

The Ombudsman's final decision

Summary: Mr Y complains about the Council's refusal to award him higher priority on medical grounds under its housing allocations policy. The Ombudsman has decided to uphold Mr Y's complaint that the Council failed to give clear reasons, in line with its Housing Nominations Policy, as to why he was not awarded higher priority on medical grounds. We find that this caused Mr Y uncertainty. To remedy this injustice, the Council has agreed to apologise to Mr Y, make him a payment, carry out a banding review in a way that is in line with its policy and make a service improvement.

The complaint

1. The complainant, who I shall refer to here as Mr Y, complains about the Council's refusal to award him higher priority on medical grounds under its housing allocations policy. He says, when reviewing his banding, the Council:
 - a) incorrectly told him he could not register his newborn child as a dependent in his household;
 - b) incorrectly stated his condition was not caused by his current accommodation and failed to give clear reasons why he was not awarded higher priority on medical grounds;
 - c) failed to consider his need for private outdoor space to help with his mental health conditions. He says the Council's consideration of his conditions showed a bias against mental health conditions; and,
 - d) failed to consider the impact noise from communal outdoor areas was having on his conditions and ability to leave his home.
2. Mr Y says he currently feels trapped in his home because he is surrounded by communal outdoor spaces. He says this affects his mental health conditions, including social anxiety, as he struggles to go out into public spaces. Mr Y says this means he often keeps his curtains closed and it makes accessing mental health services more difficult.

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 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*)
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*)

How I considered this complaint

6. I considered the information and documents provided by Mr Y and the Council. I spoke to Mr Y about his complaint.
7. Mr Y and the Council both had an opportunity to comment on my draft decision. I considered their comments before making a final decision.

What I found

Housing allocations

8. 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)*)
9. An allocations scheme must give reasonable preference to applicants in some categories, including people who need to move on medical or welfare grounds and people who need to move to avoid hardship to themselves or others. (*Housing Act 1996, section 166A(3)*)
10. The Council's Housing Nominations policy (2015) sets out eligibility for applicants to its bidding register for a new property. It has five different eligibility categories known as bands. Applicants in Band A will have the highest priority, with applicants in Band E the lowest priority.
11. Applicants may be awarded Band A to Band D priority on medical grounds by the Council. The level of banding awarded will depend on how severely the applicant's condition is affected by their current housing situation. For example, someone's medical condition who is severely affected by their current housing situation may be awarded Band A by the Council (where there is an urgent housing need). Where the Council decides the applicant's current accommodation is not appropriate for their medical needs and there is a high medical need to move, the Council may award Band C (where there is a high housing need).
12. Its policy states, 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 Housing Officer needs more advice or guidance before making a decision about whether priority on medical grounds should be awarded.
13. When assessing bedroom entitlement, the Council's policy states that a single person will be entitled to bid on one-bedroom properties, whereas parent(s) with one child will be entitled to bid on two-bedroom properties.

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14. The Council's allocation policy states if dependent children join the applicant's household, the applicant will need to prove that:

- They are the dependent's principal guardian; and
- their home is the dependant's main home and will be for the foreseeable future.

What happened

15. In January 2020, Mr Y applied to the Council to have his banding reviewed. He had been awarded Band E under the Council's Housing Nominations policy. This was awarded to applicants, like Mr Y, who were tenants "of registered providers seeking alternative accommodation but [the Council considered] otherwise adequately housed ... [and] living in the [Council authority area]". Mr Y was housed in a two-bedroom, ground floor flat. He applied on medical grounds for a banding review because he said:

- his existing mental health issues were being negatively affected by his current housing. He asked to be considered for priority on medical grounds with a need for a two-bedroom property, private access and outdoor space. Mr Y provided a number of letters from medical professionals in support of his review request; and
- the Council's housing officer had incorrectly told him he was not eligible for priority on medical grounds. He said the housing officer told him the reason for this was because his mental health conditions would continue even if he was offered alternative accommodation.

16. In February, the Council wrote to Mr Y with the outcome of its banding review. It refused to change Mr Y's banding. It explained that it considered Mr Y was adequately housed in social housing and the number of bedrooms in his property suitably met his needs. It said Mr Y's housing need was to be housed in a one-bedroom, ground floor flat. As Mr Y was housed in social housing, it said he could bid for accommodation conducive to his lifestyle under its Choice Based Lettings system.

17. Some days later, Mr Y requested a review of the Council's banding decision and asked the Council to prioritise him as in urgent need of a two-bedroom property. He said:

- the Council had incorrectly said he lived in a one-bedroom property. Rather, he lived in a two-bedroom property where the second bedroom was used when his son stayed or he needed support with his mental health conditions from a friend or his partner;
- he disagreed with the Council housing officer's decision. He said the evidence from his GP supported the position that a move to a property with private outdoor space would help Mr Y's mental health conditions. He said such a move would help as he would no longer feel trapped in his home by the communal outdoor spaces. With access to a private outdoor space, he would be able to leave his property more easily and keep his curtains open; and,
- his partner was expecting a child who they planned to register as living with Mr Y later in the year.

18. In October, the Council wrote to Mr Y with the outcome of the review of its decision. It upheld its decision and decided Mr Y would remain in Band E. The Council said:

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- it agreed that Mr Y was currently housed in a two-bedroom, not one-bedroom, property. However, it said there was insufficient evidence to show Mr Y required the second bedroom to meet any care needs;
 - for Mr Y's newborn child to be considered part of his household, he would need to complete a change of circumstances form and provide evidence he is in receipt of Child Benefit for her; and,
 - it did not consider the noise from communal spaces, including from children playing outside near his window, to be anti-social behaviour directed at Mr Y. Rather, it said these were everyday, ordinary noises of people passing through communal space.
19. The Council provided Mr Y with information on other options available to him, including receiving Band B priority if he wished to downsize to a one-bedroom property. This was because Mr Y was deemed to be under occupying his two-bedroom property at this time.
 20. Mr Y requested a second review of the Council's decision.
 21. Mr Y complained a Council officer, during a phone call had incorrectly told him he could not register his newborn child as a dependant as his child lived elsewhere. He complained the Council had not properly considered the impact of the noise coming from the communal spaces had on his conditions and that they were not everyday noises he was able to cope with. He also said the issues with his housing worsened with time so they were only now a priority.
 22. In February 2021, the Council sent Mr Y its second banding review decision. It refused Mr Y's request for medical priority.
 23. A few days later, Mr Y complained to the Ombudsman.

Analysis – was there fault by the Council causing injustice?

The Council's decision about registering Mr Y's child as a dependent

24. Mr Y complains about the Council's refusal to award him higher priority on medical grounds under its housing allocations policy. He says, when reviewing his banding, the Council incorrectly told him he could not register his newborn child as a dependent in his household (part a of the complaint).
25. In September 2020, Mr Y contacted the Council to say his partner was expecting their child that week and the child was probably going to live with him. The Council housing officer said that, even if his child lived with him, this would not affect his banding as he was already living in a two-bedroom property.
26. In October, Mr Y contacted the housing officer again. He explained he was concerned that his newborn child was not registered to live with him as a dependant. He said this change should mean he was eligible to bid on two-bedroom properties.
27. The next day, the Council sent Mr Y its banding review decision. It explained to Mr Y that, in order to register his newborn child as a dependant, he needed to complete the online change of circumstances form. It provided information on the criteria that would need to be met, specifically Mr Y, as the applicant, would need to prove that he was the principal guardian, and his home was the dependant's principal home and would remain so for the foreseeable future. This is in line with the Council's Housing Nominations policy.

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28. In January 2021, the Council and Mr Y exchanged a series of emails about which documents the Council required before being able to accept his newborn child as a dependent. At the end of January, the Council confirmed that his housing register application had been updated so that he required a two-bedroom property.
29. Based on the evidence I have seen, I find that it was not clear from the Council's initial contact with Mr Y in September how and whether he would be able to register his newborn as a dependant. This meant it was unclear whether his bedroom need could increase from one to two-bedrooms. However, I find the Council remedied the misinformation around this in its banding review decision letter from October when it provided clear information to Mr Y on how to apply to register his child as a dependent. I understand that it was around this time that Mr Y was arranging for his newborn child to live with him. I, therefore, do not find the Council at fault here. It registered Mr Y's child as a dependant in his household once Mr Y had provided all the relevant information and documents. Mr Y has confirmed that this part of his complaint is now resolved.

The Council's reasons for refusing to award higher banding

30. Mr Y says, when reviewing his banding, the Council incorrectly stated his condition was not caused by his current accommodation and failed to give clear reasons why he was not awarded higher priority on medical grounds (part b of the complaint).
31. The Council's Housing Nominations policy (2015) states, when assessing an application for medical priority, it will review all advice and information provided from the applicant or other professionals involved in their care. It is the Council Housing Officer's final decision whether or not to award priority on medical grounds. When doing so they will look at:
- a) how the current accommodation is causing or affecting the condition;
 - b) how social housing would improve it;
 - c) the severity of the effect the housing is having on the condition;
 - d) the duration of the condition and any expected recovery time;
 - e) the severity in comparison to housing needs of other applicants;
 - f) what other housing options are viable that could improve the situation; and,
 - g) a comparison to the awards made to other applicants on medical grounds.
32. In February 2020, the Council wrote to Mr Y with the outcome of its first banding review. It refused to change Mr Y's banding. It explained that:
- it had considered Mr Y's application and the documents provided. This included Mr Y's statement that he needed access to his own personal outdoor space to avoid feeling trapped in his home;
 - however, the Council decided it did not consider Mr Y's property was worsening his mental health conditions nor did it consider Mr Y moving to a different property would improve his conditions. The Council said this was because Mr Y's mental health conditions had been ongoing for over eight years. It decided Mr Y was likely to continue to experience the same difficulties if he moved to another property; and,
 - as a result, it considered Mr Y was adequately housed in social housing and the number of bedrooms in his property suitably met his needs.

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33. I do not find the Council at fault here. In my view, it has assessed how the current accommodation is causing *or* affecting Mr Y's medical conditions, which is the key consideration it must make under its policy. It has provided reasons why Mr Y did not meet the criteria to award him priority on medical grounds and considered the information and documents provided by Mr Y, including around his claimed need for private outdoor space. I appreciate that Mr Y disagrees with the Council's decision. However, without fault in how the Council made its decision, I cannot question its content.
34. In October, the Council wrote to Mr Y with the outcome of the review of its banding decision. It upheld its decision and decided Mr Y would remain in Band E. The Council said:
- it accepted, based on information provided by Mr Y, his GP and previous clinical psychologist, that Mr Y has anxiety and depression, which was being managed by prescribed medication; and
 - Mr Y had social anxiety since leaving school, which had become steadily worse over a number of years. However, it said, based on the evidence it had seen, it did not consider his current housing was exacerbating his condition or a move would alleviate symptoms. The Council said the medical evidence did not support the request that a private outdoor space would assist Mr Y with his condition either.
35. I do not find the Council at fault here. It reviewed its decision and this was carried out by a senior housing officer who had not been involved in the original decision from February. The senior housing officer provided reasons why it upheld the original decision that were based on the Council's Housing Nominations policy.
36. The Council carried out a second banding review in February 2021. It again refused Mr Y's request for medical priority. It said its decision was based on its Housing Nominations Policy and the medical opinions of its Independent Medical Adviser. It considered Mr Y's current accommodation to be suitable for his needs on medical grounds and there was no evidence to show that his medical condition was caused by his current accommodation. I find the Council at fault here as it is not in line with its nominations policy. As explained in paragraph 29, bullet point a, above, the Council's policy is a two-part consideration about how the current accommodation is causing *or affecting* the condition (emphasis added). I do not find the Council assessed how Mr Y's accommodation was affecting his condition. This caused Mr Y uncertainty and he missed out on having his banding properly reviewed.
37. Additionally, unlike the Council's previous decisions, it explained that the medical opinions of its Independent Medical Advisor were important factors in arriving at its decision. I have considered the report from its Independent Medical Advisor. The report states the following:
- Mr Y's specific medical issues were not considered of particular significance compared to an ordinary person. It is my understanding that this is a test that relates to homelessness applications whereby applicants are assessed on whether there was a priority need if considered vulnerable on medical grounds. It is not clear why Mr Y was being assessed on this basis when he had requested a review of his banding based on medical grounds. This "ordinary person" test for homelessness applications is different to the criteria detailed in paragraph 31 when someone applies for medical priority under the Council's housing allocations scheme; and

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- in relation to the suitability of Mr Y's current accommodation: *"it is contended that this is unsuitable on the basis of there being no private outdoor space. Whilst I acknowledge his wish to have a garden for his exclusive use, this is not considered to be a medical necessity. The current accommodation is suitable on specific medical grounds."* I do not find the Independent Medical Advisor has provided any clear reasons why Mr Y's current accommodation was considered suitable on medical grounds.
38. In my view, the Council's decision was influenced by a medical report that did not correctly apply the requirements of its nominations policy (as detailed in paragraph 31 above). The report also did not provide clear reasons why his current accommodation was suitable on medical grounds, which the Council failed to specify in its decision letter also. This is fault. This caused Mr Y distress and uncertainty as it was not clear why the Council had made its decision.

The Council's consideration of Mr Y's need for private outdoor space

39. Mr Y says, when reviewing his banding, the Council failed to consider his need for private outdoor space to help with his mental health conditions. He says the Council's consideration of his conditions showed a bias against mental health conditions (part c of the complaint).
40. In February 2020, the Council wrote to Mr Y with the outcome of its first banding review. It refused to change Mr Y's banding. At this time, Mr Y was registered as needing a one-bedroom property. The Council explained that the Council awarded one-bedroom properties with outside space to applicants who were over 60 years old, which Mr Y was not.
41. In response to questions I asked the Council, it said the information provided to Mr Y about one-bedroom properties with outside space being allocated to applicants who were over 60 years old was incorrect. This is fault, which caused Mr Y uncertainty about whether he could bid on these properties.
42. The Council confirmed, however, that it does not have a policy that restricts one-bedroom properties with outdoor space to those who are over 60 years old. Rather, when registered providers advertise available one-bedroom properties with outside-space, the Council said these are usually bungalows and tend to be advertised as suitable for those needing ground floor access. This is because the Council wants to make the best use of such accommodation for those needed it most. The Council confirmed this would not stop an applicant with a need for a one-bedroom property bidding on such properties, but the Council and the registered housing provider would look at the applicant whose needs most suited the property. I understand this means those over 60 years old may be likely to be successful in bidding on these property types when it meets their age-related needs. I do not find the Council at fault here as it is entitled to take such factors into consideration when making decisions about housing stock. Without evidence of fault in how it made this decision, I cannot question its content.
43. In its response to my questions, the Council apologised for the miscommunication to Mr Y about this, which I find remedies the injustice caused to him. Based on the Council's response, I am satisfied that Mr Y had not been prevented or restricted from bidding on one-bedroom properties with outdoor space.
44. I consider paragraphs 31 to 38 above provide my analysis of the Council's decision-making around Mr Y's banding review request, which included his claimed need for private outdoor space.

The Council's consideration of the impact of noise on Mr Y

45. Mr Y says, when reviewing his banding, the Council failed to consider the impact that noise from communal outdoor areas was having on his conditions and ability to leave his home (part d of the complaint).
46. In the Council's decision letters from October 2020 and February 2021, it confirmed it had considered the impact of this noise on Mr Y. However, it explained:
- it considered the noise of children playing outside to be ordinary everyday noise of people passing through the communal areas. It did not consider this to meet the threshold of a statutory noise nuisance. This is in line with the Council's published guidance on noise nuisance;
 - there was no evidence to suggest any anti-social behaviour from these activities. It said Mr Y's housing association had received one report of anti-social behaviour and noise nuisance in April 2020. Although Mr Y was not able to identify the individuals responsible for the noise, the housing association took appropriate action by sending general letters to all residents in the block about the report Mr Y made.
47. Based on the evidence I have seen and the Council's response to my questions, it is my understanding that Mr Y did not make any further reports about noise or antisocial behaviour either to the Council or his housing association. I find the Council considered Mr Y's concerns appropriately and provided clear reasons why the information provided did not support a need for higher priority banding. I appreciate Mr Y disagrees with this decision, but this is not evidence of fault.

Delays in the Council's decision-making

48. Mr Y requested a review of the Council's banding decision from February 2020 some days after this decision. The Council provided the outcome of its review in October 2020. This delay is fault. It took the Council over seven months to complete its review. Its Housing Nominations policy states the Council will "*make a decision within eight weeks of the date of the request and advise of the outcome and the grounds for it in writing.*" This caused Mr Y distress and uncertainty. He went to time and trouble chasing the Council for its response.
49. In response to questions that I asked it, the Council accepted it was at fault here and provided an apology to Mr Y in its response to my enquiry letter.
50. The Council also explained that there were delays in providing its second review decision from February 2021 because its officer was waiting for information from Mr Y's GP. It has provided evidence of how it kept Mr Y informed throughout for the reasons for the delay. I do not find the Council at fault here.

Agreed action

51. Within eight weeks of my final decision, the Council has agreed to:
- a) apologise to Mr Y for the fault identified in paragraphs 36 to 38 above, which caused him distress and uncertainty;
 - b) carry out a banding review that complies with the considerations specified in its nominations policy when assessing an application for medical priority (paragraph 31 refers). If Mr Y is unsuccessful again, the Council should provide him with clear reasons why. I understand the Council has offered to undertake a review of Mr Y's banding on social and welfare grounds. If it has not already

carried out this review, I recommend the Council does so alongside the review for increased banding on medical grounds; and,

c) make a payment of £100 to Mr Y for the uncertainty caused, and time and trouble he went to chasing the Council for its review decision from October 2020. This is inline with the Ombudsman's published guidance on remedies.

52. When sending its comments about the draft decision, the Council confirmed it had made the following service improvements as a result of this complaint:
- banding review requests are recorded in each Council officer's diary with an alert at four weeks to enable better monitoring, and
 - banding reviews are now an agenda item on caseworkers' morning meetings.
53. Within three months of my final decision, the Council has agreed to also make the following service improvements:
- reviews its guidance to staff about requesting advice from its Independent Medical Advisors. This is to ensure, when staff ask for advice that affects decisions about priority on medical grounds, the Advisors should be consulted on the considerations detailed in paragraph 31 above.
54. The Ombudsman will need to see evidence that these actions have been completed.

Final decision

55. I have completed my investigation. I have decided to uphold part b of Mr Y's complaint because there is fault by the Council causing him injustice. The Council has agreed to the above recommendations, which are suitable ways for the Council to remedy this.
56. I have decided to not uphold parts a, c and d of Mr Y's complaint because I do not find that there was fault by the Council causing him injustice.
57. I have decided to uphold Mr Y's complaint that there were delays in the Council making its review decision from October 2020. The Council has accepted this and provided an apology for this. I have also recommended the Council makes Mr Y a payment for the time and trouble he went to chasing the Council on this.

Investigator's decision on behalf of the Ombudsman