

## **Complaints upheld against the former St Edmundsbury Borough Council between March 2019 and April 2020**

### **Case 18016193**

#### **The Ombudsman's final decision:**

Summary: Mr C complained the Council failed to properly consider his circumstances before reducing his housing register banding. The Council applied its allocations policy properly but failed to explain how the allocations policy worked to Mr C. That led to him having to go to time and trouble to pursue his complaint. An apology is satisfactory remedy for the injustice caused.

#### **The complaint**

The complainant, whom I shall refer to as Mr C, complained the Council failed to properly consider his circumstances before reducing his housing register banding from band B to band D.

#### **The Ombudsman's role and powers**

We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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)

If we are satisfied with a Council's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)

#### **How I considered this complaint**

As part of the investigation, I have:

- considered the complaint and Mr C's comments;
- made enquiries of the Council and considered the comments and documents the Council provided;
- considered the Council's allocations policy;
- considered Mr C's comments on my draft decision; and
- gave the Council an opportunity to comment on my draft decision

#### **Background**

Mr C was living in owner occupied accommodation when he applied for housing with the Council. Mr C told the Council he had recently had a heart attack which might prevent him continuing to work and that his property would become unaffordable. At

that point the Council assessed Mr C as in band D as he had enough money to find his own property as he was living in a property which he owned.

Mr C sold his property in 2017. I understand Mr C received more than £185,000 following that sale. Mr C applied for housing with the Council again in April 2018. At that point Mr C was living in a privately rented property which was unsuitable for his wife's needs. The Council at first awarded band B as the family had high medical needs. However, when the Council received information about Mr C's savings it downgraded that banding to band D. The Council wrote to Mr C to tell him it had done that because he had enough money to resolve his own housing need. The Council reiterated that decision when Mr C asked for a review.

The Council accepts its communications with Mr C have not been clear about how the Council decided to award band D priority. The Council accepts Mr C's family has a high medical need for alternative accommodation and is threatened with homelessness but because he has enough money to resolve his own housing needs it has reduced his priority. The Council has offered to write to Mr C again to properly explain its decision

### **The Council's Allocations Policy**

This says if an applicant has income and or capital which will means they can resolve their own housing need they will not receive any preference for social housing. It says the assessment will be based on the following:

- the total income of the applicant or partner;
- any capital available to the applicant or partner;
- average property prices and rents in the area for the type of accommodation needed by the household;
- the ability of the applicant or partner to rent a property in the private sector based on a realistic assessment of their financial position and commitments;
- the ability of the applicant or partner to acquire a mortgage and maintain required repayments based on realistic assessment of their financial position and commitments.

### **Analysis**

Mr C says the Council failed to properly consider his family's circumstances before reducing their housing banding from B to D. Mr C says because his wife has mobility problems and his son is autistic the Council should have granted band B. The evidence I have seen satisfies me the Council at first granted band B as the family have high medical needs. That is in accordance with the Council's allocations policy. However, the Council's allocations policy also makes clear if an applicant has income and/or capital which means they can resolve their own housing need they do not receive any preference for social housing. I refer to that part of the Council's allocations policy in paragraph 7. In this case the Council was satisfied Mr C had significant savings which means he can rent privately. The Council therefore downgraded Mr C's housing priority from B to D. In effect, the fact the Council considers Mr C can afford to rent privately overrides any other assessment of priority. That decision reflects the Council's allocations policy and is not fault.

I am, however, concerned about the way the Council communicated with Mr C about that. The Council's communications both at decision and review stage simply say the Council allocated band D because it considered Mr C had enough money to resolve his own housing need. I do not consider that a satisfactory explanation, which the Council accepts. The Council should have explained the assessment of financial resources overrides any other assessment of priority and therefore although Mr C would have been entitled to band B on medical grounds that is overridden by the financial resources test which downgrades the banding to band D. If the Council had properly explained that Mr C would not have had to go to time and trouble to pursue his complaint. It would not, however, have altered the decision given the amount of Mr C's savings.

I also have some concerns with how the Council approaches assessments of financial resources. As I say in paragraph 7, the Council's allocations policy says it should carry out an assessment of financial resources and the allocations policy says how that should happen. In particular, the allocations policy says the Council should consider average property prices and rents in the area for the type of accommodation needed by the household. In this case it seems to me the Council relied simply on the amount of savings. I do not consider it likely if the Council had considered average property prices in the area that would have resulted in a different outcome, given the amount of Mr C's savings. Nevertheless, the Council should have followed its allocations policy and recorded its decision and then communicated that to Mr C. Failure to do that is fault.

My second concern is with how the Council describes how it assesses rent levels. In its response to my enquiry the Council says it uses local housing allowance rates to estimate reasonable market rent. That, however, is not in accordance with the Council's allocations policy. The allocations policy is clear the assessment should be based on average property prices and rents in the area for the type of accommodation needed by the household. If the Council wants to use the local housing allowance rate it will need to amend its allocations policy to reflect that. In this case I do not consider this has caused an injustice to Mr C. That is because the amount of Mr C's savings are such the decision would not have been different even if the Council had considered the level of rent for the type of property Mr C needed.

### **Agreed action**

Within one month of my decision the Council should:

- apologise to Mr C for failing to explain the test of financial resources overrode any other banding decision; and
- consider amending its allocations policy to reflect its practice of using local housing allowance rates rather than average property prices and rents when considering a person has sufficient financial resources to resolve their own housing need.

## **Final decision**

I have completed my investigation and found fault by the Council in part of the complaint which caused Mr C an injustice. I am satisfied the action the Council will take is sufficient to remedy Mr C's injustice.

## **Case 18015950**

### **The Ombudsman's final decision:**

Summary: Mr S complains about the way the Council has dealt with concerns about his current accommodation. The Council is at fault for not considering a professional medical assessment in accordance with its housing policy, when Mr S told it his health was affected by his neighbour's anti-social behaviour. The Council has agreed to make a payment for the time, trouble and uncertainty caused.

### **The complaint**

Mr S complains about the way the Council has dealt with concerns about his current accommodation. Mr S has medical conditions that are affected by his current housing. He feels the Council has not taken his concerns about anti-social behaviour in his current property seriously. Mr S's existing mental health condition has been made worse by the situation and he would like to be able to move to another property in a much quieter location. Mr S is frustrated as he has tried to resolve this issue with his Housing Association, and it has not properly supported him.

### **The Ombudsman's role and powers**

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 actions of these providers. (Local Government Act 1974, section 25(7), as amended)

We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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)

### **How I considered this complaint**

I have spoken to Mr S and considered the information he has provided. I have made enquiries with the Council and considered the information it has provided, which includes information from the Housing Association responsible for managing Mr S's tenancy.

I have written to Mr S and the Council with my draft decision and considered their comments.

## **What should happen**

Every local housing authority must publish an allocations scheme that sets out how it prioritises applicants, and its procedures for allocating housing. All allocations must be made in strict accordance with the published scheme. (Housing Act 1996, section 166A(1) & (14))

The Council's Lettings Policy (April 2019) for allocating housing states:

### "2.6 Change of circumstances

2.6.1 Where an applicant registered with West Suffolk Council has a change in their circumstances they must promptly inform West Suffolk Council. Applicants can complete a change of circumstances on-line at [www.home-link.org.uk](http://www.home-link.org.uk) or obtain a change of circumstances form from any partner organisation, but this must then be sent to the partner organisation who is managing their application. Change of circumstances received by West Suffolk Council will be assessed based on the new circumstances. Examples of change of circumstances are detailed below, although this list is not exhaustive.

- a) Change of address
- b) People joining or leaving the household
- c) Pregnancy/birth of a child
- d) Relationship breakdown
- e) Change to the medical circumstances of anyone included on the application
- f) Death of a household member
- g) Death of a joint applicant
- h) Change of income and/or capital"

### "5.6 Medical assessments

5.6.1 Medical assessments will be carried out for any applicants who believe that their medical condition or disability is affected by their current accommodation. The applicant will be required to fill in a self-assessment medical form, or provide information from a medical professional, detailing the effect that their current accommodation has on their medical condition or disability. These forms will be assessed and where appropriate referred to a medical professional or appropriately trained officer for their opinion of how the medical condition is affected by the applicant's housing circumstances."

## **What happened**

Mr S has been living in his current accommodation for the last three years. He has an Autistic Spectrum Disorder (ASD), a learning difficulty which affects his literacy and he suffers from anxiety and depression. Mr S can suffer from sensory overload as a result of his ASD which means he is more sensitive to excessive noise.

The Housing Association that manages Mr S's accommodation first started to receive reports from him about a noise nuisance by his neighbour in February 2017. The Housing Association asked Mr S to complete diary sheets to record the instances of noise disturbance and it also spoke to his neighbour about the problem. Mr S and his neighbour agreed to take part in mediation to resolve the issues a few weeks later. Both parties signed a good neighbour agreement and were given access to the mediator's 24-hour helpline for logging any further incidents.

Between March and October 2017, the Housing Association received at least five reports from Mr S about incidents involving his neighbour, the last in September where the police were called. The Housing Association installed noise monitoring equipment in Mr S's accommodation shortly afterwards. The equipment recorded one incident in the three weeks at Mr S's property. The Housing Association reviewed the recorded incident and decided it did not constitute a breach of the neighbour's tenancy.

The Housing Association and the mediation company met with Mr S at the beginning of 2018 to discuss the issues he continued to have with his neighbour. Mr S said he had not reported incidents to the mediator's 24-hour helpline. The Housing Association explained it could not pursue further action against Mr S's neighbour if he chose not to report incidents to the helpline because it would not have a record of incidents to establish there was a problem. The Housing Association also warned Mr S that his continued reports to the police could constitute harassment of his neighbour and may amount to breach of his own tenancy. The Housing Association and mediation company decided to close the file for Mr S's complaint a month later because there was insufficient evidence of anti-social behaviour and noise nuisance by his neighbour to warrant further action.

Mr S submitted a new housing application shortly after the Housing Association closed its file for his complaints about his neighbour. He included details of his health conditions. He stated the issues with his neighbour significantly affected his health and that he needed to move. Mr S's doctor sent two letters to the Council in support of his new housing application. The doctor asked the Council to consider giving Mr S higher priority for housing elsewhere because of the significant impact on his mental health caused by his neighbour's noise nuisance and anti-social behaviour.

The Council considered Mr S's application and the information from his doctor. It wrote to Mr S to say it had upgraded his housing priority band from D (the lowest banding) to C because it considered he had a medium medical need for housing. The Council explained that while it considered Mr S's medical condition was significantly affected by his housing circumstances, the impact was not at a serious or critical level that it was made substantially worse or his life was at risk by his current housing. The Council advised Mr S to approach the Ombudsman because he remained dissatisfied with the outcome of his banding review.

Mr S submitted another housing application earlier this year after the Council's bidding cycles changed. He stated in this application that his health continued to be affected by his current accommodation.

### **Was there fault causing injustice?**

The Housing Association acting for the Council took several steps to help address the complaints Mr S made about his neighbour. It sought to work with both parties to reach an agreement through mediation and then put in place a system which made it easier for Mr S to report incidents. It is unfortunate this did not resolve the problems Mr S was having. I do not criticise the Housing Association's handling of Mr S's complaints about his neighbour as I am satisfied it did all it could based on the evidence it had. It is disappointing Mr S felt it was a waste of time to contact the 24-hour helpline to report incidents with his neighbour as they happened. The outcome of the Housing Association's investigation might have been different had the helpline gathered a record of the incidents that Mr S said had occurred.

The Council's Letting Policy is clear about how it should consider housing applications from people who consider their health is affected by their current accommodation. The Council considered the information it received from Mr S's doctor about the impact of the noise nuisance on his health, to adjust Mr S's housing priority band.

The Council's Letting Policy however states that "medical assessments will be carried out for any applicants who believe their medical condition or disability is affected by their current accommodation". In response to my enquiries, the Council has confirmed it considered Mr S's application and increased his housing band from D to C in recognition of the impact on health caused by his neighbour's behaviour. The Council has not explained why it did not seek further information about Mr S's health condition or request an assessment from a medical professional. Without this type of assessment, the Council is unable to determine the extent to which the noise nuisance is impacting on Mr S's health. Mr S suffers from sensory overload due to his ASD and it is possible that sudden loud noises, which would have a lesser effect on a person who does not have the same condition, would have a pronounced effect on Mr S's mental wellbeing. Mr S has reported to the Ombudsman that this issue continues to have a significant effect on his health. The Council's fault in this respect has caused Mr S distress as he has felt his concerns have not been taken seriously.

Mr S started alerting the Council via the Housing Association of the problems with his neighbour over two years ago in February 2017. The Housing Association took the correct action initially to try to address and resolve the issues between Mr S and his neighbour. By the time Mr S submitted his first new housing application in February 2018, it should have been clear to the Council that the attempts by the Housing Association to resolve the problems had been unsuccessful. Mr S was put to unnecessary time and trouble by seeking additional help from his doctor to support his requests to be rehoused. The further delay of more than a year and another housing application in February 2019, might have been avoided if the Council had sent Mr S for a professional medical assessment sooner. This has caused Mr S uncertainty about his situation that could have been avoided.

In my draft decision, I recommended the Council arranged for Mr S to have a professional medical assessment to establish the extent to which his health is

affected by his accommodation. Mr S has since informed me the Council has offered him an alternative property and he has accepted this. Mr S is hoping this will move him to a quieter location and help alleviate the sensory discomfort he has been experiencing. The Council has confirmed Mr S was successful in bidding for this new accommodation through its online housing allocation system. I have removed the recommendation for a professional medical assessment as it is no longer necessary.

### **Agreed action**

Within one month of my final decision, the Council has agreed to pay £600 for the time, trouble and uncertainty caused to Mr S. This is for not considering a professional medical assessment when he declared his health was affected by his accommodation in line with the Council's Letting Policy

### **Final decision**

I have completed the investigation and uphold Mr S's complaint. Mr S has been caused an injustice by the actions of the Council and it has accepted my recommendation to remedy that injustice.