

**Further Report by the Local Government Ombudsman**

**Investigation into a complaint against**

**Isle of Wight Council**

**(reference number: 12 001 189)**

**2 October 2014**

## 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 12 001 189 against Isle of Wight 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 S            the complainant

## Introduction

1. On 14 January 2014 I issued a report on a complaint by Mr S. Mr S complained that the Council had forced him to accept a property that was too small for his family. It then failed to offer the family a larger property or give them adequate priority on its housing register, which would have enabled them to move to a larger property within a reasonable period of time. At that time Mr S had four children living with him: his eldest son, then aged 13, and three daughters aged 7, 10 and 11.
2. I found the Council was at fault for offering Mr S and his family a property which was too small for his family's needs. I found the Council was also at fault for failing to advise Mr S in writing of his right to request a review of the suitability of the accommodation offered.
3. The fault I identified caused Mr S and his family a serious injustice. They were moved from accommodation which, although temporary, met their needs, into a property which was significantly less suitable and too small for them. They had been living in overcrowded conditions ever since, and Mr S's 12 year old daughter was forced to sleep in a bedroom which by law is too small to occupy.
4. To remedy the injustice caused, I recommended that the Council:
  - provided guidance to its housing officers about overcrowding rules to ensure their knowledge and practice was up to date;
  - elevated Mr S's priority to the highest category (Band 1) to ensure he was re-housed as quickly as possible; and
  - paid Mr S £1,000 to acknowledge the distress and frustration he and his family had suffered by living in unsuitable accommodation for over two years longer than necessary, and for his time and trouble pursuing his complaint.

## The Council's response

5. The Council agreed to my recommendation to provide guidance to its housing officers.
6. The Council wrote to me on 16 January 2014 expressing concern that my recommendation to elevate Mr S's priority required the authority to do something that was not lawful.
7. The Council argued that its housing allocation policy ('the policy') is governed by the Housing Act 1975 (as amended by the Localism Act 2011) which provides:
  - housing authorities may only allocate accommodation to "qualifying persons" (section 160ZA (6)) ;
  - the housing authority has power to decide which classes of people will be considered to be "qualifying persons" (section 160ZA (7)); and
  - the housing authority shall not allocate housing accommodation except in accordance with its allocation scheme (section 166A(14)). This point is reiterated in statutory

guidance which states that housing authorities are required to have an allocation scheme and must allocate in accordance with that scheme.

8. The Council argued that its policy was clear and prescriptive on the issue of allocation to priority Band 1. The policy states that a person will be placed in a band on the basis of the following:

Band 1	Urgent medical/welfare issues Multiples of Band 2
Band 2	Severe over/under occupation (at least 2 beds) Severe medical/welfare issues Applicants identified as being ready for “move-on” accommodation from this scheme
Band 3	Multiples of Band 4
Band 4	Homeless applicants Significant medical/welfare issues Hazardous property condition as defined by the housing renewal team Lacking or sharing amenities Households within insecure accommodation Minor over/under occupation (1 bed)

9. The Council’s policy provides (at paragraph 11) that those in temporary accommodation are excluded from satisfying the overcrowded criteria.
10. The policy states that urgent medical/welfare issues will be identified through a “medical/welfare matrix” which is appended to the policy. This categorises urgent medical/welfare issues as arising: “where an applicant or member of their household... [has] ...urgent medical or welfare needs where failure to re-house could have life threatening consequences and where their current housing conditions are a major contributory factor”.
11. The Council’s position was that Mr S’s family could not properly be placed in Band 1 as they failed to meet the criteria within Band 1. They did not have urgent medical/welfare issues as defined by the policy. Furthermore they did not have “multiples of Band 2” priority, so as to be assessed as Band 1.
12. Mr S’s family was originally assessed as being in Band 3. When their circumstances changed, the case was referred to the Council’s welfare panel. In Spring 2013, the panel recommended they be elevated to Band 2 because of severe medical and welfare issues. The Council backdated their entry to Band 2 to September 2011 (the date they moved to their current accommodation) to enhance their position within Band 2.
13. The Council’s view was that my recommendation sought to interfere with this prescribed process and was not therefore lawful.

14. I responded to the Council on 23 January 2014 to say that I did not accept its suggestion. I considered the Council had a duty to act expeditiously in this case especially as it involved potentially vulnerable dependants. I clarified that the intention behind my recommendation was to put Mr S and his family in a position where their injustice could best be remedied. In my view, reprioritising them on the housing list would mean they spent as little time as possible in accommodation which was clearly not suitable. While the Council's actions had gone some way to remedying the position, I considered they fell short of restoring the family to the position they would have been in but for the Council's fault. I expressed concerns that the Council's policy appeared to disadvantage them further by preventing them from accruing "multiples of Band 2" once their property had been reclassified as temporary accommodation. I stated I had been critical of councils which had applied any policy so rigidly as to fetter their discretion, meaning that exceptional circumstances could not be taken into account.
15. The Council replied on 24 January 2014, reiterating its view that it was not lawful to move Mr S's family to Band 1, as I had recommended, on the proper application of its housing policy. However it said it would now put my report to elected members.
16. The Council's Cabinet Member for Health, Community and Adult Wellbeing presented a report to the Cabinet on 11 March 2014 advising of the outcome of the complaint. The report said that my recommendation to elevate the family to Band 1 would contravene the Council's allocation policy, would provide the family with an unfair advantage over other households on the housing register and could be detrimental to applicants who did have an urgent level of priority.
17. Although the Cabinet recognised that the Local Government Act 1974 gives me wide powers to make recommendations within a report, it did not consider the Council should follow my recommendation to elevate the family to Band 1. The family's application had already been suitably elevated to reflect their housing situation and everything was being done to resolve their situation. The Council was trying to identify alternative accommodation through partnerships with social housing providers. It was also looking to the private sector for help in bringing empty accommodation back into use.
18. The Cabinet Member's report proposed that my recommendation as to financial redress should also be rejected: first, because payment would have to be made from the homelessness prevention budget (which may mean that the Council's ability to house other homeless families in future was put at risk); and second, because the Council was not at fault for failing to realise, when it nominated the family for the property (which was owned by a housing association), that it was too small. Instead the Cabinet Member proposed that the Council should pay the sum of £250, which was in line with compensation recommended by the Ombudsman in cases where a council had failed to advise an applicant of their rights of appeal against a homelessness decision.
19. The Cabinet Member stated that in nominating the family for the property the Council relied on information provided to it by Housing Association X that it was a "four bedroomed" property. However, my report found that the housing association was acting on behalf of the Council and, in that role, acted with fault for which the Council was liable.

It was no defence for the Council to say it relied on what Housing Association X told it. The Cabinet Member's report did not address this point.

20. I wrote to the Council on 12 May 2014 giving it a further opportunity to consider the matter. I said the Council should demonstrate how it had reassessed Mr S and concluded that he did not satisfy the "multiples of Band 2" criterion. It was not evident to me from the Cabinet report, or minutes, whether each of the multiples in Band 2 had been considered by the Council.
21. I pointed out that the Council's decision to reclassify the family's current accommodation as "temporary" had had a detrimental impact on them, as they were now unable to meet the first multiple of Band 2. Further, although the Council appeared to have satisfied itself that the "urgent medical/welfare issues" criterion in Band 1 was not met, this decision appeared to have been taken without a new medical and welfare assessment being carried out. The latest assessment referred to dated back to May 2013. I considered a new medical and welfare assessment should have been carried out before the Council reached such a decision.
22. I said I felt the Council's allocations policy, and the way it had been applied, appeared to unfairly disadvantage Mr S by preventing him from accruing any of the multiples of Band 2. I was disappointed this had not been addressed in the Cabinet report and had not been taken into consideration.
23. Nor was I satisfied with the Council's decision about my proposed financial remedy. I maintained my view that £1,000 was an appropriate remedy for the injustice I had identified, which was not limited to the failure to provide written advice on their appeal rights. The Council's fault in allocating a property which was too small for their needs had caused the family to suffer the distress and frustration of living in unsuitable accommodation for over two years longer than necessary. Mr S had also incurred time and trouble pursuing the complaint. There was no record in the Cabinet meeting minutes of the Cabinet giving due consideration to, or reasons for, its decision to provide a reduced remedy.
24. The Council responded to me on 10 June 2014. It explained it had intended to discharge its full homelessness duty to Mr S and his family when they moved to their current accommodation. However, after Mr S successfully applied for a review of the suitability of the accommodation, the Council accepted it had not in fact discharged its duty. It therefore had a continuing duty to provide temporary accommodation. For this reason, Mr S's property was reclassified as temporary. The family had already been given housing needs preference for living in insecure accommodation, and for being statutorily homeless (both of which are Band 4 factors). These escalated his priority to Band 3.
25. The Council maintained its policy position that households in temporary accommodation cannot receive Band 2 priority for living in severely overcrowded accommodation. This is because they have the advantage of being owed duties which oblige the Council to ensure as soon as possible that suitably sized accommodation is available for their needs. Due to changes in Mr S's household, the case was referred to the Council's

medical and welfare panel in May 2013. The panel decided to award severe priority on welfare grounds to recognise their severe overcrowding and the fact that there was little prospect of them moving to more suitable alternative accommodation in the short term. This priority was backdated to September 2011 (as they were overcrowded from the date they moved to their current property). The Council believed it was not fettering its discretion by applying its policy so rigidly that exceptional circumstances could not be taken into account: it had used discretion through the medical and welfare panel.

26. The panel has now reconsidered the case, in the light of my request, but does not consider the application warrants any higher priority than that already awarded. It recognised that I believed the case should be elevated to Band 1 but said the overcrowding alone did not warrant such priority. The panel said it had to be mindful of other families that are overcrowded and need to be housed as soon as possible, which are in similar circumstances but will not enjoy the benefit of increased priority. The panel confirmed it would monitor the case and reconsider the priority it has awarded, in the light of any new information which is provided by medical professionals.
27. The Council has not responded any further to my comments on its rejection of my recommended financial remedy.

## My consideration

28. I am pleased the Council has accepted my recommendation to provide guidance to its housing officers and at my request referred this case back to its medical and welfare panel.
29. I accept the Council's explanation that it has taken account of this family's exceptional circumstances by referring the matter back to the medical and welfare panel. I accept that, with the priority already awarded for overcrowding, and the medical and welfare panel's further consideration, the Council has mitigated the effect of classifying the family's accommodation as temporary.
30. I am therefore satisfied with the Council's response to this recommendation and I do not intend to pursue it further.
31. I do not however accept the Council's position about the financial payment I recommended. My recommendation that it should pay £1,000 recognises the distress and frustration Mr S and his family have suffered in having to live in less suitable accommodation than they had previously, for more than two years. My recommendation was made in accordance with my general approach and published guidance, for a family living in unsuitable accommodation for longer than is needed.
32. I reject entirely the Council's proposal to pay a remedy based on my guidance for cases where Councils fail to provide sufficient notification to an applicant of their rights of appeal against a homelessness decision. The primary fault here was the Council's decision to place the family in accommodation which was, by law, too small for their needs. That led to the significant injustice I have identified above. The Council has not put forward any other arguments which would support its proposal to pay a reduced remedy.



## Conclusion

33. My report of 14 January 2014 highlighted that the Council had acted with fault in the way it allocated housing to Mr S's family. The Council accepts that the house it allocated was too small for their needs.
34. The Local Government Act 1974 provides that if the Ombudsman is not satisfied with the Council's response to her recommendations, a further report will be issued. I am satisfied the Council has accepted my first recommendation, and with its explanation for why it has not complied with my second. I am not however satisfied with its explanation for why it has rejected my recommended financial remedy.
35. I have therefore issued this further report on Mr S's complaint to call on the Council to reconsider its position and pay the financial remedy I consider is merited. This would acknowledge the distress and frustration Mr S and his family have suffered by living in unsuitable accommodation for over two years longer than necessary, and for the time and trouble incurred pursuing this complaint.