

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

**Investigation into a complaint against
Folkestone & Hythe District Council
(reference number: 18 018 663)**

2 January 2020

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

Mr X The complainant

Report summary

Housing - Homelessness

Mr X complains about the lack of support he received from the Council when he and his family became homeless.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council should take the following action to remedy the injustice caused to Mr X as a result of the fault we have identified.

- Write to Mr X to apologise for the delays in providing him with assistance with his housing situation.
- Pay Mr X £100 to recognise the uncertainty and distress this caused him and his family.

The Council should take this action within three months of the date of this report.

The Council should also take the following action to improve its services.

- Review its processes for handling requests for housing assistance to ensure it deals with cases based on both waiting time and urgency.
- Review resources available to its housing department to ensure it is meeting its duties to people who are threatened with homelessness and people who are homeless under the 1996 Housing Act (as amended).

The Council should report back to us the outcome of both these reviews, including details of any actions it intends to take, within three months of the date of this report.

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. Mr X complains the Council failed to provide him with assistance when he became homeless. Mr X says the Council offered him and his family unsuitable bed and breakfast accommodation which was in a poor state of repair. Mr X says the Council withdrew its support when he declined the accommodation offered and went to stay between various friends.

Legal and administrative background

The law and the Ombudsman

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. 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*)

Homelessness law

4. Councils must take reasonable steps to secure accommodation for any eligible homeless person. When a council decides this duty has come to an end, it must notify the applicant in writing. (*Housing Act 1996, section 189B*)
5. Statutory guidance on homelessness says:
“Applications can be made to any department of the local authority and expressed in any particular form; they need not be expressed as explicitly seeking assistance under Part 7 [of the Housing Act 1996]. As long as the communication seeks accommodation or assistance in obtaining accommodation and includes details that give the housing authority reason to believe that they might be homeless or threatened with homelessness, this will constitute an application.”
(*Homelessness code of guidance for local authorities, 2018 paragraph 18.5*)
6. The statutory guidance also says:
“Housing authorities should take particular attention to identify instances where information on an inquiry about a social housing allocation scheme, or an application for an allocation of housing under Part 6, provides reason to believe that the applicant might be homeless or threatened with homelessness. This should be regarded as an application for homelessness assistance.” (*Homelessness code of guidance for local authorities, 2018 paragraph 18.6*)
7. Councils must complete an assessment if they are satisfied an applicant is homeless or threatened with homelessness. The Code of Guidance says, rather than advise the applicant to return when homelessness is more imminent, the housing authority may wish to accept a prevention duty and begin to take reasonable steps to prevent homelessness. Councils must notify the applicant of the assessment. Councils should work with applicants to identify practical and reasonable steps for the council and the applicant to take to help the applicant

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- keep or secure suitable accommodation. These steps should be tailored to the household, and follow from the findings of the assessment, and must be provided to the applicant in writing as their personalised housing plan. (*Housing Act 1996, section 189A and Homelessness Code of Guidance paragraphs 11.6 and 11.18*)
8. A council must secure interim accommodation for applicants and their household if it has reason to believe they may be homeless, eligible for assistance and have a priority need. (*Housing Act 1996, section 188*)
 9. Examples of applicants in priority need are:
 - people with dependent children;
 - pregnant women; and
 - people who are vulnerable due to serious health problems, disability or old age.
 10. The law says councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of his or her household. This duty applies to interim accommodation and accommodation provided under the main homelessness duty. (*Housing Act 1996, section 206 and (from 3 April 2018) Homelessness Code of Guidance 17.2*)
 11. Bed and breakfast (B&B) accommodation can only be used for households which include a pregnant woman or dependent child when no other accommodation is available and then for no more than six weeks. B&B is accommodation which is not self-contained, not owned by the Council or a registered provider of social housing and where the toilet, washing, or cooking facilities are shared with other households. (*Homelessness (Suitability of Accommodation) (England) Order 2003 and from 3 April 2018 Homelessness Code of Guidance paragraph 17.32*)
 12. Homeless applicants may request a review within 21 days of being notified of certain decisions including:
 - their eligibility for assistance;
 - what duty (if any) is owed to them if they are found to be homeless or threatened with homelessness;
 - the steps they are to take in their personalised housing plan at the prevention duty stage;
 - giving notice to bring the prevention duty to an end;
 - the steps they are to take in their personalised housing plan at the relief duty stage;
 - giving notice to bring the relief duty to an end;
 - giving notice in cases of deliberate and unreasonable refusal to co-operate; and
 - the suitability of accommodation offered to the applicant after a homelessness duty has been accepted (and the suitability of accommodation offered under section 200(3) and section 193). Applicants can request a review of the suitability of accommodation whether or not they have accepted the offer.
 13. If a person is not happy with a council's decision on review they may appeal to the County Court on a point of law.
 14. There is no right to request a review of the suitability of interim accommodation provided by a Council under section 188 of the Housing Act 1996.

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.

What we found

What happened

17. Mr X has been living in a single room in a house as a lodger since 1998. In 2015 Mr X brought his wife from overseas. They later had a child together in 2017 and a second child in 2018. They all continued to live in the single room together.
18. On 8 January 2019 Mr X applied to the Council for housing. An internal Council memo said Mr X stated he and his family would be homeless on 15 January 2019.
19. The Council wrote to Mr X on the same day and provided him with links to websites with more information about finding housing. The Council said if he needed more help, he could contact it by telephone or e-mail.
20. Mr X visited the Council's offices on 4 February 2019 and provided evidence to support his housing application.
21. Mr X e-mailed the Council on 12 February 2019 to say he was living in overcrowded conditions. He said health visitors had written to the Council to say that the accommodation wasn't *"liveable"*. Mr X said he had been trying to contact the Council by telephone but had not been able to get through. He said if he did not hear from the Council by the end of the week he would go to his solicitor or local MP for help.
22. Mr X visited the Council's offices again on 18 February 2019. The Council advised Mr X that his application was *"waiting to be looked at"* and the Council was working on *"information provided in date order"*. The Council said it would contact Mr X if it needed more information.
23. Mr X visited the Council's offices on 25 February 2019 with a letter from his landlord saying he had to leave the accommodation *"in the next few days"*. Mr X completed a *"housing options assessment form"*.
24. The Council e-mailed Mr X on 25 February 2019. It said it had not been able to speak to his landlord by telephone. The Council told Mr X to ask his landlord for a further seven days notice to allow it to *"assess your situation"*.
25. Mr X phoned the Council on 1 March 2019 to say his family had to leave their accommodation that day. The Council spoke to the landlord who said the family could stay until the following Monday.
26. Mr X visited the Council's offices on 4 March 2019. The Council interviewed Mr X about his housing situation. The Council asked Mr X questions about his wife's right to reside in the UK. Mr X became upset by this. The Council offered to provide Mr X and his family with accommodation whilst it considered if they were eligible for assistance. The Council explained it would need proof of the family's income so it could claim housing benefit for any accommodation it provided. It explained Mr X would have to pay £30 a night for the accommodation if he did not claim housing benefit.

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27. Mr X left the Council's offices and said he did not want any help.
 28. The Council wrote to Mr X on 12 March 2019 to say it could not issue him with a personalised housing plan as he had left its offices during an interview. The Council said it had ended its relief duty to Mr X and his family. The Council explained Mr X could ask for a review of its decision and explained how to do so.
 29. Mr X approached the Council on 18 March 2019 and asked for accommodation. The Council provided Mr X with accommodation in a bed and breakfast.
 30. Mr X visited the Council's offices on 19 March 2019. He said he did not stay in the accommodation as it was dirty. Mr X said there were bloodstains on the bedding and he had found a hypodermic needle. The Council offered to investigate but Mr X left its offices.
 31. The Council spoke to the accommodation provider on the same day. The accommodation provider said the room was clean and provided photographs. The accommodation provider said Mr X had not mentioned finding a needle but had only stayed on the premises for approximately 40 minutes.
 32. The Council wrote to Mr X on 27 March 2019. The Council provided Mr X with a personalised housing plan and explained it was under a duty to help him secure suitable accommodation. The Council explained that Mr X could ask it for a review if he disagreed with his personalised housing plan.
 33. The Council wrote to Mr X on 1 April 2019 to say it had ended its duty to provide him with accommodation under section 188 of the 1996 Housing Act. The Council said this was because it had offered Mr X accommodation at the bed and breakfast "*which fully meets our legal duty*" and it was satisfied "*the offer of accommodation was both suitable and reasonable for you to accept*".
 34. The Council said there was no right to review the decision to end its duty under section 188. The Council explained Mr X could challenge its decision by judicial review and he should contact a solicitor for advice.
 35. The Council wrote to Mr X again on 4 April 2019 to issue him with a warning for "*unreasonably and deliberately refusing to take any steps as outlined in the Assessment and Personal Housing Plan*". The Council said Mr X had not taken any of the steps to secure housing as set out in his personalised housing plan. The Council said Mr X had seven days to take the steps required. This included making contact with the Council to discuss his efforts to find housing and provide up to date information about his whereabouts and living situation on his housing application.
 36. On 23 May 2019 Mr X's representatives e-mailed the Council to ask for a review of its decision of 12 March 2019 to end its duty to Mr X and his family. Mr X's representatives said they were not clear if the warning letter of 4 April 2019 superseded the March decision and said they reserved the right to make submissions on that basis at a later date. The Council did not realise it had received this e-mail until 21 June 2019 when it located it after searching for Mr X's name in an e-mail inbox.
 37. The Council wrote to Mr X's representatives on 5 August 2019 to say it had upheld its decision to end its relief duty to Mr X and his family on review. The Council also said it had reviewed its decision on the suitability of the bed and breakfast accommodation it offered to Mr X and his family. The Council said the "*accommodation was both available and suitable for [Mr X's] household occupation for a short term period of less than 6 weeks*".

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38. The Council says it has no records of other accommodation available on the day Mr X approached. The Council says families generally only stay in bed and breakfast accommodation for up to five days, if at all, before being moved into self-contained accommodation.
 39. The Council said it would still provide Mr X with assistance through its “*Rent in Advance Deposit Funds*” if he could find a suitable and affordable private rented property.

Findings

40. We cannot investigate the personalised housing plan or the Council’s decision to end its relief duty to Mr X and his family in this complaint. This is because Mr X has already reviewed the Council’s decision to end its relief duty. Mr X now has a right to appeal to the County Court and we consider it reasonable for him to use that right of appeal.
41. There were delays in the Council providing assistance to Mr X and his family. Mr X first contacted the Council about his situation on 8 January 2019. An internal Council memo says Mr X’s application said he would be homeless on 15 January 2019. The Council wrote to Mr X on the same day advising him how to access its services. It is not clear what advice Mr X was given or what assistance he sought from the Council when he visited its offices on 4 February 2019.
42. However, Mr X asked the Council for assistance on 12 and 18 February 2019. There is no record of the Council attempting to contact Mr X on 12 February. On 18 February the Council told Mr X his case was “*waiting to be looked at*” even though Mr X had told the Council he had been asked to leave his accommodation when he made his application on 8 January 2019 and said he was living in overcrowded accommodation on 12 February 2019. This is fault.
43. On 12 February 2019 Mr X said he was living in one room with his family and had been advised by health visitors that he couldn’t continue living there. There is no evidence the Council considered Mr X’s circumstances at the time. Had the Council done so it seems likely it would have given it enough reason to believe that Mr X was homeless or threatened with homelessness within 56 days.
44. Mr X had already told the Council he was threatened with homelessness when he applied for housing on 8 January 2019. The Council should have revisited this information when Mr X contacted it on 12 February 2019. If the Council had done so it seems likely it would have contacted him to carry out an assessment of his housing situation.
45. Statutory guidance is clear that Mr X was not required to make a formal request for assistance under Part 7 of the 1996 Housing Act and that information provided under Part 6 regarding the allocation of social housing may be enough to trigger the Council’s duties under homelessness legislation. The Council failed to consider the information Mr X provided on 12 February 2019. If it had done so it would have taken steps to arrange to carry out an assessment of Mr X’s housing situation. This may have involved speaking to him by telephone or arranging for him to visit its offices for an appointment. This is because the Council would have had enough information to have reason to believe that Mr X was threatened with homelessness within 56 days.
46. There is no fault in the Council failing to carry out an assessment of Mr X’s housing situation when he made his housing application on 8 January 2019. This is because the Council wrote to Mr X and advised him how to make contact if he

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- required further assistance. However, when Mr X contacted the Council after being invited to do so it failed to provide him with assistance.
47. The Council had three weeks to provide Mr X with help finding alternative accommodation for his family. However, the Council did not provide Mr X with assistance until he was actually homeless. This means Mr X was left in an uncertain situation and cannot know whether his situation might have been improved if the Council had offered him help sooner.
 48. When the Council did offer Mr X help he left its offices because he was not happy with questions about his wife's eligibility. Council officers were entitled to ask questions about her immigration status. By this point Mr X was faced with the imminent threat of homelessness and was upset about the lack of support he had received to date. However, it was Mr X's decision to refuse to accept the Council's assistance. Therefore, the injustice caused to Mr X as a result of the delays in the Council dealing with his situation is limited to the period 12 February 2019 to 4 March 2019.
 49. The Council says Mr X accused officers of being racist by asking for details of his wife's eligibility. The Council says this constitutes abusive behaviour and we should take this into account when considering the injustice caused to Mr X. Mr X was entitled to express his opinion of the officers' behaviour and officers were entitled to refute that they were acting in this way. The Council has not provided us with any evidence that Mr X was abusive.
 50. The Council provided Mr X with accommodation in a bed and breakfast on 18 March 2019. Bed and breakfast accommodation is not suitable for households with dependent children. However, the law says this does not apply where there is no other accommodation available so long as the family are not placed in the bed and breakfast for more than six weeks.
 51. The Council does not have records of what other accommodation was available on the day it placed Mr X in bed and breakfast accommodation. However, the Council placed other families in bed and breakfast accommodation, and it seems unlikely it would have done so if it had other accommodation available.
 52. However, Mr X may not have required bed and breakfast accommodation at all had the Council intervened sooner to provide him with assistance with his housing difficulties.
 53. There was no fault with the way the Council dealt with Mr X's complaints about the bed and breakfast accommodation. The Council offered to investigate the issues raised by Mr X but he left its offices.

Conclusions

54. The Council is at fault as it delayed providing help to Mr X with his housing situation. Because of this Mr X was left in an uncertain situation and cannot know whether his situation might have been improved if the Council had offered him help sooner.

Recommendations

55. The Council should take the following action to remedy the injustice caused to Mr X as a result of the fault we have identified.
 - Write to Mr X to apologise for the delays in providing him with assistance with his housing situation.

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- Pay Mr X £100 to recognise the uncertainty and distress this caused him and his family.
56. The Council should take this action within three months of the date of this report.
57. The Council should also take the following action to improve its services.
- Review its processes for handling requests for housing assistance to ensure it deals with cases based on both waiting time and urgency.
 - Review resources available to its housing department to ensure it is meeting its duties to people who are threatened with homelessness and people who are homeless under the 1996 Housing Act (as amended).
58. The Council should report back to us the outcome of both these reviews, including details of any actions it intends to take, within three months of the date of this report.
59. 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 Council's responses to our enquiries

60. The law gives us the same powers as the High Court to obtain evidence for our investigations. If a person, without lawful excuse, obstructs us from investigating a complaint we may apply to the High Court to find that person in contempt. (*Local Government Act 1974, section 29(7) & (8)*)
61. The Council has, at times, refused to respond to our enquiries and questioned our authority to investigate parts of the complaint. This resulted in us having to threaten to issue a summons requiring the Council to attend our offices.
62. In this case the Council produced the evidence we requested. However, we should not have had to threaten the Council with a summons in the first place.
63. We would ask the Council to reflect on how it has responded to our enquiries in this case and put measures in place to ensure we receive an appropriate response to any future investigations.

Decision

64. We have completed our investigation as we have found fault causing injustice. The action we have recommended is a suitable to remedy this.