

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

**Investigation into a complaint against
Oadby & Wigston Borough Council
(reference number: 18 005 370)**

4 April 2019

The Ombudsman's role

For more than 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.

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

Ms X The complainant

Report summary

Housing - Homelessness

Ms X complained the Council did not deal properly with her when she and her children became homeless when fleeing domestic violence. There were delays while the Council argued with another council (Authority A) about whose responsibility it was to take her homelessness application. The Council provided her with temporary accommodation that she believed was not suitable.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, the Council should:

- apologise, and pay £500 to Ms X, within three months of the date of this report. This is to recognise the injustice caused to the family by the faults we have identified. The Council should provide evidence to us of its apology letter and payment. The Council has not yet agreed to this recommendation.
- provide training to its housing staff to ensure they can identify when a homelessness application should be taken. It should do so within three months of the date of this report and provide evidence to us. The Council has not yet agreed to this recommendation.

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, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

The complaint

1. Ms X complained the Council did not deal properly with her when she and her children became homeless when fleeing domestic violence. There were delays while the Council argued with another council (Authority A) about whose responsibility it was to take her homelessness application. The Council provided her with temporary accommodation that she believed was not suitable.

Legal and Administrative background

The Ombudsman's role and powers

2. We investigate 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), as amended*)
3. We cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)

Relevant law, guidance and Council policy

Duties owed by council to homeless applicants

4. 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*)
5. Homelessness applications do not need to be in writing, nor in any other particular form. As long as an applicant who may be homeless or threatened with homelessness makes it clear that they are seeking accommodation or assistance in retaining or obtaining accommodation, this will constitute a homelessness application. (*Housing Act 1996, section 183(1); Bury MBC v Gibbons [2010] EWCA Civ 327; R v Chiltern DC ex parte Roberts (1991) 23 HLR 387, QBD; Homelessness Code of Guidance, MHCLG, Feb 2018, paragraphs 18.5 and 18.6*)
6. If a council has reason to believe that an applicant may be homeless, it must make any inquiries necessary to satisfy itself what duty it owes to the applicant. As part of this, the council may make inquiries into whether the person has a local connection with another council area. (*Housing Act 1996, section 184*)
7. If a council has reason to believe an applicant may be homeless, eligible for assistance and in priority need, it has a duty to provide interim accommodation to the applicant pending a decision on their homelessness application. (*Housing Act 1996, section 188*)
8. Where a council arranges accommodation for an applicant, the accommodation must be suitable for all members of the household. Accommodation that is suitable for a short period, for example as interim accommodation, may not necessarily be suitable for a longer period. There is no right to request a review of suitability of interim accommodation. (*Housing Act 1996, section 206, Homelessness Code of Guidance, sections 17.7 and 17.63*)

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9. Councils must take reasonable steps to secure accommodation for any eligible homeless person. This is called the 'relief duty'. (*Housing Act 1996 as amended by the Homelessness Reduction Act 2017, section 189B(2)*)
- Applications to multiple councils, and referrals from one council to another**
10. Applicants can make homelessness applications to more than one council at the same time. The courts have made clear “*An application may be made for housing assistance to any local authority*”. Where a council becomes aware this is the case, it can contact the other council to agree which will take the responsibility for carrying out inquiries. The courts have made clear, in such circumstances, “*Each is under a duty to make its own assessment after due inquiry of the factors involved including homelessness. Each is entitled if the circumstances warrant it to form the opinion that a different authority is the one with which the applicant has a local connection*”. (*Homelessness Code of Guidance, section 18.9, Royal Borough of Kensington And Chelsea, R [On the Application Of] v London Borough Of Ealing [2017] EWHC 24 [Admin], R v Slough BC, ex p. Ealing LBC [1981] QB 801*)
11. If a council considers the conditions are met for referral to another council, it has the power to notify that council of its opinion. Before making a referral to another council, the notifying council must be satisfied the applicant is homeless and eligible for assistance, and therefore owed the relief duty, and must consider the conditions for referral are met. If the notifying council has reason to believe the applicant is in priority need, it is under a duty to secure that accommodation is available for occupation by the applicant until it notifies the applicant of the decision as to whether the conditions for referral are met. (*Homelessness Code of Guidance 2018, sections 10.30, 10.37, 13.4 and 15.16, and Housing Act 1996, sections 198(A1) and 199A(2)*)
12. Once the notifying council has made a referral, both councils must agree whether the conditions for referral have been met, or a dispute as to whether the conditions have been met must be resolved in accordance with arrangements laid down by regulations. The conditions for the notifying council to refer the case to another council are met if:
- neither the applicant nor any person who might reasonably be expected to live with them has a local connection with its council area;
 - the applicant or a person who might reasonably be expected to live with them has a local connection with the council area it intends to refer the applicant to; and
 - none of them will be at risk, or threat, of domestic or other violence, which is likely to be carried out, in the council area it intends to refer them to.
- (*Homelessness Code of Guidance 2018, section 10.51*)
13. Therefore, councils cannot use the referral process to transfer their responsibility to another council where the applicant has a local connection to their area but a stronger local connection elsewhere. In such circumstances, the council the person applied to may seek assistance from the other council in securing accommodation, and both councils have a general duty to cooperate in such circumstances. (*Homelessness Code of Guidance 2018, section 10.33 and Housing Act 1996, section 213*)
14. If both councils agree the conditions for referral are met, the applicant is to be treated as having made an application to the notified council on the date on which the notifying council tells the applicant the decision. (*Housing Act 1996, section 199A(5)*)

How we considered this complaint

15. We produced this report after examining relevant documents and interviewing the complainant.
16. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.
17. We have considered the actions of the other council involved in this complaint, Authority A, in a separate decision statement. Our findings in relation to Authority A are not discussed in this decision statement.

What we found

What happened

18. Ms X made homelessness applications to the Council in 2014 and 2017. The Council found her to be homeless each time and offered her accommodation in one particular location. Ms X did not accept the accommodation because of the risk she felt she would be at in that specific location. Ms X went to stay with family members in another council's area (Authority A) however she fled at the end of May 2018 due to domestic violence. Authority A provided Ms X with temporary accommodation in a bed and breakfast from this date while it carried out its inquiries.
19. Ms X visited Oadby and Wigston Borough Council's offices at the end of May 2018 to make a homelessness application. This is because she wanted to live in the Council's area, due to the risk of domestic violence in Authority A's area. The Council advised Ms X to return to Authority A. It did not take a homelessness application.
20. Authority A sent the Council a copy of a letter it sent to Ms X the same day. This letter said Authority A had decided to make a referral to the Council as its view was Ms X had no local connection to Authority A, but she did have a local connection to Oadby and Wigston Borough Council.
21. On the advice of Authority A, Ms X then visited the Council's offices again the next day. A Council homelessness officer was busy with another customer and nobody met with Ms X. Instead, the Council telephoned Authority A to ask if Ms X had accommodation that night. Authority A confirmed she did. This Council again did not take a homelessness application. The Council says at this second visit, Ms X did not explicitly ask it to take a homelessness application from her. It advised Ms X it had not received a referral from Authority A, only a letter saying it intended to make a referral.
22. The next day, the Council told Authority A its letter was not a referral. Authority A then sent a referral form for Ms X's family to the Council. It explained her local connection to the Council's area, saying that Ms X had lived and worked in Oadby and Wigston Borough Council's area for several years.
23. The Council considered the referral. Authority A chased the Council several times. Authority A told the Council at the beginning of June that Ms X's children were at crucial stages of their education, and it was not appropriate for the family to continue living in bed and breakfast accommodation arranged by Authority A.

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24. The Council sent its decision to Authority A. It did not accept the referral, because the conditions for referral were not met. This was because Ms X had family in Authority A's area, which meant she also had a local connection to that area. The conditions for accepting a referral included that the applicant had no local connection to the referring council (Authority A).
 25. In mid-June, the Council explained its decision to Ms X. It explained Authority A must continue providing her accommodation.
 26. Authority A responded in June asking the Council to consider the domestic violence, and the strength of the family's local connection to the area. Authority A said it was withdrawing its referral but it intended to make another referral to resolve the issues present in its first referral. It explained Ms X's wishes were to be housed in Oadby and Wigston Borough Council's area, away from the family members she had fled from. The Council emailed Ms X and advised her Authority A planned to make another referral. It explained if it accepted the referral in the future it would become responsible for her accommodation.
 27. Authority A sent a new referral form which included more information. It explained, in relation to the local connection to its area, "*The Applicant does have family connections in [Authority A's area] but the relationships have broken down due to the domestic violence and due to this Applicant has no family connections or support from family members in [Authority A's area]*". Authority A added that Ms X was employed in its area, but explained "*We are satisfied that any connection to [Authority A's area] is defeated by the risk arising to the Applicant should she remain*".
 28. At the end of June, the Council sent its decision to Authority A, again not accepting the referral for the same reason. Ms X had a local connection to both council areas, due to her employment in Authority A's area as well as the family connections previously identified.
 29. Ms X told the Council she could not understand why it was resisting the referrals. She said her family's connection was to this Council's area, and her children were suffering while the two councils were arguing. The Council explained its decision to Ms X and said Authority A's repeated referrals were bound to fail. It told her she could approach it directly to make a homelessness application, and said she had not yet done so.
 30. The Council noted Authority A had accommodated the family in inappropriate bed and breakfast interim accommodation for five weeks. It decided therefore to progress a homelessness application and offer temporary accommodation to Ms X. It offered her a self-contained, two-bedroom upper floor flat with a separate living room. The Council told us its view was it could not consider a homelessness application until it had resolved the matter of the referral from Authority A.
 31. The Council arranged several viewings between the end of June and beginning of July. Ms X did not attend for various reasons, including the Council not having given her enough notice and wanting to seek advice before viewing the property.
 32. The Council sent Ms X a letter formally offering her the interim accommodation. The Council gave another date for a viewing, but explained this would be the last opportunity as it had already offered three viewings. It said it would keep the offer open for three days after that viewing. The Council explained if Ms X refused the offer it would have no further duty to provide her with interim accommodation. The Council explained it was satisfied the accommodation was suitable for Ms X's family. It said while they had no statutory right of review of suitability, the Council

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- would consider any concerns Ms X raised. The Council did not explain how it considered suitability but said it could discuss its reasons with Ms X if she wished.
33. The Council discussed the property with Ms X. Ms X raised concerns the property was in an area that would put her family at risk due to previous issues in the location. She highlighted she had previously refused properties in the same location for this reason. She said she could not provide details of the risk. The Council explained it did not accept Ms X's reasoning and she had not provided evidence to support her concerns, nor did she consent to the Council seeking further information. It advised the offer was still available and urged Ms X to reconsider her refusal.
 34. Authority A stopped providing accommodation for Ms X on the date it said it would do so, and told her to direct her enquiries to this Council. Ms X tried contacting the Council the next day. The Council arranged a viewing for Ms X again at the accommodation on this date. Ms X asked the Council if she could consider the offer overnight, as the family could not bring their pet to the accommodation.
 35. The Council sent a letter to Ms X saying its duty to provide interim accommodation had ended as she had refused its offer. The Council explained it considered Ms X's reasons for refusing the accommodation but it was satisfied the accommodation was suitable and reasonable for Ms X to accept. The Council added that it was willing to keep its offer open for three more days.
 36. Ms X accepted the accommodation on the final day. She then contacted the Council to say she was struggling with the stairs in the accommodation. The Council says this was new information and it notified the housing officer of the difficulties Ms X was having.
 37. At the end of July, the Council met with Ms X to carry out a homelessness interview and put together a relief plan. The Council recorded reasonable steps Ms X should take, and the steps it would take, to support Ms X to find accommodation.
 38. The Council sought Ms X's consent to seek medical information from her GP so it could consider the suitability of the accommodation in light of her and her son's medical needs. It considered Ms X and her son's needs and the impact of the stairs on these, and it decided the property was suitable.
 39. The Council told us at the beginning of August 2018 that Ms X had built up rent arrears of £246.12. It says she told it she did not intend to pay for accommodation she did not wish to live in, although Ms X disputes this and says there were no arrears. The Council told us it would take action to evict Ms X if she continued not to pay.
 40. Ms X moved into new accommodation in early September 2018. She says she found this privately because the Council would not move the family to alternative interim accommodation.

Conclusions

41. Ms X visited the Council at the end of May to explain she was homeless, however it told her to return to Authority A's area. The law allows a person to make homelessness applications to more than one council, and the Council has a duty in such circumstances to take a homelessness application. It did not do so and this was fault.

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42. The Council then had another opportunity to take a homelessness application from Ms X the next day when she came to its offices again. It checked whether she had accommodation that night, which she did through Authority A. However, it had not received any referral from Authority A, and the Council knew Ms X was homeless. The Council should have taken a homelessness application from Ms X. The Council's assertion Ms X did not specifically ask it to take an application does not mean it should not have done so. It should then have discussed this with Authority A to decide which council would conduct inquiries and take responsibility for any duty owed.
 43. The Council made its decisions about whether conditions for referral were met within the timescales given by the law. The Council was also entitled to reject these referrals. Therefore, there is no fault by the Council. However, had the Council accepted a homelessness application when Ms X first contacted the Council in May, Authority A would not have needed to refer her.
 44. The Council's failure to take a homelessness application from Ms X led to delays and significant injustice for her and her family. Ms X experienced distress while waiting for the Council and Authority A to agree which council should accept responsibility. This was at an important time in her children's education.
 45. The family lived in unsuitable bed and breakfast accommodation in Authority A's area, where they felt at risk due to the domestic violence they fled in that area, for one month longer than they should have.
 46. The Council then decided to accept a homelessness application, to resolve the issues and move Ms X and her family to its area. This was appropriate. However, this was one month after Ms X approached it. The Council's assertion that it could not take a homelessness application while considering the referrals from Authority A is flawed, as the law does not prevent this. In any event, Ms X visited the Council's offices before it had received a referral from Authority A. Therefore, we have recommended action this Council should take to recognise one month of distress caused to Ms X and her family.
 47. Ms X raised issues around safety in accommodation the Council offered, but she did not consent to the Council investigating this to establish whether there was a risk to her and her family. The Council considered its offer based on the information Ms X provided and decided her reasons did not make accommodation in the area unsuitable. The Council's view was that the location was suitable for the family. It was entitled to decide this based on the information it had. The guidance says accommodation may be suitable for the short-term when it would not be suitable for the long-term. The Council was not at fault in how it considered suitability when making this offer of interim accommodation to Ms X.
 48. In July the Council became aware Ms X was struggling with the stairs in her accommodation. Ms X and her family moved to accommodation they found privately. Ms X says she did this because the Council would not move them to alternative, and in her view more suitable, interim accommodation. However, the Council properly considered the family's medical needs after Ms X raised their difficulties, and decided the accommodation was suitable. As the Council considered relevant matters and followed the correct process, that is a decision the Council was entitled to take and we cannot criticise it. As Ms X has sourced privately rented accommodation for 12 months, the Council's duties under the Housing Act have now ended.

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49. We have previously criticised the Council for failing to take a homelessness application in similar circumstances. In 2017, as the result of a similar complaint, the Council reviewed and revised its procedures to ensure that it would handle cases in line with housing legislation. We are concerned it has repeated the fault of not taking a homelessness application.
 50. The Council has not yet agreed to our findings or recommendations. It told us, before we issued this report, it does not agree its staff require training because it does not believe they did anything wrong in the process. It is now open to the Council to consider its position further.
 51. The Council highlighted section 18.9 of the Homelessness Code of Guidance, which says “*in some cases applicants may apply to more than one housing authority simultaneously*”. The Council’s view is this means some applicants *may not* apply to more than one council simultaneously. We do not agree with the Council’s interpretation of section 18.9 of the Code of Guidance. The law does not prevent an applicant applying to more than one council simultaneously. When this happens, both authorities are obliged to take an application and decide between themselves who will take the lead on making enquiries. Paragraph 18.9 of the Code of Guidance explains what councils must do if someone applies to two councils.
 52. Councils are entitled to decide a different council area is the one with which an applicant has a local connection. This does not mean a council does not have a duty to take a homelessness application in such circumstances.
 53. The Council has argued that Authority A was satisfied that Ms X was eligible, not intentionally homeless and in priority need such that it owed her the main housing duty under section 188. We do not agree. Authority A did not make a decision on priority need or intentional homelessness. It did not accept that it owed Ms X the “*main housing duty*” (which in any event is not the duty under section 188). Once it notified Ms X of its intention to refer her to the Council, it owed her a duty to secure accommodation under section 199A(2).
 54. The Council has also argued that the main housing duty can only be owed to an applicant by one authority at any one time. In our view that question does not arise in this case because at no point did Authority A accept that it owed Ms X the main housing duty. The Council has further argued that it did not have to take an application from Ms X because under section 199A(5) Ms X’s application to Authority A would be deemed to have been made to the Council if the conditions for referral were met. We disagree. The Council and Authority A did not agree that the conditions for referral were met, so the provisions of section 199A(5) did not apply. In our view, section 199A(5) did not permit the Council to refuse to take a homelessness application pending a decision being made as to whether the conditions for referral were met.
 55. The Council feels that Authority A’s actions were to blame for any injustice and does not accept that it was at fault. We are issuing this report for two reasons: due to the Council not accepting our findings and recommendations; and due to its inability to acknowledge its own failings while focusing on the other council’s actions.

Recommendations

56. The Council should apologise, and pay £500 to Ms X, within three months of the date of this report. This is to recognise the injustice caused to the family by the faults we have identified. The Council should provide evidence to us of its apology letter and payment. The Council has not yet agreed to this recommendation.
57. The Council should provide training to its housing staff to ensure they can identify when a homelessness application should be taken. It should do so within three months of our final decision and provide evidence to us. The Council has not yet agreed to this recommendation.
58. 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, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

59. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Ms X and her family. The Council should take the action identified in the “*Recommendations*” section to remedy that injustice.