

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

**Investigation into a complaint about
Shropshire Council
(reference number: 21 017 512)**

17 October 2022

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

Mr X complained the Council:

- had not found him accommodation since he became homeless in July 2021, leaving him sleeping rough in a garage and his car;
- lowered his banding on the housing allocations register from Gold to Bronze over two months in error (around December 2021);
- refused him a payment from its welfare fund and ignored his request to review that decision, leaving him without funds for a blanket and toaster, and;
- communicated poorly with him.

Finding

Fault found causing injustice and recommendations made.

Recommendations

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*)

To remedy the injustice caused we recommend the Council:

- apologise to Mr X in writing;
- offer Mr X suitable temporary accommodation under its main housing duty;
- pay Mr X £500 for distress and uncertainty;
- pay Mr X £1,050 for failing to provide suitable accommodation for three months from 20 October 2021 to 26 January 2022;
- pay Mr X £2,450 for failing to provide suitable accommodation for seven months from 26 January 2022 to 26 July 2022;
- provide training or guidance to its housing team to ensure they understand the Council's duties to provide accommodation under the Housing Act 1996, with reference to this report.

The complaint

1. Mr X complained the Council:
 - had not found him accommodation since he became homeless in July 2021, leaving him sleeping rough in a garage and his car;
 - lowered his banding on the housing allocations register from Gold to Bronze over two months in error (around December 2021);
 - refused him a payment from its welfare fund and ignored his request to review this decision, leaving him without funds for a blanket and toaster, and;
 - communicated poorly with him.

What we have investigated

2. We have investigated the complaints above. At the end of this report we have explained why we have not investigated another complaint.

Legal and Administrative Background

The Ombudsman's roles and powers

3. 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*)
4. We cannot question whether an organisation'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*)
5. We provide a free service, but must use public money carefully. We do not start or may decide not to continue with an investigation if we decide there is another body better placed to consider this complaint. (*Local Government Act 1974, section 24A(6)*)

Housing Act 1996

6. The Housing Act 1996, amended by the Homelessness Reduction Act 2017, outlines councils' duties to those homeless or threatened with homelessness.

Relieving homelessness; the relief duty

7. Where the person is actually homeless, the relief duty may apply.
8. This requires the council to take reasonable steps to help the applicant secure accommodation that will be available for at least six months.
9. The council will need to carry out an assessment and work with the person to develop a personalised housing plan ("PHP").
10. If a council has "reason to believe" a person may be:
 - homeless;
 - eligible; and
 - in priority need

then it must provide interim accommodation for them.

11. The law does not say what type of accommodation the council should provide. But there is a legal duty to ensure the accommodation is “suitable” for the applicant.
12. In deciding whether accommodation is suitable, councils must have regard to the slum clearance, overcrowding and House in Multiple Occupation (“HMO”) provisions of the Housing Act 1985 and Parts 1 to 4 of the Housing Act 2004 (section 210). Councils must also have regard to the following factors:
 - the space and arrangement of the accommodation;
 - the state of repair and condition of the accommodation – as an absolute minimum it must be free of Category 1 hazards;
 - the location – including ease of access to established employment, schools and specialist health care; and
 - the specific needs of the applicant and any household members due to a medical condition or disability.
13. Any decision that the duty has come to an end must be communicated in writing giving the reasons why it has ended and notifying the applicant of their right to request a review of that decision.

Providing housing; the main housing duty

14. If homelessness is not successfully prevented or relieved, a council will owe the main housing duty to applicants who are eligible, have a priority need for accommodation and are not homeless intentionally.
15. The main housing duty is a duty to provide suitable temporary accommodation until such time as the duty is ended, either by an offer of settled accommodation or for another specified reason.
16. Most homeless applicants owed the main duty will be placed in temporary accommodation initially. The council may require the applicant to move from one temporary accommodation to another before a permanent offer is made.
17. The Court of Appeal has held a council cannot avoid performing the duty by pleading there are other demands on the housing service and lack of accommodation.
18. The Ombudsman will consider in each case whether the council took all reasonable steps to secure suitable accommodation for the applicant as soon as possible, in line with its duties.
19. The main housing duty ends when the applicant either:
 - is no longer eligible for assistance; or
 - accepts an offer of a tenancy made under Part 6 (an offer under the allocations scheme); or
 - accepts an offer of an assured tenancy from a private landlord (note: not an Assured Shorthold Tenancy); or
 - refuses a final offer of suitable Part 6 accommodation (having been informed of the possible consequences of refusal and the right to a review about suitability); or

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- refuses an offer of suitable Part 7 temporary accommodation (having been informed of the possible consequences of refusal and review rights); or
 - becomes intentionally homeless from the accommodation secured by the authority; or
 - voluntarily ceases to occupy the section 193 accommodation secured by the authority; or
 - accepts or refuses a private rented sector offer.

Housing allocations

20. Shropshire HomePoint provides a one-stop solution for people seeking housing and manages the Shropshire Housing Register, also known as the Housing Waiting List.
21. Once registered, a person can make one bid per week for affordable and social rented properties but can make as many bids as they like for mutual exchanges, low cost home ownership, private rented, house shares and private properties for sale.
22. HomePoint will check if the applicant is eligible to join the Housing Register. If eligible, it will assess need for housing according to four categories called 'Bands':
 - Priority Band is for those in emergency need
 - Gold Band is for those with a high level of need
 - Silver Band is for medium and
 - Bronze Band is for those with no recognised housing need but would still like to be considered for housing.
23. The successful applicant is the one in the highest band, with the longest band waiting time and assessed as eligible for the property.

Welfare fund

24. The Council has a local welfare fund, with details on its website. This says a resident can apply for local welfare provision support if they are:
 - aged 16 or over
 - not subject to immigration control
 - on a low income and struggling to meet essential living costs.
25. Essential living costs can include things like food, energy and essential furniture items, but this list is not exhaustive.

How we considered this complaint

26. We produced this report after examining relevant documents and speaking to the complainant.
27. 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.

What we found

What happened

28. Mr X and the Council have given conflicting accounts of what happened.
29. The Council has provided case notes and copies of correspondence exchanged with Mr X in support of its position.
30. We have set out what we consider more likely than not to have happened, based on the information and evidence available.

Accommodation

31. The Council says Mr X first presented as homeless in 2019. The Council says it made efforts to progress his homelessness application but these were unsuccessful due to lack of contact from him.
32. Mr X says he contacted the Council again in July 2021, but I have not seen any evidence to support this.
33. The Council says in September 2021 Mr X contacted it again and said he was homeless. The Council says it referred him to its outreach team. They tried to contact him with a view to offering interim accommodation but could not locate him. This is supported by its case notes.
34. The Council arranged an appointment for Mr X regarding his homeless application in October 2021 and offered him interim accommodation.
35. The Council has provided a copy of its offer letter to Mr X. This says:
 - it is offering him interim accommodation at a stated property.
 - it has assessed the property and found it suitable.
 - its duty to provide interim accommodation will end if he refuses to accept it.
 - if he refuses this accommodation and following consideration of his reasons for refusal the Council still considers the accommodation to be suitable and reasonable for him to accept, it will not offer other interim accommodation.
36. Mr X told the Council he did not want the accommodation any longer due to the roof being too low. He said he was unable to stand up in parts of the room due to the low ceilings so was in a lot of pain. He also told the Council he had work in another area where he could stay on site until the end of the week. He said he would sleep in his car if he could not find anywhere else. This is referenced in the Council's case notes.
37. The Council says Mr X completed his homelessness application by phone on 1 November. It wrote to him on the same day accepting it owed him the relief duty – that is to take reasonable steps to help him to secure suitable accommodation. It enclosed his personal housing plan. This required him to register with a housing service to help him find accommodation in the private sector, look for properties to rent online and in newspapers, continue to bid for properties on HomePoint, and provide documents. This is supported by correspondence and case notes.
38. On 11 January 2022 HomePoint offered Mr X a property. He rejected this offer on or before 23 January due to the distance from work and family and his poor mental health. This is supported by the Council's case notes. There is nothing to suggest this offer was made specifically to fulfil or discharge the Council's housing duties. And the Council did not send any letter notifying Mr X it had ended its duties following his rejection.

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39. On 26 January the Council wrote to Mr X saying that it had been unable to relieve his homelessness and it now owed the main housing duty. It explained it may secure an offer of accommodation in the private sector or Mr X may secure social housing through bids on HomePoint or directly from the Council. It would amend his banding on HomePoint to “priority” to reflect its decision. This would remain in place for 8 weeks.
40. The Council says Mr X continued to bid on properties through HomePoint but the majority of bids were for sheltered properties and / or with adaptations and age criteria. Mr X was not successful as he did not meet the age requirement, did not need adaptations and had no sheltered needs. The Council says it offered Mr X help with bidding but he refused.
41. The Council adds that to date, it has attempted to engage with Mr X to support him to get rehoused, however, it has received abusive messages in response.
42. Mr X remains homeless.
43. In comments on our draft decision on this investigation the Council said:
- It considered whether the offer of interim accommodation was suitable and determined it was. Its offer letter made clear the consequences of refusal.
 - It had an email from Mr X in which he said the property was “fantastic” and he was “not complaining”. However, on review of this email we note Mr X says: “the room was fine but also very painful for me trying to even get to the kettle, I had to crawl to get to it as a very low roof and the door a dwarf would have trouble getting in, not good as I’m 6’5” but again I am not complaining, the place is fantastic”.
 - Given Mr X was aware of the impact of refusal and as it found the property suitable there was no reason for a further offer.
 - On 20 October Mr X left the placement. It did not discharge its Interim Duty; he was aware he could come back and request accommodation if needed. (We have not seen any evidence to support that the Council told Mr X he could ask for further interim accommodation on or about 20 October.)
 - On 22 November Mr X asked for his housing case to be reopened. It confirmed that his case was already open. It also said he was still owed the interim duty and accommodation would be provided if needed. (We have not seen any evidence the Council made any further offers. On the same date Mr X replied asking it to reopen his application as his “first night in a frost in this garage is not too good”. We have not seen any evidence the Council offered accommodation in response. However, it tried to contact Mr X to review his Personal Housing Plan on 3 and 13 December 2021.)
 - On 14 December Mr X told the Council he was “quite content in the garage”. (On review of this email we note Mr X was responding to the Council’s contact of 13 December 2021 and says: “May I ask why I need to contact yourselves? I am quite content in the garage, I realise I will not be housed through yourselves after speaking to many homeless people and applying for freedom of information regarding homeless in Shrewsbury through HomePoint”.)
 - On review of its case notes and following discussion with case officers it can assure the Ombudsman that it regularly made offers of accommodation to

Mr X. Each time Mr X refused the offer of accommodation insisting he was fine where he was and did not want temporary accommodation.

Banding

44. Mr X says the Council incorrectly lowered his banding though it resolved this in January 2022 upon his complaint.
45. The Council says it banded Mr X as Silver in 2019. It increased this from Silver to Priority banding on 28 January 2022 when it accepted the main housing duty. The Council says it holds no records to show it lowered Mr X's banding at any time.
46. In comments on our draft decision Mr X said the Council banded him Gold in November 2021. This meant he had around 30 to 50 people in the queue ahead of him for housing at any time. He says this only changed in February 2022 when his queue position jumped, with only 1 to 4 people in front of him at any time. He thinks he should have had this priority earlier.

Welfare fund

47. The Council refused Mr X a welfare payment by letter, in December 2021. It said the items requested were not essential to his circumstances and it offered a review.
48. In response to enquiries the Council further explained Mr X said he was living in a garage and it felt it inappropriate to offer him items to live in a property that was unsuitable.
49. Mr X says he asked for a review but received no reply.
50. The Council says on review Mr X asked for a bed and a toaster. It has provided a copy of its reply, sent on 25 January 2022. Here it raised concerns about the safety of supplying electrical equipment for use in the garage.
51. The Council says it resent this on 11 February following contact from Mr X that he did not receive it. Following discussion with Mr X it established he now only wanted a blanket. It asked for a bank statement as evidence in support but Mr X did not provide this.
52. The Council has not provided the original documents to support its position but it has provided a detailed account and extracts of correspondence exchanged.

Conclusions

Accommodation

53. Mr X had no legal right to a council review of the suitability of the interim accommodation offered to him. However, we would still expect the Council to consider whether the accommodation was suitable following his complaint about the low roof and if not, make another offer. However, there is no evidence it considered whether the accommodation was suitable after Mr X complained. This is fault. Mr X has suffered uncertainty as to whether the Council would have offered him other interim accommodation. This is injustice.
54. In comments on our draft decision the Council said it did not need to make a further offer of interim accommodation yet also said it would have offered accommodation if Mr X wanted this. However, it is clear Mr X needed accommodation and asked the Council to reopen his case to get this, but no offers were forthcoming. Even if Mr X did not ask for accommodation the Council says it still owed the duty and yet it made no further offers. This is further fault.

We are satisfied Mr X missed the opportunity to be housed from 20 October 2021 to 26 January 2022 as a result. This is injustice.

55. In response to a draft of this report the Council said there was no duty to review the suitability of the accommodation and therefore it was not required to make a formal decision. It said that while Mr X may have struggled with a low roof the accommodation was nonetheless suitable. He had numerous conversations with the Council and always said he was “happy” to remain in the garage he was residing in. He was aware he could request further interim accommodation and did not do this. It refers to its letter of 1 November 2021 as evidence it made him aware. (The letter is referenced at paragraph 37 above).
56. In hindsight the Council accepted Mr X may not have understood the meaning of its letter and it does accept it had a duty to house him if he required accommodation. The Council has therefore taken this on board and is reviewing all formal letters to ensure they are written in ‘Plain English’ making them easier to understand. Despite this Mr X did not request further accommodation, including in response to its correspondence of 22 November (as referred to at paragraph 43 above). Mr X had the capacity to approach the Council and request accommodation if he needed it, instead he regularly told the Council the opposite. As a local authority it could not continue to offer accommodation daily to individual clients for it to be refused. It refers to an offer Mr X refused on or about 26 January 2022 (as referred to at paragraph 38 above).
57. We have considered the Council’s comments on our draft report. However, as the Council has referred to information and evidence we had previously seen, our findings and recommendations remain the same. The Council’s letter of 1 November said it owed the relief duty. The letter did not say it would offer further interim accommodation if requested and crucially the Council did not make any further offer of interim accommodation. The Council’s case records show Mr X was unaware the Council would offer further accommodation until he requested it reopen his case on 22 November. The Council did not then make an offer in response and Mr X expressed his frustration in his contact on 14 December.
58. The Council had a statutory duty to make suitable temporary accommodation available when it accepted the main housing duty. However, we have not seen any evidence to show the Council offered Mr X temporary accommodation after accepting the main housing duty. This is fault. Mr X missed the opportunity to be housed from 26 January 2022 and remained homeless at the time of contacting the Ombudsman and up to at least 26 July 2022. This is injustice. Mr X slept in his car with no access to facilities, causing distress.
59. In response to our draft report the Council said Mr X may not have understood its letter accepting the main housing duty due to the formal language used. That is; he may not have understood the Council accepted it had a duty to house him if he required accommodation. It takes on board the fact that it should have been more explicit in its offer. Mr X was in regular email conversation with Council staff from 26 January 2022 and was aware temporary accommodation was available, but always said he was happy to remain in his car or a garage. It made countless attempts to support Mr X in sourcing alternative accommodation, but this was always met with threats, aggression, and hostility. It had not found Mr X sleeping in his car on any occasion it tried to meet him and had heard from third parties that on occasion he stayed temporarily with friends. Mr X was now accommodated temporarily by the Council under its homeless duty.

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60. On review of the Council's response to our draft report we consider it has misunderstood its duties. Where the Council has a duty to provide accommodation it should make a written offer of accommodation, specifying a place of accommodation. Sending a letter which simply accepts it owes a duty is not sufficient; it must actually make an offer of accommodation. The Council cannot discharge its duty without making any offer and instead suggesting the service user was otherwise happy remaining homeless. It is concerning that the Council has not understood its statutory duties as others will likely be impacted by this.
61. As the Council has not provided any new information or evidence that affects our view on this part of the complaint, our findings and recommendations remain the same. The Council did not offer Mr X accommodation after accepting the main housing duty and up to at least 26 July 2022. Just because the Council did not find Mr X in his car or he stayed with a friend on occasion, it does not mean he had secured suitable alternative accommodation for any length of time. We note the Council says it has since accommodated Mr X, but as we have not yet seen evidence of this our recommendation that it do so remains.

Banding

62. There is a lack of evidence to show the Council lowered Mr X's banding in or around December 2021. We therefore cannot find fault.
63. The Council decided to place Mr X as Priority Band after it accepted the main housing duty on 26 January 2022. This meant Mr X had a better position in the queue for properties from February. We have not seen any evidence to suggest Mr X complained to the Council that it should have placed him in the Priority Band sooner. His complaint to the Ombudsman was that the Council lowered his banding, but we have not seen any evidence of this.

Welfare fund

64. The Council has evidenced it gave a written decision and reasons for refusing Mr X a welfare fund payment and offered a review. On the evidence provided, we accept on balance it responded to Mr X's review request but required evidence of Mr X's income to reach a decision. Given the Council's policy requires a low income and as the Council is entitled to request evidence in support, we do not find fault in its decision making process.
65. We remind the parties that we cannot investigate new or ongoing matters. This includes the ongoing exchanges between the parties since Mr X complained to the Ombudsman.

Communications

66. Mr X did not raise specific instances of poor communication but it is clear from our findings above that the Council's communication with Mr X fell short. We do not make any separate finding of fault.

Recommendations

67. To remedy the injustice caused we recommend the Council:
- apologise to Mr X in writing;
 - offer Mr X suitable temporary accommodation under its main housing duty;
 - pay Mr X £500 for distress and uncertainty;

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- pay Mr X £1,050 for failing to provide suitable accommodation for three months from 20 October 2021 to 26 January 2022;
 - pay Mr X £2,450 for failing to provide suitable accommodation for seven months from 26 January 2022 to 26 July 2022;
 - provide training or guidance to its housing team to ensure they understand the Council's duties to provide accommodation under the Housing Act 1996, with reference to this decision.
68. 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

69. We find the Council at fault. This is because it did not have due regard to its duty to offer suitable interim accommodation and because it did not offer accommodation under its main housing duty. The Council should take the action identified in paragraph 67 to remedy that injustice.

Parts of the complaint that we did not investigate

70. We did not investigate Mr X's complaint about the Council's response to his Freedom of Information request. This is because the Information Commissioner's Office is the appropriate body to deal with such complaints.