

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

**Investigation into a complaint against
Medway Council
(reference number: 20 004 585)**

23 February 2021

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 E	The complainant
Mr F	Her son

Report summary

Housing

Ms E complained about the way the Council dealt with her homelessness.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused, the Council should within one month of the date of this report:

- apologise to Ms E and her son Mr F;
- decide whether Ms E is owed the full housing duty and issue a written decision on her homelessness application;
- decide whether Mr F is owed any duty or service under the Children Act 1989 and provide that service. If the Council decides Mr F is not owed any duty under the Children Act 1989, it should go on to consider if it owes Mr F any duty under the Housing Act 1996;
- pay Ms E and Mr F £1,500 each to reflect the avoidable distress and hardship caused by being homeless and sleeping in a tent for almost two months; and
- pay Ms E an additional £200 to reflect the avoidable inconvenience and time and trouble of not being listened to when reporting street homelessness on several occasions.

Within three months, the Council should provide refresher training for staff in the housing allocations and housing options teams to ensure officers are competent to identify information from potential applicants which triggers the duties in sections 184, 188 and 189 of the Housing Act 1996.

The complaint

1. Ms E complained for herself and her son Mr F about the way Medway Council's housing and children's services teams dealt with their homelessness.

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. The law says we cannot normally investigate a complaint unless we are satisfied the council knows about the complaint and has had an opportunity to investigate and reply. However, we may decide to investigate if we consider it would be unreasonable to notify the council of the complaint and give it an opportunity to investigate and reply (*Local Government Act 1974, section 26(5)*)
4. Ms E did not use the Council's complaints procedure before contacting us. But we decided to investigate her complaint anyway because her situation was urgent. She told us she and her child were sleeping rough and she had not been able to get the housing department or children's services to help her.

Relevant law and guidance

5. This complaint involves events that occurred during the COVID-19 pandemic. The Government introduced a range of new and frequently updated rules and guidance. We can consider whether the council followed the relevant legislation, guidance and our published [Good Administrative Practice during the response to COVID-19](#). We consider basic record keeping vital during a crisis. There should always be a clear audit trail of how and why decisions were made, particularly summarising key reasons for departing from normal practice.
 6. The Coronavirus Act 2020 made a temporary provision to protect most residential tenants by increasing notice periods to at least three months. The Act also temporarily paused possession proceedings. The suspension of evictions applied only to tenants and not to most licences to occupy. The government issued non-statutory guidance advising landlords of those on licences to 'work with renters who may be facing hardship as a result of the response to COVID-19'. (*COVID-19 Guidance for Landlords and Tenants*)
 7. Part 7 of the Housing Act 1996 and the Homelessness Code of Guidance for Local Authorities (the Code of Guidance) set out councils' powers and duties to people who are homeless or threatened with homelessness. The Code of Guidance is statutory guidance on how councils should carry out their functions and they must have regard to it.
 8. If a council has 'reason to believe' someone may be homeless or threatened with homelessness, it must take a homelessness application and make inquiries. Applications can be made to any department of the local authority and expressed in any particular form. (*Housing Act 1996, section 184 and Homelessness Code of Guidance paragraphs 6.2 and 18.5*)
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9. 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. This is called the interim housing duty. (*Housing Act 1996, section 188*)
 10. Councils must complete an assessment if they are satisfied an applicant is homeless or threatened with homelessness. This is known as the assessment duty. Councils must notify the applicant of the assessment and should work with an applicant to identify practical and reasonable steps for the council and the applicant to take to help the applicant keep or secure suitable accommodation. These steps should be tailored to the household, and follow from the findings of the assessment, and must be set out to the applicant in a written personalised housing plan. (*Housing Act 1996, section 189A and Homelessness Code of Guidance paragraphs 11.6 and 11.18*)
 11. Councils must take reasonable steps to secure accommodation for any eligible homeless person. This is called the relief duty. When a council decides this duty has come to an end, it must tell the applicant in writing. (*Housing Act 1996, section 189B*)
 12. The Children Act 1989 defines a child in need as one who is unlikely to achieve or maintain a reasonable level of health or development or whose health and development is likely to be impaired without services. (*Children Act 1989, section 17*) Councils carry out assessments of children in need and draw up child in need plans which are reviewed.
 13. A council must provide accommodation for any child in need in their area who is 16 or 17 and whose welfare is likely to be seriously prejudiced if accommodation is not provided. (*Children Act 1989, section 20*)
 14. If a council has reasonable cause to suspect a child in the area is suffering or is likely to suffer significant harm, the council must make such enquiries as considered necessary to decide whether to take action to safeguard or promote the child's welfare. (*Children Act 1989, section 47*)
 15. The government issued statutory guidance setting out the legal duties of housing and children's services authorities towards children aged 16 or 17 who are homeless. The departments must co-operate and work jointly to meet the child's needs. Relevant parts include:
 - housing departments should deal with the case as a homelessness application in the normal way and secure accommodation if there is immediate homelessness;
 - housing departments should refer to children's services departments for an assessment under the Children Act. If a duty to provide accommodation is refused or the young person declines assistance, the housing department must decide the application on its own terms;
 - housing and children's services departments should have joint protocols setting out practical arrangements and services for homeless 16 and 17 year olds. (*Provision of Accommodation for 16 and 17 year olds who may be homeless and/or require accommodation*)
 16. The Human Rights Act 1998 brought the rights in the European Convention on Human Rights into UK law. Public bodies, including councils, must act in a way to respect and protect human rights. It is unlawful for a public body to act in a way which is incompatible with a human right. 'Act' includes a failure to act. (*Human Rights Act 1998, section 6*)
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17. It is not our role to decide whether a person's human rights have been breached. That is for the courts. We decide whether there has been fault causing injustice. Where relevant, we consider whether a council has acted in line with legal obligations in section 6 of the Human Rights Act 1998. We may find fault where a council cannot evidence it had regard to a person's human rights or if it cannot justify an interference with a qualified right.
18. Article 8 of the European Convention on Human Rights says everyone has a right to respect for their private and family life, home, and correspondence. This right is qualified which means it may need to be balanced against other people's rights or those of the wider public. A qualified right can be interfered with only if the interference is designed to pursue a legitimate aim, is a proportionate interference and is necessary. Legitimate aims include:
 - the protection of other people's rights;
 - national security;
 - public safety;
 - the prevention of crime;
 - the protection of health.

How we considered the complaint

19. We produced this draft report after examining relevant documents and discussing the complaint with Ms E.
20. We gave Ms E and the Council a confidential draft of this report. We took their comments into account before issuing this final report.

Investigation

What happened

21. Ms E became homeless at the end of 2018. The Council placed her and Mr F in temporary accommodation while it dealt with her homelessness application. The Council decided Ms E was intentionally homeless in February 2019. She was not evicted from temporary accommodation and the Council's children's services department took over funding from the housing department in July 2019. The Council told us there was no written agreement (licence or tenancy) for the temporary accommodation.
 22. There was an initial child protection conference in November 2019. Mr F was 16 at the time. He was placed on a child protection plan. There was a review conference in January 2020. The children's services department were funding a house for the family for three months. The minutes noted:
 - the family needed a long-term home. Ms E had found a private property; and
 - things had improved and so a manager decided the case could be 'stepped down' to a child in need case. This was Mr F's wish and the family were more settled so the risk had reduced.
 23. There was a child in need meeting in March. The minutes noted the family were at risk of homelessness. The funding panel agreed to fund the house for a further two weeks. Ms E was said to have been living in London but had returned to Medway. She said a potential property had fallen through and she continued to find it difficult to find permanent housing due to a poor credit rating.
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24. In May 2020 there was a review of the child in need plan. Ms E and Mr F remained in the house funded by the children's services department. Ms E suggested the private property she had found would not be ready and had fallen through. The minutes of the review said:
 - the social worker had discussed the case with her manager who felt it could be closed. She had told Ms E that if the case was closed, they may be evicted;
 - Mr F needed stability and long-term accommodation;
 - there was a realistic prospect of the family becoming homeless after the Council gave notice; and
 - the practice manager decided to close the case by the end of May.
 25. The children's services department continued funding the house in June and July. Notes from the finance panel on 7 July said

'due to client's non-engagement funding for emergency accommodation would be ended and Ms [E] would be given notice to vacate. Son to be offered a JHA [Joint Housing Assessment] to assess accommodation for him alone....case stepped down to early help [a support service for families run by the children's services department] and then closed in May despite continuation of funding.'
 26. Ms E telephoned the housing department on 10 July saying she had received a letter giving her three days' notice to leave. The officer she spoke to said she would arrange a Joint Housing Assessment (JHA) for Mr F.
 27. Ms E telephoned the housing options team on 16 July and said Mr F had called for the JHA interview and that they were both sleeping in a tent. It appears the housing options officer and a social worker from the children's services department team tried various numbers for Mr F but could not get hold of him. Another appointment was booked for a JHA, but again, this does not appear to have taken place. On 20 July, a housing options officer and Ms E spoke again and she confirmed they were still sleeping in a tent and Mr F was staying with his sister for two nights only. The housing officer's note said she had spoken to Mr F and *'due to some facts that have been established, we will not be carrying out an assessment'*. The Council has not provided a record of the facts that led the housing options officer to decide not to carry out an assessment.
 28. On 26 July, Ms E emailed the housing team to say she was homeless, living in a tent and responsible for a 17-year-old boy who was sofa surfing. She asked why she could not bid for properties. A rehousing officer replied saying she needed to fill in a change of circumstances form.
 29. Ms E sent the change of circumstances form on 6 August. She put on the form that she was homeless, sleeping rough and that the Council had evicted her from temporary housing. She said she and her son had been on the streets for a few weeks. There is no record of any action taken on receipt of the form.
 30. Ms E and an adviser from Shelter called the housing department on 3 September and spoke to a housing options officer. Ms E said she and her dependent child had been street homeless since 13 July. A housing options officer said the housing department would not provide temporary accommodation (as Ms E was previously intentionally homeless) and she would have to find private rented accommodation. The housing options officer checked with a colleague who said there had been no change of circumstances to trigger a fresh homelessness application.
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31. Ms E contacted us on 8 September. We asked the Council to review the case urgently and consider whether to take any action.
32. On 11 September, a housing options officer completed an initial housing assessment. She noted there was reason to believe Ms E was homeless and in priority need as she had a dependent child. There had been a change of circumstances since the previous application as the family were sleeping in a tent and Mr F had been staying with his father for a period and was now homeless. The housing department placed Ms E and Mr F in a Bed and Breakfast. After a few days, they were moved to a self-contained two-bedroom property and remain there at the time of writing.
33. The Council issued Ms E with a letter accepting the relief duty and sent her a personalised housing plan.

Conclusions

34. The Council was at fault in the way it dealt with the family. When the children's services department withdrew funding in July, it ought to have worked with the housing department to ensure the relevant housing assessments were carried out on Mr F in line with the statutory guidance described in paragraph 15. We note Mr F may have been hard to reach, but the records do not show enough attempts to contact him and in any event, Ms E was ringing the Council regularly and could have acted as a point of contact on his behalf. An officer did eventually manage to speak to Mr F (see paragraph 27), but the records indicate she had already decided not to proceed with a JHA. Our guidance [*Good Administrative Practice during the response to COVID-19*](#) is clear that we expect an audit trail of decision-making, summarising reasons for departing from normal practice. The failure to document the reason for not carrying out a JHA was a departure from the expectations set out in statutory guidance and was fault. And, the decision not to proceed was relevant because the Council had a duty to assess Mr F and its decision not to was significant because it meant he was effectively abandoned.
 35. The new information reported – that the family were sleeping in a tent – should have triggered some consideration as to whether Mr F should now be assessed as a child in need and whether the duty to provide accommodation in section 20 of the Children Act 1989 applied. Given the inherent risk of significant harm associated with street homelessness, we would also expect the Council to have considered whether its duty to make enquiries and take action to safeguard Mr F under section 47 of the Children Act 1989 was triggered. Instead, the Council did not take any action.
 36. Ms E was probably a licensee and so did not benefit from the temporary protection from eviction afforded to tenants in the Coronavirus Act 2020. However, the Council should still have taken into account the advice from government to consider hardship faced by renters. It should have been clear to the children's services department's funding panel that the family would suffer hardship following the withdrawal of funding as they had no other housing arrangements in place. While we are sympathetic to the pressures on councils, we expect them to consider national guidance issued during the pandemic and the failure to do so was fault.
 37. The housing department received information suggesting there was reason to believe Ms E and Mr F were homeless on five occasions:
 - on 16 and 20 July when Ms E told staff in housing options she and her child were sleeping in a tent;
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- on 26 July when she emailed housing options with the same information;
 - on 3 August when the housing department received a completed change of circumstances form with the same information; and
 - on 3 September when Shelter called housing options on Ms E's behalf.
38. Despite the above contacts, the Council failed to consider its legal duties under either the Housing or Children Acts or statutory guidance. This failure was not in line with:
- sections 184, 188 or 189 of the Housing Act 1996;
 - paragraphs 6.2, 11.6, 11.18 and 18.5 of the Homelessness Code of Guidance; and
 - sections 17, 20 and 47 of the Children Act 1989.
39. There is no evidence of regard to Ms E and Mr F's right to respect for family and private life when the Council decided to stop funding their housing. There is no indication of any consideration of their human rights and as such we do not consider the Council provided services in a way which had regard to those rights. This was an additional fault.

Did the fault cause injustice?

40. The above failings led to Ms E and Mr F becoming homeless and sleeping rough during the COVID-19 pandemic. They slept in a tent for almost two months. This caused them avoidable hardship and distress.

Recommendations

41. To remedy the injustice caused, the Council will, within one month of the date of this report:
- apologise to Ms E and Mr F;
 - decide whether Ms E is owed the full housing duty and issue a written decision on her homelessness application;
 - decide whether Mr F is owed any duty or service under the Children Act 1989 and provide that service. If the Council decides Mr F is not owed any duty under the Children Act 1989, it should go on to consider if it owes Mr F any duty under the Housing Act 1996;
 - pay Ms E and Mr F £1,500 each to reflect the avoidable distress and hardship caused by being homeless and sleeping rough for almost two months; and
 - pay Ms E an additional £200 to reflect her avoidable frustration when failing to get a service from the Council after reporting her homelessness.
42. Within three months, the Council should provide refresher training to staff in its housing allocations and housing options teams to ensure all officers are competent to identify information from potential applicants which triggers the duties in sections 184, 188 and 189 of the Housing Act 1996.
43. The Council has accepted all our recommendations, which we welcome. We will require evidence of compliance.
44. 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*)
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Final decision

45. The Council was at fault in dealing with a homeless family. It failed to act in line with the Housing Act 1996, the Homelessness Code of Guidance, the Children Act 1989 or with government guidance during COVID-19. This caused a woman and her 17-year-old son to become homeless and to have to sleep in a tent for almost two months. The Council needs to apologise, make payments, issue written decisions and provide staff training.