

**Report  
on an investigation into  
complaint ref no 12 001 189 against  
Isle of Wight Council**

**14 January 2014**

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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

## **Report summary**

### **Housing**

Mr S complains that the Council forced him to accept a property that was too small for his family and has since then failed to offer him a larger property or give him adequate priority on the housing register to enable him to move to a larger property within a reasonable period of time.

The Ombudsman finds that the Council was at fault in offering Mr S a property which was too small for his family's needs. The Council was also at fault in failing to advise Mr S in writing of his right to request a review of the suitability of the accommodation offered.

This fault has 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 not large enough for them. They have been living in overcrowded conditions for two years and Mr S's 12 year old daughter was forced to sleep in a bedroom which, by law, is too small.

### **Finding**

Fault found causing injustice.

### **Recommended remedy**

The Council has agreed to provide guidance to its housing officers about overcrowding rules to ensure their knowledge and practice in this area is up to date.

I also recommend the Council:

- elevates Mr S's priority to the highest category (Band One) to ensure he is re-housed as quickly as possible; and
- pays Mr S £1,000 to acknowledge the distress and frustration he and his family have suffered by living in unsuitable accommodation for over two years longer than necessary and for his time and trouble pursuing his complaint.

## **The complaint**

1. Mr S complains that the Council forced him to accept a property that was too small for his family and has since then failed to offer him a larger property or give him adequate priority on the housing register to enable him to move to a larger property within a reasonable period of time.

## **Legal and administrative background**

2. The Ombudsman's powers are defined by the Local Government Act 1974 (as amended). She investigates complaints about 'maladministration' and 'service failure'. In this report, I have used the word fault to refer to these.

### **The Council's homelessness duty**

3. Under part VII of the Housing Act 1996 (as amended) a council has a duty to secure suitable accommodation for an applicant if it is satisfied: he is eligible for assistance; homeless or threatened with homelessness within 28 days; in priority need (for example with dependent children); not intentionally homeless or threatened with homelessness intentionally; and has a local connection with the area.

### **Part X Housing Act 1985 Overcrowding**

4. Section 324 of the Housing Act 1985 ('HA 1985') states a property is overcrowded by law when the number of people sleeping in it contravenes either the "room standard" or the "space standard".
5. Section 325 HA 1985 says the room standard is contravened when the number of rooms available in the property means that two people of the opposite sex who are not living together as husband and wife must sleep in the same room. Children under the age of ten are left out of the calculation.
6. A room is available for sleeping accommodation if it is normally used as a bedroom or as a living room.
7. Section 326 HA 1985 states that the space standard is contravened when the number of people living in the property exceeds the 'permitted number', taking into account the number and floor area of rooms available as sleeping accommodation. Rooms under 50 ft<sup>2</sup> cannot be taken into account. The minimum size of a bedroom for children under 10 years old is 50 ft<sup>2</sup> and the minimum size for children of 10 years and over is 70 ft<sup>2</sup>.

### **The Council's Housing Allocations Policy**

8. The Council's Housing Allocations Policy in force in September 2011 stated that a young person was classed as a child until the age of 16 for the purposes of deciding what size of accommodation was suitable. Anyone over 16 needed their own bedroom. Two children of the same sex could share a bedroom.
9. The policy states applicants will be prioritised according to housing need and placed in one of six bands, Band One being the highest priority.
10. The policy states that homeless applicants will be dealt with separately. This is because applicants to whom the Council owes a statutory homeless duty cannot remain in temporary accommodation indefinitely. Therefore, if applicants are not

bidding or are unable to bid the Council can decide to provide assistance with securing alternative accommodation.

11. The policy states that, because of the very high demand for properties on the Island, additional bedrooms cannot be given to applicants who have children living separately, but who visit and stay on occasions.

### **How I considered this complaint**

12. This report has been produced following the examination of relevant documents.
13. The complainant and the Council were given a confidential draft of this report and invited to comment before the report was finalised. No comments were received.

### **What happened**

14. Mr S and his family have been registered on the Council's housing register for a permanent move to a four-bedroom property since May 2007 when the Council accepted a homelessness duty to Mr S and provided him with temporary accommodation in a four-bedroom house. At that time Mr S had four of his children living with him: his eldest son, then aged 13, and three daughters aged 7, 10 and 11.
15. In April 2010, when the Council's new choice based lettings system was introduced, Mr S's application was transferred to the Council's "Island Home Finder scheme". Under the scheme Mr S has the right to bid on any suitable properties that he and his family are eligible for. Mr S placed no bids on the system as there were no suitable properties available in his areas of choice.
16. Having recognised the need for more four-bedroom properties, the Council funded a local registered housing provider (Housing Association X) to purchase a small number of four-bedroom properties on the open market to increase the social housing stock for this size of property. A condition of the funding was that the Council would have the right to nominate applicants for the houses where it had accepted a homeless duty towards them and they needed four bedrooms.
17. Housing Association X purchased a property with the assistance of the Council funding and requested a nomination from the Council. The Housing Association told the Council the property had four bedrooms.
18. The Council decided Mr S and his family could benefit from the opportunity to move to more settled accommodation given the length of time they had spent in temporary accommodation and the fact that it was unlikely that a property of the right size and in the right location would become available in the foreseeable future in Mr S's limited areas of choice. The Council therefore nominated Mr S for the property.
19. The property has four bedrooms, a living room, a kitchen/diner and a bathroom. However one of the bedrooms measures only 49 ft<sup>2</sup>.
20. Housing Association X's staff visited Mr S to discuss the potential offer and accompanied him on a viewing of the property. They say that at no time did Mr S raise any concerns that the property would be too small. Mr S says he stated at the viewing that the property was unsuitable both because of its size and because the area was not suitable for a family as it is dominated by older residents.

21. Mr S says he asked the Council if he could refuse the property and was told that if he did he would not be offered another one and would also lose the temporary accommodation he was living in. He therefore signed for the tenancy and the family moved into the property on 5 September 2011. There is no independent evidence of exactly what advice Mr S was given at the time, either by the Council or by Housing Association X.
22. An applicant has the right to refuse an offer of accommodation if he considers it is not a suitable or reasonable offer. He can also request a review of the suitability of the offer. If such a review concludes the offer is suitable, the Council's homelessness duty is discharged. In such circumstances, the applicant's right to occupy the temporary accommodation provided by the Council is terminated and he becomes responsible for securing his own accommodation. However, he also has the right to accept the offer of accommodation and take up occupation and then request a review of its suitability.
23. The Council did not send Mr S a letter advising him of his right to request a review of the suitability of the accommodation offered. Mr S should have been given this information in writing so he would have had the opportunity to make a more informed choice about whether to accept the offer and then request a review of suitability or whether to refuse the offer and request a review. The Council accepts this was fault and has apologised to Mr S.
24. Mr S asked for advice from a law centre shortly after accepting the tenancy. The law centre complained to the Council that the family had been forced to move out of suitable temporary accommodation into a house that was too small.
25. The Council investigated the matter and found that one of the bedrooms was too small to count as a bedroom because it was under the minimum size permitted by the HA 1985. The Council therefore accepted the property was too small for the family despite having the correct number of bedrooms. At the time of the offer Mr S's son was 18 and his daughters were 11, 14 and 15.
26. The Council wrote to Mr S on 7 October 2011 and agreed to reinstate his housing application without loss of time or priority which put his application back into the same position it was before he accepted the Council's offer. Unfortunately, no alternative temporary accommodation of the size required for Mr S's family was available. The Council therefore decided to treat the property as temporary accommodation even though it was originally intended to be permanent.
27. The children continued to go to the same schools after moving to the property but soon found the journey to be too difficult as they had to catch one bus into town and then another bus to the school. They therefore had to change schools.
28. Mr S is still waiting for permanent accommodation. His application remains in Band Three. He says the temporary accommodation the family lived in before was more suitable for their needs because the bedrooms and the living room were bigger and it was in a more suitable area.
29. Mr S says there is inadequate storage in the property so many of the family's clothes are stacked in piles in the hallway, living room and kitchen as there is nowhere else to put them. He says the whole situation is extremely stressful.
30. Mr S says there have been many complaints from older residents about the children playing football, riding their bikes and playing outside and this has contributed to the

stress. He has recently been diagnosed with diabetes which he considers has been brought on by the stressful living conditions.

## Findings

31. The statutory standards set out at paragraphs 4 to 7 above were met so the family is not statutorily overcrowded. However, the Council says it does not count living rooms as bedrooms and the bedroom sizes must meet the requirements in s326 HA 1985. The smallest bedroom which is less than 50 ft<sup>2</sup> could not therefore be taken into account. So the family was overcrowded under the Council's policy when they moved into the property.
32. I do not criticise the Council for making a direct offer to Mr S as it is entitled to do so. The Council has a duty to homeless applicants and is entitled to take steps to provide or secure accommodation in circumstances where an applicant has been living in temporary accommodation for some time. But, regardless of whether the Council advised Mr S of his right of review, it was fault for it to offer him a property which did not comply with its policy.
33. The Council says it was not at fault as it nominated Mr S for the property based on the details provided by Housing Association X. It says Housing Association X did not advise it that the property was too small either in terms of the number or size of the bedrooms. The Council says it took the property details supplied by Housing Association X in good faith.
34. The Council had the statutory obligation of discharging its homeless duty and, in so doing, reached agreements with Housing Association X to make properties available for it. I find Housing Association X was acting on behalf of the Council and, in that role, acted with fault for which the Council is liable. It is no defence for the Council to say it relied on what Housing Association X told it.
35. The Council's fault has 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 not big enough for them. Mr S says that, until his son left the property in September 2012, he had to sleep in the living room or share a bedroom with his son. He says this was difficult because the living room is the only usable communal area. The property has a conservatory which is too cold to use and the kitchen is small. Mr S's 12 year old daughter slept in a bedroom which, by law, is too small.
36. The Council says it is not clear why Mr S slept in the living room or shared a bedroom with his son as there were enough bedrooms for all family members, albeit that one of them was 1 ft<sup>2</sup> smaller than it should be. It says two of the bedrooms were of a sufficient size for Mr S and his son to have separate bedrooms, the youngest daughter could have used the smallest room and the two elder daughters could have shared a fourth bedroom as they were both under 16 at the time.
37. However, Mr S's youngest daughter was 11 when the family moved in to the property. The law says the minimum size of a bedroom for children aged 10 and over is 70 ft<sup>2</sup>. The smallest room was therefore unusable by any member of the family and was not too small by only 1 ft<sup>2</sup> as the Council says, but by 21 ft<sup>2</sup>.
38. In addition, Mr S says his elder daughters could not share a room because they were abused in the past. He says the Council was aware of this and has a report from his

daughters' social worker confirming this. I have not seen any evidence that the Council had agreed the girls needed separate bedrooms until Children's Services confirmed in January 2013 that they now believed the girls did need separate bedrooms. But, given the changes in the ages of the girls since moving to the property (they are now over 16 and therefore require their own bedrooms under Council policy), this information did not alter the position as Mr S was already registered for a move to a property which would allow them separate bedrooms.

39. When Mr S's eldest son left the property in September 2012, the family was still overcrowded under the Council's policy as there are only three usable bedrooms and each family member on the application requires their own bedroom.
40. Mr S says he was not treated with courtesy or respect and was bullied into accepting the offer in September 2011 by the Council. The Council denies this saying that officers explained Mr S's rights regarding the offer, although this was not confirmed in writing. It says Mr S was aware of his right to refuse the offer and/or request a review of its suitability. There is a conflict of evidence on this point. In the absence of any evidence to support either version, I cannot safely reach a conclusion as to what advice the Council gave Mr S.
41. I find the Council was at fault in failing to advise Mr S in writing of his right to request a review of the suitability of the accommodation offered. The Council has accepted this and has apologised to Mr S.
42. Mr S tells me that, during the course of my investigation, more of his children have come to live with him creating further overcrowding. However, this is a new matter and the additional overcrowding is not the fault of the Council. I have not therefore taken this factor into account in the recommendations below.

## **Conclusions**

43. I find there was fault causing injustice. The Council was at fault in offering Mr S a property which was too small for his family's needs. As a result he and his family have been living in overcrowded conditions for over two years. The Council was also at fault in failing to advise Mr S in writing of his right to request a review of the suitability of the accommodation offered.

## **Recommendations**

44. The Council has agreed to provide guidance to its housing officers about overcrowding rules to ensure their knowledge and practice in this area is up to date.
45. I also recommend that the Council:
  - elevate Mr S's priority to the highest category (Band One) to ensure he is re-housed as quickly as possible; and
  - pay Mr S £1,000 compensation for the distress and frustration he and his family have suffered by living in unsuitable accommodation for over two years longer than necessary and for his time and trouble pursuing his complaint.