

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

**Investigation into a complaint about  
West Berkshire Council  
(reference number: 21 014 573)**

**11 January 2023**

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## 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 X	The complainant
Council B	Another council
Provider C	A social housing provider in Council B's area

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## **Report summary**

### **Housing: Homelessness**

Ms X complained the Council refused to accept a homelessness application when she had to leave her home due to threats of violence. She also complained it delayed in dealing with her housing register application, her application for a discretionary housing payment and responding to her complaint.

### **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*)

The Council should also take the following action within three months of the date of this report:

- Apologise to Ms X for not providing interim accommodation and for not properly considering whether it owed a relief duty and pay her £500 for the frustration and uncertainty caused.
- Review its processes to ensure it accepts homelessness applications and provides interim accommodation in line with the law and guidance and provide guidance or training to relevant staff following that review.

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## The complaint

1. Ms X complained the Council:
  - refused to accept a homelessness application when she had to leave her home due to threats of violence, which meant she had to remain in unsuitable hotel accommodation with her children. Further the Council did not issue a written decision with appeal rights, which meant she did not get the chance to ask for a review of its decision;
  - delayed in dealing with her application for a discretionary housing payment and initially refused a payment because it did not wait for her to provide the evidence it had asked for;
  - delayed in dealing with her housing register application and did not respond when she queried the priority band awarded; and
  - delayed responding to her complaint.

## 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. 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*)
4. When considering complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that we will weigh up the available relevant evidence and base our findings on what we think was more likely to have happened.

### Relevant law and guidance

#### Homelessness

5. Part 7 of the Housing Act 1996 and the Homelessness Code of Guidance for Local Authorities (the Code) set out councils' powers and duties to people who are homeless or threatened with homelessness.
6. If a council has 'reason to believe' a person may be homeless or threatened with homelessness, it must take a homelessness application and make enquiries. The threshold for taking an application is low. The person does not have to complete a specific form or approach a particular council department. (*Housing Act 1996, section 184 and Homelessness Code of Guidance paragraphs 6.2 and 18.5*)
7. The council will make enquiries to establish whether the person is:
  - eligible for assistance;
  - homeless or threatened with homelessness;
  - in priority need; and
  - not intentionally homeless.

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8. Where the person is homeless and eligible for assistance, the council must take reasonable steps to secure suitable accommodation for them for 56 days. This is the relief duty. When the council decides this duty has ended, it must notify the person in writing.
  9. A council must secure interim accommodation for the person and their household if it has reason to believe they may be homeless, eligible for assistance and have a priority need. (*Housing Act 1996, section 188.*) Applicants with dependent children will be in priority need.
  10. At the end of the relief stage, the council must decide if it owes the person the main housing duty. It will owe the main housing duty if it is satisfied the person is homeless, eligible for assistance, has a priority need and is not intentionally homeless (unless it refers the application to another housing authority under section 198). (*Housing Act 1996, section 193 and Homelessness Code of Guidance, paragraph 15.39*)
  11. At the same time, the council may make enquiries to establish whether the applicant has a “*local connection*” with it. Generally, applicants may have a local connection if they live in the council’s area (or have lived there in the past), work in the area, or have family associations in the area.
  12. If the council determines the applicant has no local connection to it but has a local connection with another council, it can make a referral to that council if certain conditions are met. A referral cannot be made to another council where the applicant or someone in their household will be at risk of domestic abuse or other violence in that council’s area. (*Homelessness Code of Guidance, paragraph 10.51*)
  13. Under section 213 of the Housing Act 1996, a council can ask for assistance from another council. The council receiving the request for assistance must “*cooperate in providing such assistance as far as is reasonable in the circumstances*”. The Code, at paragraph 16.15 says this would be appropriate where an applicant is at risk of violence or serious harassment in the area where they applied for assistance.
  14. Most housing decisions must be confirmed in writing and the person has the right to ask for a review of the decision within 21 days. There is no right to a review of the decision to refuse to accept a homelessness application.

### **Assistance with housing costs**

15. Universal Credit (UC) includes an element to assist with rent. The maximum paid towards rent is the Local Housing Allowance (LHA), which is based on where the person lives and how many bedrooms they need for their household.
16. The Government restricts the total amount of benefit a person can receive. This is known as the benefit cap. The benefit cap does not affect those who are retired or receiving certain benefits, such as working tax credit.

### **Discretionary housing payment (DHP)**

17. Councils operate a scheme to assist with housing costs. This can be used to assist those whose rent is higher than the LHA and those subject to the benefit cap. DHPs are discretionary.
18. Relevant to this complaint, this Council’s scheme prioritises those who are at risk of homelessness, where DHPs can prevent homelessness.

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## Housing allocations

19. Most councils maintain a housing register for those waiting for social housing. The council 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)*)
20. An allocations scheme must give reasonable preference to applicants in the following categories:
  - homeless people;
  - people in insanitary, overcrowded or unsatisfactory housing;
  - people who need to move on medical or welfare grounds;
  - people who need to move to avoid hardship to themselves or others.(*Housing Act 1996, section 166A(3)*)
21. This Council's scheme prioritises applications based on four priority bands:
  - Band A: Emergency housing need to move.
  - Band B: Urgent housing need to move. The Council may award band B where housing conditions exacerbate a serious medical condition or disability.
  - Band C: Medium housing need to move. The Council may award band C where the applicant is owed a homelessness duty.
  - Band D: Low housing need to move.

## Complaints handling

22. This Council's complaints process has two stages:
  - Stage 1: Informal resolution. It aims to respond within 15 working days; and
  - Stage 2: Formal investigation. It aims to respond within 25 working days at this stage and will tell complainants if the reply will take longer.
23. If the complainant remains unhappy with the response, they can complain to us.

## How we considered this complaint

24. We produced this report after examining relevant documents, discussing the complaint with Ms X and making targeted enquiries of the Council.
25. We gave Ms X and the Council a confidential draft of this report and invited their comments. Ms X told us she did not want to make any further comments. The Council did not make any comments, despite being asked to do so several times.

## What we found

### What happened

26. In this report we refer to two different councils. The subject of this complaint is West Berkshire Council, which we refer to as "this Council". Ms X was a council tenant in Council B's area. In December 2020 she had to leave her home due to threats of violence. Initially the police arranged emergency accommodation for three nights. When this arrangement ended, the police informed Council B's lettings team Ms X could no longer live in her council property because it was not safe. The police advised Ms X to approach this Council as homeless because they considered she would be safe in this Council's area.

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27. Ms X contacted this Council the next day. She explained the police had told her it was not safe for her to live in Council B's area and that she was also at risk in certain other areas. This Council told her that because the first contact was to Council B's lettings team, Council B had a duty to assist her. It also contacted Council B to stress it was their duty to assist Ms X. Council B agreed to make enquiries about where Ms X and her family could stay that night. Council B accepted a relief duty and placed Ms X in interim accommodation in this Council's area.
28. Ms X asked this Council for a decision in writing. This Council sent her an email, which:
- set out its understanding of the situation, including that she was at risk of violence in Council B's area and that the police were involved;
  - stated that the police contact with Council B amounted to a referral by a public body, which meant that Council B had a duty to assist her; and
  - further stated that Council B had a duty of care as Ms X's landlord.
29. Ms X instructed a solicitor, who contacted this Council in early January 2021. The solicitor set out the background to Ms X having to leave her home, and stated their view that this Council should:
- accept a homelessness application and make enquiries; and
  - provide interim accommodation for Ms X in the meantime.
30. This Council responded that:
- Ms X first approached Council B and therefore Council B should provide accommodation;
  - the police had not confirmed Ms X would be safe in its area and its attempts to contact the police had not been successful; and
  - it understood Council B had since accepted a relief duty for Ms X. Council B could explore placing Ms X in social housing outside its area, either through another council that owned its own housing stock or with a registered social housing provider.
31. Shortly after this, Council B asked this Council for assistance under section 213. It said Ms X was currently living in a hotel with no kitchen facilities in this Council's area. It had established this Council's area was safe for her and was satisfied it would not be appropriate for her to be accommodated in its own area. This meant it could not provide an alternative council property and it would be difficult for Ms X to secure private rented accommodation due to her financial circumstances. It requested assistance in discharging the relief duty on the basis that the most appropriate way to do so would be for Ms X to be offered social housing in this Council's area, which is where she wanted to live.
32. This Council refused to assist. It said:
- the request was not reasonable because the circumstances were not exceptional, and it had not seen police evidence that Ms X was safe in its area. It said the police evidence provided mostly related to a family member who was not part of the household;
  - it did not have any social housing stock of its own and it would take a long time for her to be offered a property through its housing register; and

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- Council B could discharge its duty by contacting other housing providers and it provided details of the largest social housing provider in Council B's area, provider C.
33. It asked Council B to send it the following information before it considered the request further:
- Council B's reasons for not sending it an out of area placement notification when it placed Ms X in its area;
  - Council B's reasons for not being able to discharge the relief duty, which could be discharged by placing Ms X in another council area;
  - details of the attempts Council B had made to secure accommodation for Ms X during the month it had been assisting her;
  - confirmation that Council B had approached provider C directly about whether it could offer social housing to Ms X in exchange for placing another applicant in Council B's area.
34. In late January/early February 2021 this Council corresponded further with Ms X's solicitor. It maintained that it was Council B's responsibility to assist Ms X and that it would disadvantage Ms X if this Council helped her. It said this was because if it did so it was likely Ms X would end up in private rented sector accommodation. This would mean she lost her social housing tenancy, and it would be more expensive for her. However, it suggested Council B could seek a reciprocal arrangement with a social housing provider in this Council's area.
35. In early February, Ms X found private rented accommodation in this Council's area.

### **Analysis and findings - Homelessness**

36. Ms X approached this Council for assistance. She explained she had had to leave her council property in Council B's area because of serious threats of violence and provided details of the lead police officer dealing with the case. This Council spoke to her about her situation, spoke to Council B and attempted to contact the police. On balance, it had sufficient information to establish Ms X "*may be*" homeless on the grounds it was not reasonable for her to continue to occupy her council property. This meant it was under a duty to make enquiries about what duties it may owe her, including whether it owed a relief duty.
37. Under section 188 where an applicant "*may be*" homeless, is in priority need and is eligible for housing assistance, councils have a duty to provide interim accommodation for them. The courts have confirmed the threshold for deciding the applicant "*may be*" homeless is low. On balance, if it had properly considered the matter, this Council would have decided it had reason to believe Ms X was homeless, in priority need (as she had dependent children), and eligible for assistance. It therefore had a duty to provide interim accommodation at her request. It failed to do so, which was fault.
38. It argued that the police referral to Council B triggered a duty for Council B to provide interim accommodation. However, such an assessment is not relevant to its decision-making under section 188. Whilst it may have been appropriate for this Council to contact Council B about which of them should fund the interim accommodation, those discussions should take place whilst the accommodation is being provided, not before agreeing to provide it.



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39. Although this Council made some preliminary enquiries, it is unclear whether it accepted a homelessness application. It did not issue Ms X with a section 184 decision letter. Its failure to consider whether it owed a relief duty to Ms X and confirm its decision in writing was further fault.
  40. We note this Council argued that taking a homelessness application may have disadvantaged Ms X. This was because it was likely it would have discharged the duty by identifying private rented accommodation for her so she would lose her social housing tenancy. However, it could have accepted an application and then explained the situation so that Ms X could make an informed decision about whether to pursue an application with this Council or Council B. Having accepted a homelessness application it could not have referred Ms X back to Council B on the basis that Ms X did not have a local connection in its area because the police had confirmed Ms X was not safe in Council B's area.
  41. In the event, Council B accepted a homelessness application, provided interim accommodation, and later accepted a relief duty. However, Ms X was frustrated because she could not pursue an application in the area of her choice, West Berkshire. She is left with some uncertainty about whether the outcome may have been better, including whether the interim accommodation would have been more suitable, if she had been able to pursue a homelessness application with this Council.

#### **Refusal to assist Council B**

42. Council B does not need to show the circumstances were exceptional nor that it could not discharge its housing duty before seeking assistance from another council. Arguably, this Council was setting a high bar to be met before it would consider assistance to Ms X, which was not justified.
43. That said, it explained that it had no social housing stock of its own and that Council B could seek a reciprocal arrangement with the main social housing provider in its area, for which it provided details. Further, it did not rule out providing assistance, but asked for further information and evidence, which Council B did not provide because shortly thereafter Ms X identified private rented accommodation.
44. On this basis, whilst this Council's reluctance to assist Council B was not good practice, it falls short of amounting to fault.

#### **Other complaints considered**

##### **Housing register application**

45. Ms X said she asked about joining this Council's housing register shortly after moving into its area but was told she was not eligible because she had not lived in the area for two years. She has provided evidence she asked the Council for log-in details on 1 November 2021, after she tried again to make an online application but got a system message that an application already existed with her national insurance number. In response to our enquiries, the Council said it had no record of an application from Ms X before 1 November 2021, and that application was incomplete. It accepted her application on 9 November and awarded her Band D priority. It confirmed this in writing and told Ms X she could ask for a review within 21 days.
46. On 7 December Ms X asked whether the Council had taken her medical and financial circumstances into account. The Council replied the next day to say her financial circumstances, on their own, did not amount to a housing need and

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asked for medical evidence to consider if she was eligible for medical priority. It subsequently considered the medical evidence Ms X provided and awarded her Band C on 23 March. It later reviewed the application and awarded her Band B priority on 31 March, which it said took into account the ending of the DHP (see below).

47. There is not enough information to determine when Ms X first applied to the housing register. There was no delay from 1 November 2021 onwards. There was no fault in the way the Council considered the priority band, which reflected the information it held at the various points in time.

### **Discretionary housing payment (DHP)**

48. Ms X applied for a DHP in mid-May 2021. The Council told her what evidence it needed to support this, including evidence from the Department of Work and Pensions (DWP) about her Universal Credit (UC) claim. By early July it had not received the DWP evidence and made a decision based on the information it had, which included that she was a student. It refused the DHP because payments were not intended for students and signposted her to other sources of support.
49. Just under a week later, it reviewed the case and decided to award Ms X a DHP of £75 a month, until her course began in September because she had shown financial hardship. It said she could ask for a review of its decision, which she did in late July.
50. There was a delay by this Council in considering the review. In the meantime, Ms X discovered her course would not be running in September 2021, which meant she would no longer be a full-time student. After asking for further evidence the Council awarded an increased DHP to reflect that Ms X was subject to the benefit cap and her rent was more than the Local Housing Allowance (LHA). This award was made for six months. In its complaint response to Ms X, the Council acknowledged there was a delay in carrying out the review, for which it apologised.
51. The Council made its initial decision without waiting for the DWP evidence because its processes required it to make a decision within a specific timeframe, but then revised its decision within a week. DHPs are discretionary and the Council was entitled to refuse where other sources of funding may be available.
52. The Council accepted there was a delay in considering the review, which was fault. This did not cause Ms X a significant injustice because the award would not have been increased if it had been considered sooner. This was because it did not become clear until September 2021 that Ms X would not continue to be a full-time student. On this basis, the Council's apology is a sufficient remedy.

### **Complaints handling**

53. Ms X complained on 2 September and the Council responded on 24 September, which was 16 working days, which is one day later than its policy says.
54. Ms X made a stage 2 complaint on 27 September. The Council's policy says it aims to respond within 25 working days but will let the complainant know if there will be a delay. There was a delay in this case as relevant officers were on annual leave, but the Council wrote to Ms X to explain there would be a delay on 27 October 2021. It issued a stage 2 response on 10 November 2021, which was 32 working days. Although there was a short delay in responding, this was not sufficient to amount to fault. The Council responded appropriately to the issues Ms X raised.

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## Recommendations

55. Within three months of the date of this report, the Council should:
- apologise to Ms X for not providing interim accommodation and for not properly considering whether it owed a relief duty and pay her £500 for the frustration and uncertainty caused; and
  - review its processes to ensure it accepts homelessness applications and provides interim accommodation in line with the law and guidance and provide guidance or training to relevant staff following that review.
56. 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

57. We decided to issue a final report. We found fault by the Council causing injustice. We have recommended action to remedy that injustice and prevent recurrence of the fault.