

Report

on an investigation into
complaint no 11 018 683 against
City of York Council

16 October 2012

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

Mr Green

The complainant

Report summary

Housing allocations

Mr Green complains that the Council insisted he accept a property with a bedroom that was too small by law for his two daughters, and has since then failed to give him adequate priority on the housing register to enable him to move to a bigger property within a reasonable period of time.

The Ombudsman finds that the Council did not comply with the law by placing Mr Green in a property which was too small for him and his family. She expects the Council to be aware of the law in this respect and carry out basic checks on the properties it lets to ensure it complies with its statutory obligations.

She also finds that while the family continue to live in the property, the Council is in breach of the law and could be prosecuted for the offence.

This maladministration has caused Mr Green and his family a serious injustice. They have been forced to live in overcrowded conditions for over two years and the two daughters, now aged 11 and 12, have had to share a bedroom barely big enough for two single beds.

Finding

Maladministration causing injustice, remedy agreed.

Agreed remedy

The Council had already placed Mr Green in Gold band from the date he accepted the tenancy of his current property. The Ombudsman recommended the Council elevate his priority to the highest category (Emergency band) to ensure he was rehoused as quickly as possible. While the Council considered this request, Mr Green successfully bid on a three-bedroom property of his choice.

The Council has agreed to:

1. pay Mr Green £2,000 compensation for the significant distress, frustration, time and trouble he and his family have been caused in having to live in unsuitable accommodation for 2 years longer than was necessary; and,
2. review its guidance to housing officers on the Council's duties under overcrowding legislation and government guidance and arrange refresher training for all housing officers involved in making offers of accommodation to ensure their knowledge and practice in this area is up to date.

Introduction

1. Mr Green complained that the Council insisted he accept a property with a bedroom that was too small (by law) for his two daughters and has since then failed to give him adequate priority on the housing register to enable him to move to a bigger property within a reasonable period of time.
2. My investigator has considered the complaint and the documents provided by Mr Green and his MP, discussed the issues with him, made enquiries of the Council and considered the comments and documents it provided.

Legal and administrative background

3. My powers are defined by the Local Government Act 1974 as amended by the Local Government and Public Involvement in Health Act 2007.

Part X Housing Act 1985 overcrowding

4. Section 324 of the Housing Act 1985 states a property is overcrowded by law when the number of people sleeping in a dwelling contravenes either the room standard or the space standard.
5. Section 325 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. Since October 1998 guidance from the Health and Safety Executive states that a room cannot be used as sleeping accommodation if it contains a gas fire, gas space heater or a gas water heater including a gas boiler.
7. Section 326 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. Children under ten years old count as half a person. In the case of a two-bedroom house (with one bedroom measuring between 6.5m² and 8.3m²) the permitted number of people is three.
8. Section 331 says the landlord of a dwelling commits a summary offence if he causes or permits it to be overcrowded and, if convicted, is liable to a maximum fine of £500 plus one tenth of that amount for every day after conviction that the overcrowding continues.
9. Section 339 says that if the local authority is the landlord, permission to prosecute must be sought from the Attorney General.

Council's housing allocations policy

10. The Council's allocations policy prior to June 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. A family with two children of the same sex would be eligible for a two-bedroom flat, maisonette or house.
11. The policy after June 2011 states that single adults aged 21 or over require their own bedroom and a person aged between 9 and 20 years will require a separate bedroom if they would otherwise have to share with the opposite sex. It states that staff can exercise discretion to adjust the number of bedrooms if they are particularly large or small.
12. The new policy says applicants will be prioritised according to housing need and placed in one of four bands: Emergency, Gold, Silver and Bronze.

Investigation

13. In March 2010 Mr Green, his wife and two daughters, then aged 9 and 10, applied to the Council for accommodation on the ground they were homeless. The Council accepted it had a duty to house them and placed them in temporary accommodation. It awarded them Band A priority as a homeless family, in accordance with its allocations policy at the time. The Council's policy also stated that the Council would only make one suitable offer of accommodation to homeless applicants.
14. The Council sent Mr Green a letter dated 7 May 2010 making an offer of Property B. It had two bedrooms one of which measured only 7.7 metres². The living room contained a gas fire and back boiler.
15. The letter stated the offer was a final one, as only one offer of suitable permanent accommodation would be made. It set out his right to request a review if he considered the property was unsuitable.
16. Mr Green did not receive the offer letter. He says he could not receive post directly at the temporary accommodation he was occupying and had to go to the housing office to collect post. He recalled a member of staff asking him to go to the office one morning and his caseworker told him she had good news as the Council was offering him a two-bedroom property. After being told of the offer, Mr Green asked if he could refuse the property. He was told if he did, he would not be offered another one. He signed the tenancy and the family moved into the property.
17. The family was burgled just before Christmas 2010 and lost a significant amount of their possessions including all the children's Christmas presents.

18. In January 2012 Mr Green made a complaint to the Council via his local MP. He said his family had been forced to live in a house that was too small in an unsuitable area and asked to be moved to larger accommodation in a different area. The Council replied on 31 January 2012. It said it had dealt with the case in accordance with the homelessness legislation and the Council's allocations policy. It said the family was adequately housed in two-bedroom accommodation and that the second bedroom was classed as big enough for two children of the same sex. But it did accept the bedroom was small and so awarded Mr Green additional priority (in Silver band) for a transfer on the basis that he was short of one bedroom.
19. Mr Green complained further on 5 February 2012 but the Council replied on 15 February 2012 upholding its previous response. Mr Green then complained to me on 27 February 2012.
20. My investigator made enquiries of the Council on 19 March 2012. It replied on 29 March 2012 saying that the second bedroom was 7.7m² and as such was large enough to accommodate two children of the same sex. The council said it had written to Mr Green on 7 May 2010 explaining his right of review if he felt the property was unsuitable and it had no reason to believe Mr Green did not receive that letter.
21. On 5 April 2012 the investigator made further enquiries asking for evidence that the Council had considered the size of the bedroom when offering the property, in accordance with section 324-326 of the Housing Act 1985.
22. The Council replied on 17 April 2012 saying that Mr Green's two daughters were 9 and 10 at the time the offer was made. It said the offer of the property, at that time and now, would be on the basis that it was a two-bedroom home for rent and council tax purposes so would be classed as suitable for applicants with two children of the same sex under 21.
23. My investigator made further enquiries on the same day querying how the offer complied with the law, given that Mr Green's daughters, at the time of the offer, counted as 1.5 people under the relevant legislation (and within less than 12 months would count as 2 people). A room of 7.7 m² was only big enough for one person. Regardless of whether or not Mr Green was aware that he could ask for a review of the suitability of the accommodation she questioned how the Council could justify offering a property to an applicant that would be legally overcrowded as soon as the family moved in. By accepting the unsuitable property Mr Green had lost his Band A priority under the old scheme and would now have to wait several years to successfully bid for a larger property. She asked the Council to increase his priority to Gold band under the new scheme, backdated to the date he accepted the property.
24. The Council replied on 11 May 2012. It stated that Mr Green's household did not breach section 325 of the Act (the room standard) because no two people

of the opposite sex (who were not living together as husband and wife) were sharing a room. In respect of section 326 it said this was not breached because the number of available rooms included the living room. It offered to increase Mr Green's priority to Gold band from the date of the letter.

25. Mr Green then submitted further information to me highlighting the Health and Safety Guidance stating that living rooms with a gas fire or boiler could not be counted as sleeping accommodation.
26. On 11 June 2012 a Council inspector visited Mr Green to check whether he had a gas fire in the living room. Mr Green said the inspector told him he already knew the house had a gas fire in the living room as it was stated on the records for the property. He advised the family not to use the living room as sleeping accommodation.
27. Later that day the Council confirmed to my investigator that Mr Green's living room had a gas fire and a back boiler and so could not be used as a bedroom. It said it had believed the appliance was an electric fire and apologised to Mr Green for any further upset this misunderstanding had caused. It agreed to backdate Mr Green's Gold status to the date he accepted the property.

Conclusions

28. When Mr Green and his family moved into their property their household was 3.5 people in terms of sections 324 -326 Housing Act 1985. But, given the size of the second bedroom, the house was overcrowded by .5 of a person from the moment they moved in.
29. Regardless of whether Mr Green received the letter of 7 May 2010 which told him of his right of review, it was maladministration for the Council to have offered Mr Green the property at all as it was not big enough for his needs. I expect the Council to be aware of the law in this respect and carry out basic checks on the properties it lets to ensure it complies with its statutory obligations. I find it unlikely that the Council was not aware there was a gas fire in the living room, and even if it was not clear, this detail should have been checked before the offer was made.
30. While the family remain in the property, the Council was in breach of the law and could be prosecuted for the offence. This is further maladministration.
31. This maladministration has caused Mr Green and his family a serious injustice. They have been forced to live in overcrowded conditions for over two years and the two daughters, now aged 11 and 12, have had to share a bedroom barely big enough for two single beds.
32. The seriousness of the situation is made worse by the fact that even when this matter was brought to the attention of the Council by Mr Green, his MP and my

office, the Council still insisted it had acted within the law, thus prolonging the family's unsuitable housing conditions for a further six months.

Finding

33. Maladministration causing injustice, remedy agreed.

Remedy

34. The Council had already placed Mr Green in Gold band from the date he accepted the tenancy of his current property. I recommended the Council elevate his priority to the highest category (Emergency band) to ensure he was rehoused as quickly as possible. While the Council considered this request, I am pleased to note Mr Green successfully bid on a three-bedroom property of his choice.
35. I also recommended the Council:
- a. pay Mr Green £2,000 compensation for the significant distress, frustration time and trouble he and his family have been caused in having to live in unsuitable accommodation for 2 years longer than was necessary; and,
 - b. review its guidance to housing officers on the council's duties under overcrowding legislation and government guidance and arrange refresher training for all housing officers involved in making offers of accommodation to ensure their knowledge and practice in this area is up to date.
36. I am pleased to say the Council agreed to both these recommendations.

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