation]*'.
33. On 19 June, Mr A spoke to a customer services adviser saying Mr X had asked him to leave because his daughter had drawn on the wall. He said Mr X was abusive.
34. A caseworker spoke to Mr X on 22 June who denied being rude or abusive and said the couple had treated the property badly – marking the walls by moving furniture and their child had drawn on the walls in pen. Mr and Mrs X repainted the walls. The caseworker spoke to Mr A and said '*this behaviour cannot continue as discharge [of the main housing duty] may be done*'.
35. Also on 22 June, the caseworker warned Mr and Mrs A orally that if, there were further issues, they would be evicted from temporary housing.
36. On 3 July, Mr X said to the Council that he had told Mr and Mrs A to clean the property by 6 July. He said he attended the property and found a broken lampshade, furniture moved and the flat in a 'bad state'. Mrs A called the police when he tried to speak to her about this as she felt Mr X was harassing her. The caseworker tried to call Mr and Mrs A but could not get hold of either of them.

37. The Council provided photographs of the interior of the flat showing drawing and marks on the walls, marks on the carpets, a broken lampshade, broken plinth and stained carpets. Mrs A also provided similar photographs of the lampshade and broken plinth which she says were both broken when they moved in.
38. Also on 3 July, the caseworker left two voicemail messages for Mr and Mrs A asking them to contact her. Mr X then phoned the caseworker and said Mr and Mrs A were refusing to leave the flat. The caseworker's notes say she spoke to Mrs A and '*advised she needed to leave the property today. Advised as to why this was. Mrs A advised they were going to clean, but I advised they had been given warnings. Mrs A admitted to moving furniture around and moving a computer desk into the property. I advised they need to leave and attend [the Council's offices]. Also advised we may not provide further TA [temporary accommodation] and they may be referred to SS [social services]*'.
39. On 6 July, the caseworker referred the children to the County Council's social services department. She noted '*duty is being discharged due to their behaviour. Duty discharge letter to be completed*'.
40. The Council placed Mr and Mrs A in a hotel over the weekend of 3 to 6 July. Mrs A was told orally on 6 July the Council had discharged its duty to house the family and they should contact social services. Mrs A said she had done so already and been told to contact the Council. Mrs A was told she would receive a discharge of duty letter. Between 7 and 13 July, Mr and Mrs A paid privately for a Bed and Breakfast.
41. On 7, 8 and 9 July 2015, Mrs A attended the Council offices for the discharge of duty and eviction letters. She put in a request for a review/appeal of the Council's decision to discharge the full housing duty (although she was yet to receive a written decision letter about this) and formal letters of complaint with evidence. Mrs A's letters were headed '*unlawful eviction from temporary accommodation*' and '*formal complaint against [the caseworker] in housing department*'. The key points of Mrs A's letters are summarised below.
- They phoned the Council twice before coming to Maidstone on 9 March from a different area. They arrived at the Council's offices at 2pm on the 9<sup>th</sup>. They had to call the out of hours' service to arrange accommodation. The Council's offices closed and they had to wait outside in the cold until 7.30pm before accommodation was arranged.
  - They put two beds together as it was unsafe for the baby to sleep alone on a single bed. The following day Mr X moved the beds back when they were not in. Later, Mr X came back and saw the baby and then said it was okay to move the beds together.
  - Mr X inspected the property every morning, including looking inside boxes. He put their possessions back the wrong way.
  - On 19 June, Mrs X said the carpet should be kept clean. There was milk spilt on it. Mrs X screamed at her. Mrs A said she would pay for any damage. Mrs X saw three or four lines on the wall. She became angry and said they would have to pay to repaint the room. Mrs A said she would clean the wall. Mrs X showed her other marks on the wall and continued shouting.

- Mrs A put a computer table in the property. Mr X said this was not allowed. Then he brought a 'rules and regulations' form in to show her. He could not find a relevant term. And the licence agreement did not say furniture was not allowed.
  - Mr X returned on 3 July and said again to get rid of the computer table. He shouted at Mrs A. Her children became upset. She called the police. Her caseworker left her a message saying she was being evicted. Mr X stayed in the property and started moving her belongings outside. Mrs A spoke to the caseworker who said she was being evicted and had to move from the flat that day and she may not get any more accommodation. Mr X refused to leave the property. He started cleaning and moved all their stuff outside. Mr X refused to let the children use the toilet or sleep on the bed. Mrs A had to put her baby on the floor to continue packing. Her husband's manager came to help them move and witnessed Mr X refusing them access to the toilet.
  - The caseworker decided to evict them before hearing their side of the story and without giving them any notice.
42. The Council wrote to Mrs A saying her complaints would be dealt with through the review/appeal.
43. On 8 July, Mrs A wrote to the caseworker (handing the letter in to the Council's offices in person) saying she (the caseworker) had evicted them by phone. Mrs A said she was still waiting for the eviction letter, which the caseworker had promised to provide. She asked the caseworker to provide evidence to justify the eviction.
44. On 10 July, Mrs A handed in a letter asking for housing. She explained she had asked for a review of the Council's decision to discharge its duty and made a complaint.
45. The housing charity Shelter spoke to a senior adviser at the Council on Mr and Mrs A's behalf on 13 July. Shelter said Mr and Mrs A had the benefit of the Protection from Eviction Act and were entitled to a court order before being evicted from the flat. Shelter said it was not appropriate for the Council to discharge its duty.
46. The senior adviser reviewed legal cases to see if the Council had followed the correct process, and decided that Mr and Mrs A should have four weeks' notice and if they did not leave, a court order would be necessary to evict them. The senior adviser noted the Council was intending to discharge the main housing duty, but would provide accommodation for four more weeks.
47. The caseworker emailed the discharge of duty letter to Mr and Mrs A. She also emailed a Notice to Quit. The Notice to Quit gave Mr and Mrs A until 11 August to leave "*any temporary accommodation provided....by Maidstone Borough Council*".
48. On 14 July, the caseworker texted Mr and Mrs A to say the Council had taken over payment of the Bed and Breakfast accommodation.
49. On 20 July, Mr and Mrs A asked for a review of the Council's decision to discharge the main housing duty on the grounds that they were intentionally homeless.

50. For reasons which are unclear, the Council moved Mr and Mrs A to a different Bed and Breakfast for two nights. Then they had to move back to the previous Bed and Breakfast. The Council extended Mr and Mrs A's Bed and Breakfast accommodation until it completed the review. Mrs A emailed councillors highlighting her experience and asking them to investigate. A few councillors replied, saying the matter would be dealt with as part of the review or it would have to wait until the review was completed.
51. On 15 September, the Council reversed the decision that Mr and Mrs A were intentionally homeless and reinstated the main housing duty. A few days later, the Council offered Mr and Mrs A permanent housing which they accepted.

### **The Council's response to the complaint**

52. Mr and Mrs A approached a solicitor in June 2016. The solicitor made another formal complaint on their behalf (Mrs A had already complained in July 2015 but there had been no response to her complaint: see paragraph 41.). The Council responded under both stages of the complaints procedure saying:
- due to the high demand, an appointment had not been available on 9 March, so Mr and Mrs A got the next available appointment on 12 March. They were not left homeless on the day of their approach and accommodation was arranged through the out of hours' team. The Council did not keep emergency temporary accommodation vacant in preparation due to the severe demand for it;
  - the caseworker contacted Mr and Mrs X on 22 June who denied being rude and reported concerns about the condition of the property. On 3 July Mr X contacted the caseworker again about poor conditions in the flat. There were conflicting versions of events so it was not possible to take further action;
  - Mr and Mrs X gave evidence of a breach of licence conditions. The caseworker reached a reasonable conclusion that Mr and Mrs A's behaviour was a breach of licence conditions and so the Council was entitled to discharge the housing duty and cancel the accommodation at short notice;
  - the Council took prompt action to investigate Mr and Mrs A's complaints about Mr X's behaviour. Mr and Mrs A provided no evidence and contacted the police. It was not appropriate for the Council to become involved as it was a police matter. After speaking to Mr X, the Council decided his actions were reasonable as Mr and Mrs A confirmed damage and drawing on the wall, moving furniture around and moving furniture into the property;
  - the Council agreed that as the main housing duty had been accepted, Mr and Mrs A should have had a more reasonable period of notice to leave the accommodation. But this did not amount to the Council facilitating an unlawful eviction;
  - the review had dealt with the decision to discharge duty;
  - there was a delay in telling Mr and Mrs A of the discharge of the housing duty. Mr and Mrs A were told about the decision on 3 July but did not receive the letter until 13 July;
  - the Council provided three nights of temporary accommodation between 3 and 5 July. Then on 13 July, they were told the Council would house them for four more weeks and they were provided with temporary accommodation on 14 July;

- the temporary accommodation provided from 14 July onwards was under a discretionary power, so the Suitability Order (see paragraph 16) did not apply;
- the Council considered Mrs A's letters and decided to treat them as a request for a review of the decision to discharge the main housing duty. Mrs A was asked and refused to make a formal complaint. The appeal and complaint letters were almost identical;
- there was no evidence of discrimination;
- the Council was sorry for the failure to give reasonable notice and would pay for the eight nights of accommodation Mr and Mrs A funded (6 to 13 July) - £550;
- there was no evidence Mr and Mrs A raised concerns about the condition of the Bed and Breakfast accommodation at the time (mould, water and poor conditions). It was not possible to investigate unless people raise such issues at the time.

### **Comments from the Council, officers involved with the case and Mrs X**

53. The Council told us:

- if a person presented as homeless on the day and there were no appointments, they received the out of hours' number to access accommodation for that night;
- if Mr and Mrs A had made contact closer to 9 March 2015, they would have received a pre-booked appointment. Due to the high number of no-shows, appointments are only booked for the next five working days. It was not possible to book interim/emergency accommodation in advance due to high demand and peoples' circumstances often changing. It was not an efficient use of public funds to pre-book accommodation which was then not needed;
- it accepted that an appointment with a housing adviser should have been offered when the housing application was received. However, it is not accepted that if the Council had contacted the family earlier this would have negated the need to access interim/emergency accommodation through the out of hours' service, as this would have been dependent on the demands on the service at that time. There is no legal requirement to provide interim/emergency accommodation within a specific time frame and due to high demand, it could not be sourced immediately;
- the owner entered into a contractual licence with the Council that enabled the Council to fulfil its homelessness duties. It was established case law that under these conditions the applicant was not a tenant and did not have exclusive possession;
- in the normal course of events the Council would have provided 28 days' notice to end the licence; here the Council was not in a position to do so, as Mrs X ended the contractual arrangement with the Council rather than the Council instigating it. The property was being used by the Council on a nightly basis and Mrs X could withdraw this arrangement at short notice. This type of arrangement was typical of the contractual arrangements that local housing authorities are required to enter into due to the lack of suitable affordable housing;

- the Council used a range of interim accommodation providers with their own particular rules. It would not be practical to include these within a standard agreement;
- Mr and Mrs A could not remain in the accommodation because Mrs X was not willing to let them;
- officers emailed the Notice to Quit and discharge of duty letter as they did not have an address for Mr and Mrs A;
- Mr X sent photos of damage to the property on 3 July and these were used as evidence in reaching the decision;
- the Council did not allow an unlawful eviction. The Council had no legal right to interfere. The provider ended the contractual arrangement with the Council. The property was being used by the Council on a nightly basis and the owner could withdraw the arrangement at short notice. The Council cannot be held accountable for the provider's actions. This is a common arrangement in many councils;
- the Council accepted it should have identified those parts of Mrs A's letters that were not suitable for the statutory review and dealt with them as formal complaints.

54. The senior housing adviser involved in Mr and Mrs A's case told us:

- the number of possessions and the movement and placement of furniture caused Mr X concern. Mr X was also unhappy with marks to the walls and he redecorated the flat while Mr and Mrs A lived there;
- Mr and Mrs X did cleaning. This was done as part of a daily check. Households had the right to say no and do their own cleaning and if they did their own cleaning, there would be a weekly check;
- Mrs X had no history of aggression. Mr X had taken over the business. He was more direct and there were reports of 'brashness'. This was raised with them both.

55. Mrs X was invited to comment on a draft of this report. She said:

- Mr and Mrs A received a laminated copy of the rules. This included a rule about not moving furniture around;
- she had received complaints about noise from Mr and Mrs A's flat;
- she gave them two verbal warnings about not disturbing other residents. She told them not to move furniture;
- Mr and Mrs A complained about the frequency of visits and denied seeing the rules so she gave them another copy and agreed with the case officer that she would cut down visits to them;
- during the week of their eviction, a large piece of pine furniture appeared in the flat. She told the housing department and it was agreed it would be removed.

56. Mrs X also described what happened on the day of the eviction. But she was not present so her comments are not included as she was not a witness. Mr X carried out the eviction and has been given an opportunity to give his perspective on events. But he has not commented.
57. The Council told us it made changes to the housing service at the end of 2016 (so since Mr and Mrs A complained) including:
- decreasing the use of Bed and Breakfast except in emergencies;
  - increasing nightly self-contained temporary accommodation procured through private providers;
  - buying 29 units of self-contained temporary accommodation;
  - buying/leasing 11 units of shared accommodation;
  - introducing a temporary accommodation strategy and policy;
  - changing the way it manages staff so more customers can have a same day appointment;
  - where customers approach late in the day they are offered temporary accommodation if eligible, rather than being referred to the out of hours' team;
  - introducing a housing advice triage service;
  - introducing new licence agreements;
  - increasing staff numbers in the housing advice service.

### **Comments from Mr and Mrs A**

58. Mr and Mrs A believe if the Council had promptly investigated the complaints Mrs A made at the beginning of July 2015, they would have been able to stay in the flat and challenge the Council's decision to discharge the main housing duty. Instead, they had to live in one room in a Bed and Breakfast. Mr and Mrs A say they told a county council social worker about poor conditions in the Bed and Breakfast and the social worker said she would report this to the Council.
59. There is no evidence in the Council's records that it received any concerns from the County Council about the Bed and Breakfast.

## Conclusions

**Complaint: There was a failure to assist them until the family approached the Council in person. They had to use the out of hours' service and, despite attending the Council's offices in person at 2pm, and advising of their homelessness previously, the Council did not arrange accommodation until 7.30pm when they had two small children (including a baby of 13 months) and nowhere to go**

60. Mr and Mrs A gave the Council information when they completed an on-line registration form in February to suggest they were threatened with homelessness. Mr A clarified the date they would be homeless and gave supporting written evidence from a government agency. We consider this was enough for the Council to start inquiries under section 184 of the Housing Act 1996. The Code of Guidance clarifies the threshold for starting inquiries is a low one. The Council should have started its inquiries on receipt of the on-line application form in February. Instead, the Council took no action. The failure to do so was not in line with the law or the Code of Guidance and is fault.
61. The Council told us had Mr and Mrs A contacted it closer to the date they intended to present as homeless, they would have been offered an appointment. The Council also told us appointments were only offered five working days in advance. We accept this is an appropriate use of resources given the high no-show rate. However, given Mr A's further emails clarifying his expected date of homelessness, we see no reason why an officer could not have telephoned Mr and Mrs A several days before 9 March to ask what their plans were and to book them an appointment for 9 March, or at least told them that they needed to phone and book an appointment closer to the time. The Council's lack of action on the case, despite Mr and Mrs A having warned well in advance of their homelessness, is fault.
62. It showed a lack of compassion for Mr and Mrs A and their small children to make them leave the Council offices when they closed and wait outside until accommodation was found for them two and a half hours after the close of business. We have reached this view because the Council had advance notice of the family's homelessness. The failure to offer emergency accommodation in office hours might not be fault if a single person with no young children attended late on the day of their homelessness with no prior warning. In this case, the Council had adequate notice and could easily have contacted Mr and Mrs A to check whether they needed emergency accommodation or had made other arrangements. We accept the Council's argument about not pre-booking emergency accommodation that would not be used and the Council is also correct in saying there is no legal requirement not to use out of hours' services. However, Mr and Mrs A presented with two small children early in the afternoon and the Council knew about them well before the day. There was no reason the process of sourcing emergency accommodation could not have been started earlier on 9 March rather than leaving the job to the out of hours' service. It was fault of the Council not to start looking for accommodation earlier on 9 March.

**Complaint: There was a failure to deal with complaints about the housing provider's son, Mr X including complaints of harassment**

63. We are satisfied the Council investigated alleged verbal abuse by Mr X in June 2015 by speaking to Mr and Mrs X and it was denied. It is not possible to conclude there was verbal abuse or harassment. It is one person's word against another's. There is no fault.
64. We deal with the daily visits and events on the day Mr and Mrs A were evicted and the reasons given for the eviction in the next section.

**Complaint: The Council allowed an unlawful eviction**

65. The Council has a duty under Section 193 of the Housing Act 1996 to secure accommodation for applicants where it has accepted the full housing duty. In this case it did so by an arrangement with Mrs X. Section 25(7) of the Local Government Act 1974 gives us power to investigate the actions of Mrs X as well as the Council's role in responding to Mr and Mrs A's concerns about Mr and Mrs X's behaviour because the housing service Mr and Mrs X provided was an arrangement on behalf of the Council.
66. The issue of whether the agreement was a licence or a tenancy and the identity of the landlord (Mrs X or the Council) do not need to be settled by this investigation and would most appropriately be decided by a court. Regardless of the identity of the landlord and the nature of the agreement, Mr and Mrs A were entitled to a minimum of 28 days' notice because the Council had accepted the main housing duty (see paragraph 12). So the caseworker was at fault on the eviction day because she incorrectly told Mr and Mrs A to leave the accommodation straight away. The caseworker should have told Mr X that there was an entitlement to 28 days' notice and that if he did not stop, the eviction would be unlawful. Regardless of which party had to give proper notice, the Council is at fault because it was responsible for an unlawful eviction committed by Mrs X through her son.
67. The agreement said the Council would end accommodation if there was unreasonable or antisocial behaviour or if there was a breach of the rules. The Council told us minor breaches would result in a warning. Damage to the property including marking the walls and uncleanliness may amount to unreasonable and antisocial behaviour depending on the severity. Mrs X claimed the property needed cleaning but has not evidenced a significant problem with poor hygiene in the photographs provided for this investigation. Mrs X also commented during the investigation that a large piece of pine furniture was put in the flat and the Council agreed this should be moved, but this is not documented or evidenced elsewhere. Based on the photos provided by both Mrs A and Mrs X, we consider the marks to the walls, small stains to the carpet and missing plinth fall within the meaning of minor breaches which would not on their own be an adequate reason to end accommodation.
68. People need to be aware of any rules before they sign up for a property so they can observe them. The Council failed to show it made Mr and Mrs A aware of the rules and so is at fault. Mrs X asserts she gave copies of the rules to Mr and Mrs A but we have seen no documentation on the Council's files to support this. So we are not satisfied the

Council or Mrs X made Mr and Mrs A aware of the rules before they moved in. The rules included:

- daily visits and inspections and the right to refuse these and have weekly visits instead;
- not moving furniture; and
- not bringing in furniture.

69. Video and audio evidence from Mrs A strongly suggests that even if Mr X did not move their belongings outside himself, as is alleged, Mrs A was in a position where she had to pack up all the family's belongings immediately. This was grossly unfair given the age of her children.
70. Audio evidence strongly suggests Mr X was packing and moving the family's belongings and preventing them from accessing parts of the flat. The children were present throughout and can be heard on the recording. The recording suggests harsh behaviour by Mr X which again was not investigated by the Council at the time it occurred.
71. The caseworker liaised with Mr X on the day of eviction and then told Mr and Mrs A to leave. This is not in line with the Council's procedures which say if complaints are raised about the conduct of a provider or occupant, the Council hears both sides and makes a decision based on evidence. The caseworker sided with Mr X on the phone without hearing any evidence from Mr and Mrs A. She did not investigate any of the allegations on the day of the eviction. The caseworker should have told Mr X about Mr and Mrs A's right to 28 days' notice and given Mr and Mrs A a chance to put forward their side of the story.

**Complaint: There was an unacceptable delay in providing decisions in writing**

72. The relevant decision for the purposes of this complaint is the decision communicated in the letter of 13 July to discharge the main housing duty on the grounds that Mr and Mrs A had made themselves intentionally homeless.
73. A homeless decision is not made until it is issued in writing. So it is not technically correct to say there was a delay in providing decisions in writing. The verbal communication to Mr and Mrs A on 3 July was not a decision. The decision was made 10 days later when it was issued. We do not conclude therefore that the 10 day period ('delay') between officers stating they intended to discharge the full housing duty and issuing the written decision is fault because legally, there was no decision until 13 July and no statutory timescale. However, we do not expect members of the public to understand technical issues around the issuing of decisions. So in practice, the delay between verbally informing Mr and Mrs A of the decision the Council was minded to make and the date they actually made the decision in writing created a period of avoidable uncertainty for Mr and Mrs A and is fault.

**Complaint: There was a failure to provide accommodation after the eviction**

74. Officers should have known the law (or checked with the Council's legal department if unsure). Mr and Mrs A had not been given correct notice. Thus the obligation to provide accommodation fell on the Council because it permitted a premature eviction. The Council has already recognised this fault through its response to the complaint and has agreed to repay Mr and Mrs A the cost of six nights Bed and Breakfast.

**Complaint: The Council provided unsuitable Bed and Breakfast accommodation; conditions were poor, there was damp and mould and insects. The room was cold and the heating did not work properly. There was dog excrement in the garden**

75. Mr and Mrs A provided photographs of the Bed and Breakfast, but these are not sufficient evidence to support the poor conditions they allege. There is also no evidence in the records they or a social worker from another council raised this with the Council at the time so we do not see how it could have been expected to investigate or take action. There is no fault.

**Complaint: The family were in Bed and Breakfast accommodation for 14 weeks**

76. The Suitability Order says Bed and Breakfast accommodation is not suitable for families, but may be used where there is no alternative for up to six weeks. Mr and Mrs A were in Bed and Breakfast between 9 and 30 March. There is no fault by the Council as this is not six weeks.
77. Bed and Breakfast accommodation provided after the eviction was provided under a power, not a duty and so the Suitability Order did not apply. There is no fault.

**Complaint: There was racial discrimination**

78. Mr and Mrs A's case was handled with fault as identified elsewhere in this report. But we find no evidence to suggest racial discrimination so we do not uphold this complaint.
79. However, one officer's comment, also recorded in writing, was inappropriate. Mr and Mrs A were told they were 'lucky' to be in temporary accommodation. Temporary accommodation was a legal entitlement and nothing to do with luck. The officer showed disrespect to Mr and Mrs A and it is fault to make this comment.

**Complaint: There was a failure to respond to the complaint**

80. Mrs A complained in writing to the caseworker in July 2015. She did not receive a response to the complaint. Instead, the Council decided the issues she raised would be dealt with in the homeless review/appeal. Mrs A also emailed councillors with her concerns and was told by some that the review would deal with these. We do not consider all the issues Mrs A put in writing fell within the scope of a homeless review/appeal, in particular, complaints about Mr and Mrs X's behaviour and the delay in providing interim accommodation. The Council should have correctly identified the issues in Mrs A's complaint which fell within the scope of the statutory review and those which did not. It should have then responded to issues outside the review's scope through the complaints procedure. The Council did not do this until Mrs A sought legal advice. The delay in responding to Mrs A's complaints is fault.

## ***Injustice***

81. Mr and Mrs A say if the Council had dealt with their case properly, the eviction would not have happened and they would have been able to stay in the flat instead of moving into Bed and Breakfast accommodation. Whereas the Council considers Mr and Mrs A could not stay in the flat because Mrs X would not allow it. This suggests the Council considers it has no control at all over the third parties it uses to secure accommodation for applicants owed the main housing duty. We consider the Council should only make arrangements with third parties to discharge its homeless duties if those parties agree to comply with the law and behave fairly. In this case, the housing provider, which we consider acted on behalf of the Council, did not comply with the law because correct notice was not given.
82. If the Council and Mrs X had acted without fault by giving Mr X the correct advice about notice, Mr and Mrs A would have been able to stay in the flat and would not have moved into Bed and Breakfast accommodation because:
- it took the Council two months to review and reverse the decision to discharge duty;
  - Mr and Mrs A were legally entitled to remain in the flat for the 28 day notice period, until the end of July. They were then entitled by law to remain in the flat after a notice had been served and until the Court granted an eviction order;
  - obtaining an eviction order is likely to have taken the Council or Mrs X longer than the six week period from 1 August till 15 September when the Council reversed its decision and offered Mr and Mrs A permanent housing.
83. We consider Mr and Mrs A and their children suffered avoidable distress and inconvenience because of the fault identified in the previous section because:
- being told to leave the Council's offices on 9 March and wait for housing for two and a half hours was humiliating and caused avoidable distress to Mr and Mrs A and their small children;
  - they lost self-contained accommodation and had to go into Bed and Breakfast for 11 weeks because of minor breaches of licence conditions that should have resulted in a written warning if the Council had acted in line with its policy;
  - being judged by rules that were unclear and/or not communicated in writing at the appropriate time caused confusion about what the Council and/or the provider considered acceptable behaviour;
  - being given no time to pack up their belongings and being forced to leave a property without lawful notice caused avoidable anxiety to Mrs A and her young children;
  - not having a fair opportunity to put their case before being evicted caused additional distress and outrage; and
  - being told they were lucky to have temporary accommodation was humiliating and disrespectful when it was a legal right.
84. Mr and Mrs A also claim financial losses.

- A loss of possessions including a television (which they say Mr X damaged by moving) and items that they were unable to take with them because of the sudden nature of the eviction.
- Removal and storage costs of £370.

## Decision

85. There is fault in the way the Council dealt with Mr and Mrs A as homeless applicants and in its arrangements for accommodating them. This caused them avoidable distress, inconvenience, financial loss and avoidable expenses.

## Recommendations

86. To remedy the injustice to the family, the Council should, within three months of the date of this report:

- apologise to Mr and Mrs A for the fault identified;
- pay them £500 to reflect lost and broken belongings including a television. We are satisfied on a balance of probabilities, relying on the audio and video evidence of Mr X's conduct on the day of the eviction that there was some damage to their property. And we consider it likely some belongings got left behind due to the pressure on Mrs A to leave immediately. As Mr and Mrs A cannot provide receipts or further evidence of exact costs, a symbolic payment is appropriate;
- pay Mr and Mrs A £550 for the cost of Bed and Breakfast from 6 to 13 July 2015 (the Council has already agreed to do this);
- pay Mr and Mrs A's removal and storage costs of £370. We recommend this not because of any legal requirements in section 211 of the Housing Act 1996, but because if the Council had acted without fault, Mr and Mrs A would have been able to remain in the flat and not incurred these costs;
- pay Mr and Mrs A £750 which reflects some of the cost of takeaway food for the two months the family was in the Bed and Breakfast after the eviction. Without fault by the Council, Mr and Mrs A would have remained in the flat which had its own kitchen and not incurred these additional costs; and
- pay them £2,000 to reflect the high distress described in paragraph 83. We have taken into account in particular, that Mr and Mrs A's children were present on the day of the eviction. This is in line with our published [guidance on remedies](#).

87. The Council accepts the recommendations to pay for the cost of the Bed and Breakfast accommodation and the removal and storage costs, but not the other recommendations. The Council has made changes to the homeless service postdating Mr and Mrs A's complaint. But those changes were not as a result of this complaint. The changes do not address our concerns about the Council's responsibilities when it contracts out statutory

duties to third parties. The Council does not accept the other recommendations because it does not consider it should hold any responsibility for the housing provider's actions. We do not share that view for the reasons set out in paragraph 65 of this report. The Council also says the payment we recommend is not in line with other cases. However, each case turns on its own facts and the payments recommended are in line with our published guidance.

88. Within three months of the date of this report, we recommend the Council reviews and formalises its working relationship with Mr and Mrs X in writing to avoid recurrence of the fault identified in this report and reports back to us with an action plan confirming how it plans to do this. The Council is reviewing its temporary accommodation strategy and it agrees to consider this recommendation as part of that review.

### **Parts of the complaint we did not investigate**

89. We did not investigate the complaint about an alleged failure to make proper inquiries before finding Mr and Mrs A intentionally homeless because they successfully challenged the decision using the statutory review procedure. We do not generally investigate complaints where a person has already had a statutory review because the review provides a remedy for the injustice caused.