

Exeter City Council (20 014 237)

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Decision : **Upheld**

Decision date : **28 Apr 2022**

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The Ombudsman's final decision:

Summary: The Council's inaccurate advertising of two properties on the housing register was fault. The Council was also at fault for delays responding to Mrs X and her solicitor and failure to deal with a complaint in line with its policy. The Council has agreed to apologise, pay the family £1,575, and take action to improve its service.

The complaint

1. Mrs X complains on behalf of her son, Mr Y, that the Council:

- Advertised two properties as being on the ground floor when they were not
 - Failed to issue a decision following a statutory review request
 - Delayed and failed to respond to complaints and requests from Mrs X and her solicitor
 - Refused to reimburse her for the additional legal costs incurred by this delay
2. Mr Y was suspended from the housing register for over a month. Mrs X says he may have missed out on a suitable offer of accommodation during this period. Mrs X says that both she and her son have been put to significant time, trouble, and expense pursuing their complaint and that Mr Y remains in unsuitable accommodation.

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The Ombudsman's role and powers

3. 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)
4. 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)
5. 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)

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How I considered this complaint

6. I considered the complaint and the information Mrs X provided.
7. I made written enquiries of the Council and considered its response along with relevant law and guidance.
8. I referred to the Ombudsman's Guidance on Remedies, a copy of which can be found on our website.
9. Mrs X and the organisation had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

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What I found

Council duties to homeless people

10. Part 7 of the Housing Act 1996 and the Homelessness Code of Guidance for Local Authorities set out councils' powers and duties to people who are homeless or threatened with homelessness.
11. If a council is satisfied an applicant is homeless, eligible for assistance, and has a priority need the council has a duty to secure that accommodation is available for their occupation. This is called the main housing duty. Councils can end the main housing duty to applicants who have accepted or refused a suitable final accommodation offer. (Housing Act 1996, section 193 and Homelessness Code of Guidance 15.39)
12. Homeless applicants have a right to ask for a review of certain decisions about their homelessness within 21 days of the decision. This includes a council's decision to end the main duty. Applicants can also ask for a review of the suitability of a final accommodation offer. This right exists whether the applicant accepts or refuses the offer. (Housing Act 1996, section 202)

Allocations

13. 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))
14. The Council is a partner in a choice-based lettings scheme called Devon Home Choice. This means housing applicants can express an interest in available properties. This is called bidding. The Council advertises new properties on a weekly cycle and applicants can bid for three properties each week.
15. The Council places applicants who qualify to join the housing register in a priority band from Band A (highest priority) to Band E (lowest priority). This priority is the first factor the Council uses to allocate a property.
16. The Council's scheme says properties advertised will include a full description. So far as is relevant to this complaint, this includes:
 - Type of property
 - Number of bedrooms
 - Location of property
 - Floor level (if appropriate)

Background

17. Mrs X has a disability which affects her mobility. This means it is difficult for her to climb stairs.
18. Mr Y has poor mental health. He relies on Mrs X for support.
19. Mr Y, his partner Miss Z, and their young child were living with Mrs X in her flat. There was not enough space for them all.
20. The Council accepted that Mr Y and his partner were homeless. In March 2020, the Council awarded them Band B on its housing register. This meant Mr Y and Miss Z could bid for two-bedroom properties.
21. To make sure Mrs X would be able to visit, the couple only bid on ground floor properties.

What happened

22. In April 2020, Mr Y and Miss Z bid on a property advertised as a ground floor flat. However, when they viewed the property, they discovered it was

- on the first floor. I will refer to this as Property 1.
23. The Council told Mr Y and Miss Z that it was a suitable property and that it would end its homeless duty to them. Mr Y and Miss Z refused the offer.
 24. They asked the Council for a review of the suitability of the property. Mrs X instructed a solicitor to help them with the review. While the review was ongoing, Mr Y and Miss Z were suspended from bidding on other properties.
 25. In May, the solicitor pointed out to the Council that the property advert said it was limited to applicants with a connection to a different area anyway.
 26. At the end of May, the Council emailed the solicitor. It said that “decisions stemming from the offer” would be overturned. This meant that Mr Y and Miss Z would still be owed the main housing duty and could bid for properties in Band B.
 27. The Council said that it would follow up with a more detailed decision in a letter. It did not send any such letter.
 28. After several emails chasing the letter, in July the solicitor asked for the Council to consider the matter at stage one of its complaints process. Under the Council’s policy, it should have sent a response by early August. The Council did not respond to this complaint.
 29. In September, Mr Y and Miss Z bid on a property advertised as a ground floor flat. However, when they viewed the property, they found it was on the third floor. I will refer to this as Property 2.
 30. The Council said it was a suitable offer to end its main duty. Mrs X says Mr Y and Miss Z felt they had to move into the property.
 31. In response to the solicitor’s request for a response to the complaint in July, the Council said that since Mr Y and Miss Z were now housed, it did not think there were any outstanding issues.
 32. The solicitor disputed this, pointing out that Mrs X had accrued significant costs because of the delay in responding and the Council had still not given its decision on the April suitability review in writing.
 33. The Council did not respond to this complaint.
 34. In August 2021, Mrs X complained to the Council again. She said she had incurred avoidable legal costs of £900 because of the Council’s failure to respond to the solicitor. She asked the Council to allow Mr Y and Miss Z back on the housing register due to the advertising error.
 35. In September, Mr Y and his partner separated, and he returned to live with Mrs X.
 36. The Council responded to the complaint at stage one of its process. It said:

- it accepted it had delayed in responding to Mrs X and her solicitor and had not given its review decision in writing as promised.
 - it was up to the landlords of individual properties to ensure the accuracy of adverts on the Devon Home Choice website.
 - its decision to suspend Mr Y and Miss Z from bidding after being offered Property 1 was correct, albeit based on inaccurate information.
 - despite being inaccurately advertised, Property 2 was suitable and the Council was correct to end its homelessness duty to Mr Y and Miss Z.
 - it was Mrs X's decision to instruct a solicitor.
37. The Council offered to pay Mrs X £450 towards the fees she incurred as a remedy for the delay. It also agreed, given the change in Mr Y's circumstances, to allow him to join the housing register with the priority and date of the earlier application.
38. Mrs X said that it was the Council's delay and failure to respond to the solicitor which resulted in the fees. She asked the Council to consider her complaint at stage two of its process.
39. The Council wrote to Mrs X in October with its response to her stage two complaint. It said that Mrs X had been told in a telephone call in April that she did not need legal advice but could seek this if she wanted to. It said that since Mrs X made the decision to instruct the solicitor, it considered £450 was a suitable remedy.
40. Mr Y and Miss Z reconciled and he returned to live with her in the third floor flat. As a result, Mrs X is unable to visit her son and grandchild in their home.
41. The Council has added Miss Z to Mr Y's current application on the housing register in Band B with their original priority date of March 2020.

My findings

Property listing and offers

42. The Council says it is not responsible for the accuracy of adverts on the Home Choice website. It says this is the responsibility of the individual landlords. However, the Council is responsible for the scheme and allocating in line with its published policy. When another organisation provides services on the Council's behalf, the Council remains responsible for those services and for the actions of the organisation providing them.

43. The policy says that property adverts will contain a description of the property. These descriptions must be accurate so that applicants can make informed decisions about which properties to bid for. Publishing inaccurate property adverts is fault..
44. I am satisfied that had they been accurately advertised, Mr Y and Miss Z would not have bid on either Property 1 or Property 2.
45. As a result of the fault in advertising Property 1, Mr Y and Miss Z were unable to bid from late April until early June. In response to my enquiries, the Council provided evidence to show that at least one two-bedroom ground floor property was let to an applicant lower on the list than Mr Y and Miss Z. Therefore, it is likely that Mr Y and Miss Z missed out on an offer of suitable accommodation. This is a significant injustice to Mr Y and Miss Z.
46. Were it not for the fault in how Property 1 was advertised, I find it likely Mr Y and Miss Z would have been successful in bidding on another property before Property 2 was advertised. Therefore, the further fault in inaccurately advertising Property 2 would not have affected them. Instead, the inaccurate advert for Property 2 compounded the injustice already caused.

Complaints and communication

47. The Council has accepted it is at fault for:
 - failing to provide the review decision letter about Property 1 when it said it would
 - delay responding to Mrs X's solicitor
48. I find the Council is also at fault for failing to deal with the solicitor's stage one complaint in July 2020 and again in September. Had it done so, Mrs X would not have had to bring the complaint again in 2021. This is an injustice to Mrs X.
49. The Council offered Mrs X £450 towards the cost of her solicitor as a remedy for the fault it accepted. I do not consider this to be a suitable remedy for the injustice caused.
50. It is true that it was Mrs X's choice to instruct a solicitor. However, it was the significant delay by the Council which pushed the costs up. In the circumstances, I consider the Council should meet 75% of the costs.

Agreed action

51. When a council commissions another organisation to provide services on its behalf it remains responsible for those services and for the actions of the organisation providing them. So, although I found fault with the actions of the landlords in advertising two properties inaccurately, I have made recommendations to the Council to remedy the injustice it caused.
52. To remedy the injustice from the faults I have identified, the Council has agreed to:
- Apologise to Mr Y and Mrs X in writing
 - Pay Mrs X £225 in addition to the £450 already offered towards the legal costs she incurred
 - Pay Mrs X a further £150 in recognition of her avoidable time and trouble in having to bring a second complaint.
 - Pay Mr Y £750 in recognition of the significant avoidable distress and missed opportunity caused by the Council's inaccurate adverts
53. The Council should take this action within four weeks of my final decision.
54. The Council should also take the following action to improve its services:
- Produce a policy setting out how the Council will deal with inaccurately advertised properties on the housing register. This might include:
 - a. withdrawing and readvertising the property; or
 - b. allowing an applicant to refuse an offer of an inaccurately advertised property without penalty.
55. The Council should tell the Ombudsman about the action it has taken within three months of my final decision.

Final decision

56. I have completed my investigation. The Council is at fault. The action I have recommended is a suitable remedy for the injustice caused.

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Investigator's decision on behalf of the Ombudsman

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