

## **The Ombudsman's final decision**

Summary: The Council was at fault for failing to properly consider medical evidence Mrs B provided when deciding her medical housing priority. It has agreed to reconsider her application.

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## **The complaint**

1. The complainant, whom I refer to as Mrs B, complains that the Council did not properly take account of her son's medical needs when deciding her housing allocation priority. I refer to her son as C.

## **The Ombudsman's role and powers**

2. 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*)
3. We cannot question whether a council'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. 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*)

## **How I considered this complaint**

5. I considered information from Mrs B and the Council. I wrote to Mrs B and the Council with my draft decision and gave them the opportunity to comment.

## **What I found**

### **What happened**

6. Mrs B lives in a two-bedroom house with her partner and their two sons. C, who is 4 years old, has autism. In 2018 Mrs B asked the Council for medical priority to move to a larger property. She said C's condition meant he needed his own room.
7. On 1 May an occupational therapist (OT) completed a report on C's needs. The report said C needed an upstairs toilet (as well as a downstairs toilet), and would benefit from having his own bedroom because he shows aggression and violent

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behaviour towards his brother and wakes him up during the night. The report said this violent behaviour happened in the car and in the home. It also said C's brother had become more aggressive and had started fighting back.

8. On 20 June the Council's medical adviser wrote to the Council and said the family's circumstances did not justify medical housing priority. He said C's aggression was mainly in the car, and noted that C's brother is older. He did not mention C disturbing his brother's sleep, his brother's retaliation to C's violent behaviour, or the OT's recommendation for a property with an upstairs toilet.
9. On 12 July Mrs B asked the Council to review her medical priority. In July and August she provided letters from C's GP, his community nursery nurse and his paediatrician, all of which supported her assertion that C needed his own room. The letters referred to C's behaviour towards his brother, his difficulties sleeping in a room with his brother, and his lack of a *"safe calm space to go [to] when he is overwhelmed ... he is struggling to manage his emotions and sensory overload due to his condition"*.
10. The Council wrote to Mrs B on 17 September and said it had not increased her medical priority. It said C's behavioural issues, meltdowns and decreased safety awareness would not be improved by moving to a larger property. It said the OT's intervention plan did not support the need for a third bedroom but identified other areas of support which could be met in the family's current property. It said its medical adviser had said there was no medical need for an extra bedroom.
11. The Council told Mrs B that it had completed its review, and referred her to the Ombudsman if she was dissatisfied.

### **The Council's housing nominations policy**

12. This policy says that, where an applicant or a member of their household has a medical condition or disability that is affected by their housing circumstances, they will be asked to complete a medical self-assessment form. This may be referred to the council's Independent Medical Adviser if the Council needs more advice or guidance.
13. The policy says the Council will review all advice and information provided from the applicant or other professional involved in their care. It says it is the Housing Officer's final decision whether or not to award priority on medical grounds.
14. The policy says that, in deciding priority, the Council will consider how the current accommodation is causing or affecting a medical condition, and the severity of the effect the housing is having on the condition.

### **Analysis**

15. It is not the Ombudsman's role to decide housing priority. That is for the Council to decide, having considered relevant evidence.
16. However, in making such decisions the Council must take account of its nominations policy and must properly consider an applicant's circumstances (including any medical evidence). If it does not do so, the Ombudsman may find fault.
17. In Mrs B's case, the Council followed correct procedure in referring her application to its medical advisor and in considering whether C's condition requires Mrs B to have medical priority for a transfer to a three-bedroom property.
18. However, the medical adviser's decision pre-dates most of the medical letters Mrs B provided to the Council. The OT assessment was completed before, but

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the adviser's decision does not appear to have taken account of large parts of the OT's report.

19. The adviser said C's aggression towards his brother took place "*mainly in the car*", whereas the OT report said it took place "*predominantly in the car and in the home*". The adviser's decision letter did not mention C disturbing his brother's sleep, or the OT's recommendation for a property with an upstairs toilet. He says C's brother is older – with the implication seeming to be that this reduces the impact of C's violence – without mentioning C's brother's retaliations to his violent behaviour.
20. The Council's medical advisers do not make decisions on medical priority – they only provide advice and guidance. It is for the Council to make final decisions, although it can consider input from a medical adviser before doing so. The Council, in Mrs B's case, refers to the medical adviser's recommendation in its decision letter of September 2018, so this clearly formed a part of its consideration.
21. In the same decision letter, the Council said it had considered medical evidence which Mrs B provided after June 2018 (which the medical adviser was clearly unable to consider).
22. However, the letter says the OT's intervention plan did not support the need for a third bedroom. Although the intervention plan did not mention a third bedroom, the accompanying report said C would benefit from having his own bedroom because he shows aggression and violent behaviour towards his brother and wakes him up during the night. The Council's letter did not mention this, and the letter suggests the OT had not supported C's need for a third bedroom at all, which was not the case.
23. The Council's letter does refer to C's behavioural difficulties, and says they will probably remain unchanged in a larger property. However, the letter does not demonstrate a consideration of how the impact of such behaviour on the family – especially C's brother – would decrease in a larger property (as suggested by medical professionals), or why this did not justify medical priority.
24. I cannot say whether Mrs B should or should not be eligible for a three-bedroom property. However, I have concluded that the Council did not fully consider the medical evidence available when deciding her priority, and did not fully explain why the evidence did not justify a transfer to a larger property.
25. As a result, I have found fault with the Council. It should reconsider its decision, taking up-to-date medical information into account. If it needs advice from a medical adviser, it should ask for new advice, rather than relying on the advice of June 2018.

### **Agreed action**

26. The Council has agreed to reconsider Mrs B's application for medical priority for a transfer to a larger property.
27. This action should be completed within six weeks of the date of this decision statement.

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## **Final decision**

28. The Council was at fault for failing to properly consider medical evidence Mrs B provided when deciding her medical housing priority. The agreed action remedies her injustice.

## **Investigator's final decision on behalf of the Ombudsman**