

**Complaint reference:**  
16 011 978

**Complaint against:**  
East Devon District Council

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

Summary: Mrs X complains the Council placed her in the wrong banding for housing allocation, which meant she spent a period of time in unsuitable accommodation unnecessarily. My investigation has not found the Council at fault.

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## **The complaint**

1. The complainant, whom I shall call Miss X, complains that the Council failed to assess her housing needs in accordance with its own policy. This, she says, caused her an injustice as she spent longer than necessary in unsuitable accommodation.

## **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*)

## **How I considered this complaint**

3. I read the complaint statement provided by Miss X, made enquiries of the Council and reviewed its response. I examined the complaint in the light of relevant policy and law. I gave both the Miss X and the Council the chance to make comments on my draft decision. The council made comments which, I have taken into account. Miss X did not respond.

## **What I found**

### **Relevant policy**

4. The Council has a policy (The Devon Home Choice policy) to decide who is eligible for housing and how applicants will be assessed and prioritised. Local authority and housing association homes available are advertised each week on the housing register. People can then 'bid' for a suitable house. The successful bidder will be selected from those that applied for a home based on whether they meet the preferences in the advert, upon which 'band' their application has been placed (which reflects their housing need) and the start date of that band.
5. There are five bands, with Band A being the band for those with the most need and Band E being the band where the Council assesses the person has no

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housing need. Those in Band A are thought to have an emergency housing need. Band B indicates a high housing need and Band C indicates a medium housing need. A summary of the relevant/Extracts from the policy are set out below

**High health and wellbeing priority (Band B)**

6. The housing situation is so severely affecting the applicant's health and well being that it is resulting in them being completely housebound, at risk of injury, relapse or unable to live independently. Alternative housing is required to prevent serious risks to their health and wellbeing.

**Medium health and wellbeing priority (Band C)**

7. The housing situation is seriously affecting the applicant's health and wellbeing and is having an unacceptable impact on their ability to live independently. Alternative housing is required to prevent a significant and serious deterioration to their health and wellbeing.

**Low health and wellbeing priority (Band D)**

8. The housing situation is having a negative impact on the applicants well being but it is not causing any significant deterioration to their health or ability to live independently.

**Relevant considerations when awarding health and wellbeing priority**

9. Health and wellbeing priority is not awarded because of anti-social behaviour problems encountered by the applicant. This will only be awarded where there is significant evidence from the police or other interested bodies of the impact on the applicant's health and wellbeing.
10. Health and wellbeing priority is not awarded in situations where minor adaptations or equipment can resolve a problem.

**Local priorities are considered alongside the statutory reasonable preference categories**

11. Some people are given what is called 'reasonable preference' for housing. The Communities and Local Government, Allocation of accommodation: guidance for local housing authorities in England, suggests this could include people who have a mental illness or disorder, people who have a physical disability and people who need to be near friends/relatives on medical grounds.
12. However, the guidance stresses this does not mean that they should be given absolute priority over others. This means that an allocation scheme may provide for other factors than those set out in section 166A(3) of the Localism Act 2011 to be taken into account in determining which applicants are to be given preference under a scheme. This is provided that they do not dominate the scheme and that overall, the scheme operates to give reasonable preference to those in the statutory reasonable preference categories over those who are not.
13. Para 3.2 of the Devon Home Choice policy recognises the necessity to prioritise those for whom reasonable preference applies, including those who need to move on medical or welfare grounds including a disability. The policy then goes on to set out the way in which it prioritises, by placing different applications into different bands (as set out above).

**What happened**

14. On 30 September 2016 a council officer assessed Miss X as being in Band D priority.

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15. On 4 October 2016 Miss X wrote to a council officer and disputed being assessed as Band D. She pointed out that she has a lung disorder and mental health problems that she said are made worse by where she is living. She asked to be placed in a higher band.
  16. On 7 October 2016 Miss X received a reply from the Council. In her letter, the officer explained that while Miss X might have serious health issues, this was not how the Council assessed which band she should be placed in. She explained that the test was not the severity of Miss X's health issue but how her current property was affecting her health and wellbeing. She added that the Council had mainly looked at evidence from Miss X's doctor, who had mostly spoken of issues she was having with her daughter. The letter also said that the Council was awaiting the results of an occupational therapist assessment.
  17. The occupational therapist report is dated 14 October 2016. Among other observations, she said:
    - Miss X had restricted movement in her wheelchair around the house as there are only standard doorways and her wheelchair has a poor turning circle
    - Miss X was under constant stress and her breathing difficulties are made worse by stress
    - Miss X wanted to move area to be near her 8 year old son and carer. This would give Miss X an 'increased sense of self-respect and wellbeing.'
    - Miss X does not need sheltered/supported housing but is requesting a quiet environment to live in.
    - No applications for adaptations to her accommodation would be made by the occupational therapist as Miss X said she did not want to remain living in the house.
  18. Her psychological wellbeing practitioner said that she had agreed with Miss X that her housing situation was preventing her from engaging with therapy and that Miss X had told her that her physical health was becoming worse because of her anxiety.
  19. In October 2016, Miss X contacted the Council quoting a police reference. Part of the reason Miss X said she wanted to leave the area she was in was because of the anxiety she experienced due to disputes with nearby family members. However, the Council say they contacted the Police using the crime reference number provided and were told it did not exist. The Council also say that they were advised that the Police had attended the property in relation to a domestic incident (which was not logged as a crime.) The Council took the view that it had not received any information which would suggest that Miss X was at risk or not able to reside in the property.
  20. On 2 November 2016 the Council accepted the evidence of Miss X's occupational therapist and psychological wellbeing practitioner and placed her in band C for medium medical priority. The letter reminded her she could also consider using the home exchange service Homeswapper.
  21. Unhappy with the allocation, on 3 November 2016 Miss X made an application for alternative accommodation. On 7 November 2016 Miss X telephoned a senior Council officer. She also called another council officer on 9 November 2016 and wrote to the Chief Executive on 14 November 2016.

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22. A senior officer replied on 14 November 2016. Her application for review was refused as the Council said Miss X had not produced any new information. However, because the Council said it had concerns Miss X might not be living at the property and because it wanted to conduct a full review, she was informed a visit would take place.
  23. On 8 December 2016 the Council wrote to Miss X after the visit had been conducted. The officer who visited maintained the Council's view that there was no fresh evidence that would lead the Council to conclude a review of her banding was appropriate. However, the officer accepted that there may be an issue with Miss X accessing the garden in her wheelchair. He suggested her occupational therapist might be able to organise a ramp to help with this problem.
  24. He also noted that Miss X's electrical wheelchair moved with difficulty over a rug in her lounge. He suggested she should remove the rug.
  25. The officer again told Miss X that since she wanted to move to a different area to be near her son, she could consider the Homeswapper service.
  26. On 13 December 2016 Miss X got further medical evidence in the form of a doctor's letter. The doctor supported her request for a change of accommodation, saying that Miss X would benefit from living nearer her carer.
  27. On 23 December 2016 Miss X asked for her application to be reviewed and to be placed in Band A.
  28. On 4 January 2017 the Council wrote to Miss X and said having considered her latest evidence from her doctor, it still did not consider that she should be in Band A. She remained in Band C.
  29. On 19 January 2017 the Council wrote to Miss X setting out the consideration it had given to Miss X's application but still refusing to move her up a band.
  30. Miss X did not make an application to register with the Homeswapper service.
  31. Miss X has now been offered alternative accommodation which she has accepted. She has told me she is happy with the accommodation.

### **Findings/analysis**

32. The Council gave due consideration to Miss X's application to be re-housed. The Council's efforts to assess the evidence and act on that evidence was demonstrated by the decision to move her from Band D to Band C upon sight of the information she provided.
33. Being in Band C meant that the Council accepted that Miss X had difficulties and that she needed re-housing. But it did not think her situation was so bad as to warrant a Band B priority. The Council followed due process and showed that it considered her application properly, taking all relevant factors into account.
34. I consider that the Council gave full and proper consideration to Miss X's situation. In order for her to be assessed as being in Band B she or medical professionals would have to have shown that her housing so severely affected her health and wellbeing that she was completely housebound. Miss X told the assessor who came to her house that she was able to use the buses and sought a house with a good bus route. Her occupational therapist said she didn't need supported housing and records show that while it was thought her needs may become greater, she had no current help for personal care, shopping, food preparation or cleaning. The officer who visited her found that while she couldn't turn the cooker off at the mains, she would have been able to use the cooker dials

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to operate the cooker. He also found that while it was difficult for her to manoeuvre into the kitchen, it was not impossible. The Council accepts the property was not ideal. But the evidence showed that while life was difficult for Miss X in this property, she still maintained a degree of independence and was not housebound. There is no evidence she was at risk of injury.

35. The Council also says that the crime reference number Miss X produced did not exist. This is confusing because Miss X has produced an email from the police which was sent at some point in September 2016. It makes reference to Miss X being contacted by the safeguarding team. However, I am satisfied there is no evidence of any serious risk. The Council is not under any obligation to take anti-social behavior experienced by an applicant into account and the Council is entitled to come to the view that it does not think she was at any risk, given the absence of any criminal charges or further evidence to support Miss X's fears.
36. Miss X has some serious health conditions and her disability should mean that she was given reasonable preference. But I consider that her placement in Band C did give her reasonable preference. Her disability was considered but not above that of other residents who might have been in accommodation that left them housebound. She was lifted out of Band D to C. But there is nothing in the evidence I have seen that suggests the Council should have done anything more.
37. Further, Miss X has now been re-housed in accommodation that is suitable for her.

### **Final decision**

38. The Council gave due consideration to Miss X's application to be re-housed because of the difficulties she was experiencing with her housing. There is no fault in its actions.

### **Investigator's final decision**