

HOMELESSNESS APPLICATION – OMBUDSMAN INVESTIGATION

1 SUMMARY

- 1.1. Following an investigation into a complaint about a homelessness application made in 1997, the Ombudsman has found maladministration with injustice and has recommended an ex-gratia payment and review of arrangements.

2 COMPLAINT AND INVESTIGATION

- 2.1 A copy of the Ombudsman's full report is appended.
- 2.2 The complaint was the subject of a Homelessness Review Panel report in April 1998, but the meeting was terminated at the applicants' request when they advised the Panel Members they intended to make a complaint to the Ombudsman.

3 ACTION REQUIRED

- 3.1 The Local Government Act 1974 requires the Council to make a press announcement within two weeks of receiving the report, and this has been done.
- 3.2 The Act also requires copies of the report to be made available for a period of 3 weeks at one or more of the Council's offices. The report will be available between 3-25 April at the main offices and the Civic Suite. Anyone is entitled to take copies or extracts from the report (for which a reasonable copying charge can be made).
- 3.3 The Council has to consider the report within 3 months and advise the Ombudsman of the action it has taken or proposes to take.

4 ISSUES TO BE ADDRESSED

- 4.1 The issues to be addressed from the Ombudsman's findings can be summarised.
 - (a) Failure to invite a formal homelessness application
 - (b) Failure to issue a formal determination under S.184 of the Housing Act 1996
 - (c) Failure to make adequate enquiries

Since the transfer of the homelessness function from the former Housing (Operations) Unit in early 1998, there has been a major overhaul of the way in which enquiries and applications from homeless or potentially homeless persons are dealt with.

The staff involved have received specialist training and there is increased consultation on the more difficult cases with the Council's Legal Officers.

Procedures have been put in place which will assist in ensuring that an application is taken and a formal decision notice is issued in each case when one is required by law.

(d) Lack of clarity in the Housing Points Scheme

The Council has already considered revisions to the housing pointing policy and allocations system and a comprehensive consultation exercise is now being undertaken. The proposed revisions change and make clearer the "reasonable preference" given to people on the housing register who are homeless or threatened with homelessness.

5 REMEDY

- 5.1 The Ombudsman has recommended that the Council make the complainants an ex-gratia payment of £500 together with a further payment of £250 for their time and trouble spent pursuing the complaint.
- 5.2 He has also recommended that the Council reviews its arrangements for dealing with the issues highlighted at Paragraph 4.1 above.
- 5.3 Throughout the investigation, Officers have advised the Ombudsman's office that any local settlement considered appropriate would be put to Members for consideration. The Ombudsman has decided to issue a formal report instead. The reasons for this decision have been requested and will be reported to the Committee if available.

6 FUTURE ACTIONS TO BE TAKEN

- 6.1 Ongoing staff training will continue to be essential for the staff working in the unit, to keep up-to-date with changes in legislation and case law. Opportunities for appropriate training are dependent on the availability of suitable courses. Staff participate in the Homelessness Officers' Group, part of the Essex Housing Officers' Group, which assists in disseminating good practice.
- 6.2 The procedures used are being kept under regular review.

A pilot Best Value review of the homelessness and housing advice functions has already started, which will include a fundamental service review. The resulting procedures will require documentation which is likely to have resource implications.

7 LEGAL IMPLICATIONS

- 7.1 The statutory requirements resulting from this finding have been outlined in the report.
- 7.2 The Council is not legally required to accept the Ombudsman's findings, but if it chose not to do so it would need to show cause for such a decision and there are statutory procedures that would have to be followed. Officers do not recommend this course of action because the main conclusions are not disputed.

8 RESOURCE IMPLICATIONS

- 8.1 At the time of the move of the homelessness and housing advice functions in the last reorganisation of the Council's services, there were a number of outstanding cases which, because of the workload, were dealt with under operational procedures which are not now regarded as adequate. Since that time, a new, more detailed, investigation procedure has been put in place.
- 8.2 The greater complexity of homelessness enquiries resulting from the changes that have already been put in place has led to a considerably increased workload and a lengthening of the average time taken to make decisions and time spent by some applicants in interim accommodation whilst enquiries are completed.
- 8.3 The pilot Best Value review which is currently being undertaken on the homelessness and housing advice functions requires staff time from the homelessness team and from other sections and the conclusions reached may have resource implications.
- 8.4 Provision has been made for writing back the suggested compensation totalling £750 into the 1999/2000 accounts for payment to the complainants, subject to Member agreement. The cost of placing the newspaper advertisement of £280.00 will be dealt with in the same way.

9 RECOMMENDATION

- 9.1 Proposed that it is **RESOLVED**
- (1) To accept the Ombudsman's findings and report.
 - (2) To pay a total ex-gratia payment of £750 to the complainants.

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- (3) That the Ombudsman be advised of the action taken or being taken to address the failures identified in his report. (HHHCC)

G. Woolhouse

Head of Housing, Health and Community Care

Background Papers:

None.

For further information please contact G. Woolhouse on (01702) 546366

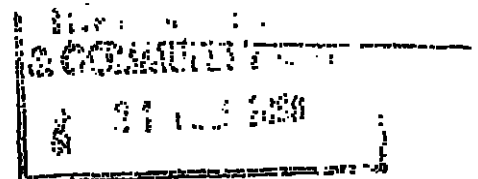


The Commission for
Local Administration in England

Report

on an Investigation into
Complaint No 98/B/1653 against
Rochford District Council

20 March 2000



**Investigation into Complaint No 98/B/1653
Against Rochford District Council**

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Key to names used

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|----------------------------------|-----|--|
| Mr and Mrs X | - | The complainants |
| Mr Y | - | Mr and Mrs X's representative, a worker for a housing charity |
| Officer A | - | A senior Housing Officer |
| Officer B | - | Head of Service responsible for homelessness from early 1998 |
| Officer C | - | An Allocations Officer |
| Councillor Z | - | An elected member |
| Ayetown | - | Mr and Mrs X's preferred area |
| Beatown | -) | Areas covered by |
| Seatown | -) | a different Council |
| Delta Housing Association | - | A local housing association |
| Omega Housing Association | - | A local housing association |

Report Summary

Subject

Mr and Mrs X were faced with eviction in 1997. They applied to the Council. The Council failed to ask them to submit a homelessness application. The Council states that it was satisfied that they were threatened with homelessness, not intentionally so, and in priority need. The Council believed it had discharged its duty to Mr and Mrs X when they found a rented property in the private sector, but did not take details of their income to determine whether it was affordable.

Mr and Mrs X moved in May 1998 to a second floor maisonette which, they say, is unsuitable because Mrs X has a spinal condition which makes it difficult for her to climb stairs. However, nominations to suitable properties in their area of choice have all been made to applicants with a higher priority on the housing register.

Finding

Maladministration causing injustice.

Recommended remedy

To remedy that injustice I recommend that the Council:

- (a) makes an ex gratia payment to the complainants of £500, together with a further payment of £250 for their time and trouble in complaining to me
- (b) reviews its arrangements for dealing with persons who are homeless and threatened with homelessness, the review to include the Council's housing points system as it affects homelessness applicants and the publicity the Council provides in respect of its arrangements.

Introduction

1. Mr and Mrs X complain that the Council failed in its statutory duty towards them when they were under notice of eviction. They say that as a result they suffered financial hardship and stress and have had to move away from the area in which they had lived for over 30 years and where their teenage daughter still goes to school; they are in unsuitable accommodation and their son can no longer live as part of their household. They have also complained that the Council failed to accept approaches between 1987 and 1996 as homelessness applications. I have not exercised my discretion to investigate this complaint, as I saw no reason why Mr and Mrs X should not have complained to me within 12 months of the alleged failures having occurred.
2. Mr Y, a caseworker with a housing charity, complains on behalf of Mr and Mrs X that the Council failed to provide him, as their representative, with information about approaches they made to the Council from the late 1980s onwards in respect of selling their property.
3. The law¹ generally requires me to report without naming or identifying the complainants or other individuals. The names used in this report are not the real names.
4. One of the Commission's officers has met the complainants and interviewed Members and officers of the Council. She also examined the relevant files. Both the complainants and the Council were sent a copy of the factual part of this report in draft, prior to the addition of the conclusions. Where appropriate their comments are reflected in the text.

Legal & Administrative Background

5. The Housing Act 1996 sets out the duties and responsibilities of a council towards those who are homeless, or are threatened by homelessness. Section 183 provides that when a homelessness applicant approaches a council, a formal application should be requested and determined. The tests which a council has to apply are: whether the applicant is homeless or threatened by homelessness; whether that homelessness is intentional or unintentional; and whether the applicant is in priority

¹ Local Government Act 1974, section 30(3)

need and eligible for assistance. Categories of priority need are laid down in section 189(1) of the Act.

6. Section 193 of the Housing Act 1996 lays down the duty of the council in respect of accommodating the applicant. If an applicant is unintentionally homeless and in priority need (the full housing duty), the council has a duty to make temporary accommodation available and to consider whether suitable alternative accommodation is available. If such accommodation is available, for example in the private rented sector, the council's duty is limited to the provision of appropriate advice. There is a growing body of case law which defines whether accommodation is suitable.
7. Section 197 of the Act states that where the Council is "satisfied that other suitable accommodation is available for occupation in the district", its duty is to provide the applicant with such advice and assistance as it considers to be reasonably required to enable him to secure the accommodation. The courts have held that part of the test of suitability of the accommodation is affordability.
8. Section 202 of the Housing Act 1996 provides that where a homelessness applicant is dissatisfied with the decision of the council, s/he can ask for the council to review it. If s/he remains dissatisfied, s/he has a right of appeal on a point of law to the courts under section 204 of the Act.
9. Section 161 of the Housing Act 1996 requires a council to set up a housing register for all those who wish to apply for housing owned by a council or by a social landlord and who qualify for inclusion. Section 167 of the Act sets out the categories of applicant to whom reasonable preference shall be given and a council will normally draw up a pointing scheme which enables it to give appropriate weight to the individual circumstances of applicants and prioritise one application over another. The Council's housing points scheme is attached as an appendix. In the Council's interpretation of its scheme, if an applicant was determined to be homeless and placed in a temporary council hostel, he would be awarded 50 points for homelessness (together with additional points for shared facilities, etc, as appropriate). But if an applicant was determined to be homeless and placed in private rented accommodation, he would be awarded 10 points. The Council has recently amended its scheme to give reasonable preference to the homeless by the award of an additional 10 points.

Investigation

10. Mr and Mrs X purchased their house in Ayetown from the Council under the Right to Buy Scheme in 1986. They suffered financial difficulties and were issued with possession notices by their bank on four occasions. Mr and Mrs X complain that they approached the Council on several occasions to ask for help with housing, but the Council did not provide assistance or take details of their financial position.
11. In May 1997 Mr X contacted the Council again and submitted a housing application form in respect of himself, Mrs X, his daughter and step-son. On 18 June 1997 Officer A, a housing officer, visited them. Officer A says this was his first meeting with Mr and Mrs X, although he had replied in writing to an approach they made in 1995. His notes record that the visit was "to discuss their threatened homelessness". He noted that Mr and Mrs X had been attempting to save the property for nine years; and that it was probably now too late for a mortgage rescue package. The note records that Officer A said that the Council could assist if Mr X was unable to find the deposit for private sector accommodation; that he undertook, at Mr X's request, to contact the Delta Housing Association in Seatown to see if the Council could nominate Mr and Mrs X; and that he "assured Mr and Mrs [X] that, if [they] were made homeless, the Council would do everything to avoid them going into bed and breakfast". Mr and Mrs X's recollection of this meeting was that they had been given the impression that there was hope of help and that Officer A had said he was happy that they were not making themselves intentionally homeless. There is a manuscript note on the foot of Officer A's note of the meeting "30/06/97. Spoke with [Delta] ... No vacancies".
12. Officer A's recollection is that he was satisfied that Mr and Mrs X were threatened with homelessness, not intentionally so, and in priority need. He accepts that with hindsight he should have asked them to submit a homelessness application at this point, but says that he attempted to assist them by other means before they became homeless. He contacted the Delta Housing Association, but was told they had no vacancies. He also contacted Mr and Mrs X's mortgagee, who was unable to agree a mortgage rescue package. Mr and Mrs X dispute the extent of the assistance they received from Officer A.
13. On 10 July 1997 Mr and Mrs X were served with an Eviction Notice to take effect on 7 August 1997. On 12 July 1997 Mr X sent Officer A a copy of the Eviction Notice and asked if he could be considered for the tenancy of a house in the road where he lived which he knew would become vacant shortly. Mr and Mrs X say

Officer A advised them that they would be better off renting in the private sector, but they say they told him on numerous occasions that they could not afford private sector rents. They say that they told Officer A they were prepared to work excessive hours in order to meet the cost of private rented accommodation for a short time if this would count as "temporary accommodation" in the calculation of their housing points total. They say he replied that it would be so counted and that they would not otherwise have considered renting in the private sector.

14. Officer A said in interview that he had no details of Mr and Mrs X's income but he believed that, as Mr X was in employment, Mr and Mrs X could afford private sector rents. He recalls their suggestion that any time spent in private rented accommodation should be counted as time spent in temporary accommodation, but says he did not indicate that this would be possible.
15. The Council wrote to Mrs X on 15 July 1997 again referring to Mr and Mrs X as "threatened with homelessness" and urging them, "in view of the Council's limitations in trying to provide assistance you should do everything you can to try and secure your own alternative accommodation. Should you require advice and assistance on this matter, please contact [Officer A]". On 23 July 1997, Officer A told Mr and Mrs X that he had given them advice and assistance in order to secure alternative accommodation in the private sector, and suggested that their best option was to appeal to the court for a stay of execution "given your present circumstances and the Council's limitations in trying to provide you with assistance".
16. Mr and Mrs X say that they were actively seeking a property throughout this time and that Officer A agreed to include them in the Council's Rent and Deposit Guarantee Scheme. This was a scheme specifically for families who had been accepted as homeless and in priority need, whereby landlords were indemnified against any damage caused by any tenants. They suggested this to a number of estate agents, who would not accept an indemnity in lieu of a deposit. Mr X says he told Officer A that estate agents would not participate. Officer A provided him with a letter dated 29 July 1997, naming two estate agents who "have expressed a willingness to participate in the Council's proposed Rent and Deposit Guarantee Scheme" and with introductory letters to each. Officer A accepts that there were difficulties with the Scheme, which relied on landlords' co-operation. He said in interview that there is little private rented accommodation in Ayetown, although there was accommodation available elsewhere in the area.
17. Officer A told Mr X that, should he fail to secure alternative accommodation in the private sector, he would need to make a formal homelessness application to the

Council prior to 7 August 1997 and that it would be likely that he would be accommodated in the Council's temporary accommodation in Rochford. Mr and Mrs X say that they were not advised to make a formal homelessness application and state that they believed they had been accepted as homeless. Mr X says he went to both the named agencies and neither was prepared to participate. The Council did not offer Mr X any advice on storage of his belongings.

18. Officer A said in interview that the Council would not have expected Mr and Mrs X to be physically evicted before the Council accepted a responsibility to house them. He added that they would have been offered temporary accommodation at some point between one and two weeks before the due date of the eviction. He said they would almost certainly have been accommodated in one of the Council's two hostels and there was a possibility that if the hostels were full they would have been placed in bed and breakfast accommodation. He recalled that Mrs X had been very keen to avoid going into temporary accommodation. Mrs X recollects that Officer A informed her differently, stating that it was unlikely that the Council would be able to help.
19. Mr X's recollection is that Officer A told him that one option would be to place the family in a particular hostel, but that Officer A had said that it would be utterly unsuitable as it was intended for single mothers. Officer A said that Mr and Mrs X insisted they did not want to go into any form of temporary accommodation. He added that if they had done so, their housing needs would have been assessed from there, and it was likely their points score would have been high; he estimated that they would probably have been there for up to about four to six months before being allocated suitable permanent housing. Mr and Mrs X say that it was never explained to them at the time that their points score would be lower in private rented accommodation.
20. Mr X says he had less than two weeks to find somewhere to house himself, his wife and his 12 year old daughter. He found a house in Beatown, an area outside that covered by the Council, at a rent of £450 per month. The landlord required a deposit, but agreed to take this at £50 per month. The rent was therefore in effect £500 per month.
21. Mr and Mrs X continued to seek assistance with housing from the Council. They say that Officer A visited them twice in Beatown. They told him they were unable to afford the rent on their house there, that they wished to return to Ayetown and that their daughter was continuing to travel to school in Ayetown.

22. There is a note on the Council's file of an interview between Mr X and Officer A on 26 September 1997, at the Council's offices. The note does not mention financial difficulties, although it records Mrs X's health problems. It records that Officer A suggested that Mr and Mrs X register with the Council for Beatown and Mr X's response that he did not meet the residential requirement as he had not been resident there long enough.
23. Officer A says that at this point the Council had no statutory homelessness duty towards Mr and Mrs X, but he continued to try to help them as a housing advisory service. There is a note on the Council's files of a telephone call on 30 September 1997 between Officer A and a representative of a housing charity, who had been approached by Mr X. The note records that Officer A told the charity that the Council had "given [Mr X] every advice and assistance as he was threatened with homelessness". The note concludes "it appears that [Mr X] has now claimed that the rent on [the house at Beatown] is not 'affordable'. No mention whatever was made of this when he was interviewed on Friday, 26 September 1997".
24. On 28 October 1997, Mr Y wrote to Officer A requesting copies of "any information (correspondence, interview notes, etc)" from 1986 onwards in respect of Mr and Mrs X's approaches to the Council to discuss the possibility of selling their property at Ayetown and making a homelessness application, as they were finding it extremely difficult to cope.
25. Mrs X says that, while her family was in Beatown, her adult son was living at home as part of the household. Officer A asked her whether her son was in a relationship and whether he was likely to move out soon. Officer A told her there was more likelihood of being allocated two-bedroomed accommodation than three-bedroomed and that her son could apply for Council accommodation separately, on his own behalf. Mrs X says her son accordingly moved into his girlfriend's parents' house.
26. The Council replied to Mr Y's letter on 7 November 1998, saying that in November 1989 Mr and Mrs X had formally contacted the Council's Housing Department to discuss their financial difficulties in meeting their mortgage commitments and Mrs X and her sister had been interviewed by the Chief Housing Manager and a senior Housing Assistant. The Council told Mr Y that correspondence from 1986 to 1989 in the main related to Mr and Mrs X's problems in respect of payments of general rates, and subsequently to Community Charge and Council Tax difficulties. Mrs X wrote to the Council on 14 November 1997 expressing concern that the Council's files had no record of contact over her mortgage difficulties prior to November 1989, saying that the Council had been told

as early as the first repossession order in 1987 and on each occasion when she had been to the Council; the officer's file on her case had been quite thick. She said that, had the Council given correct advice to Mr X and to her in the beginning, their financial position might have been different.

27. Mr and Mrs X's doctor confirmed on 4 December 1997 that the family were all suffering from stress related problems; Mrs X's daughter had expressed thoughts of suicide, and that it was important for her mental well-being that their housing situation be rapidly resolved.
28. Mr Y wrote to the Council on 4 December 1997 to set out a possible way of resolving Mr and Mrs X's complaint. In a meeting the following day he told Officer A that he felt Mr and Mrs X had been disadvantaged by the Council's past failure to secure homelessness applications from them. He said that Mr and Mrs X would eventually be unable to afford the rent on their house in Beatown and this was likely to lead to the landlord taking possession action. He said that Mrs X and her daughter were suffering from stress and that the school had advised Mrs X not to move her daughter to a different school. Mr and Mrs X affirmed that they had contacted the Council on at least four or five occasions over the last nine years to ask if they could sell their house to pay their debts and be rehoused by the Council and each time the Council had advised that they would be intentionally homeless if they were to do this; but the only record the Council appeared to have was of the interview in 1989.
29. Mr Y disputed the Council's assertion that there was no record of any previous approaches apart from the interview in 1989. He enclosed a copy of a letter to Mr and Mrs X dated November 1995 which was evidently a reply to a letter from Mr and Mrs X. He said that their approach in July 1997 constituted a homelessness presentation, but the Council, although aware that they were about to be evicted, failed to require a homelessness application; and that the Council should have established whether the applicants were homeless, in priority need, and unintentionally homeless before deciding what duty was owed to them. He suggested that the Council immediately grant an additional fifty points awarded to applicants on the housing register who are homeless and in priority need and that the Council make Mr and Mrs X an *ex gratia* payment.
30. Officer A confirmed at interview how the Council's points system was operated (see Appendix). The Council's files record that he discussed Mr Y's letter with his senior officer, the author of the Council's policy. He then sought legal advice on Mr and Mrs X's case. The Council's Legal Department replied that any

irregularities in the way in which Mr and Mrs X's previous approaches had been handled could not now be regularised by granting additional points in retrospect.

31. On 9 December 1997, the Council wrote to two housing associations outside its area asking if either could accept the family. The two housing associations replied that there were no vacancies.
32. On 16 December 1997, the Council's medical adviser recommended a medical grading of "B" (25 points) in respect of Mr and Mrs X's daughter's social and medical problems.
33. The Council told Mrs X on 23 December 1997 that her family had 95 points; there were 52 applicants with over 100 points.
34. Mr Y contacted the Council on 20 January 1998 to ask why he had not received a response to his letter of 4 December 1997. Officer B, who had recently assumed the responsibility for housing advice, allocations and homelessness, replied on 2 February 1998.
35. Mr X says that, at this stage, he asked Officer A if self-nomination to a housing association was a possibility. Officer A had given him two forms with a list of about 100 housing associations. Mr and Mrs X had telephoned about 50 of these, all of which had confirmed that they would accept only Council nominees. Officer A said in interview that Housing Associations will accept self-nominations if their lists are open at the time.
36. Officer A contacted the Delta Housing Association and another housing association on 2 March 1998 to ask if they could help Mr and Mrs X. At this point, Mr and Mrs X had 95 points with the Council and were on the list for two-bedroomed accommodation. There were 15 families before them on the list. Mrs X says that, at about this time, she visited the Council and spoke to Officers A and B. Officer A told her that it was highly unlikely that the Council would ever be able to house her.
37. On 5 March 1998, Mr Y made a formal complaint to Councillor Z about Officer B's response of 2 February 1998, and in particular about his view that Mr and Mrs X "were not technically homeless and there appears no reason why the information they imparted should have been treated as a formal homelessness application". He proposed the investigation of:

- why no homelessness application was taken from Mr and Mrs X when they contacted the Council saying that they were in financial difficulties and struggling with their mortgage, after they had received a bailiff's warrant or when they were advised about the Rent and Deposit Guarantee Scheme;
 - on what information Officer B's predecessor based his advice to Mr and Mrs X when he interviewed them in November 1989;
 - why no additional points had been awarded to Mr and Mrs X in connection with their daughter's health condition; and
 - on other matters I have decided not to investigate.
38. On 12 March 1998 the Council informed Mr and Mrs X that their points level had been reached and they had been nominated for a two-bedroomed flat with the Omega Housing Association. Mr and Mrs X say that Omega offered them a flat, but that they did not accept it as the flat was a first floor flat and was very small.
39. Councillor Z replied to Mr Y on 19 March 1998. Mr Y was not satisfied with her reply. In particular, Councillor Z had not addressed the question of why no homelessness application was taken from Mr and Mrs X when they had received a bailiffs' warrant in respect of their home in Ayetown or when they were advised they could be assisted by the Rent and Deposit Guarantee Scheme. No reply was ever received to these questions.
40. On 25 March 1998, Officer B wrote to Mr and Mrs X. He said he had conducted a review in respect of the approach made to the Council in July 1997. He said that he concluded that Mr and Mrs X had been threatened with homelessness and in priority need in July 1997 and that they had been given appropriate advice and assistance in the form of the Rent and Deposit Guarantee Scheme, letters of introduction and an explanation of the type of accommodation that the Council had available. Officer B said at interview that the intention of his review had been to establish whether the procedures adopted in respect of Mr and Mrs X were correct. He had concluded that Officer A had reached an informal decision that they were threatened with homelessness. Officer B said that when Mr and Mrs X had found their house in Beatown, the Council had determined that they were no longer homeless. Officer B said in his letter that, if they were not satisfied with his decision, Mr and Mrs X could appeal to the Council's Appeals Panel.

41. Mr and Mrs X indicated that they would appeal and the Council prepared documents for the Panel. The documentation included a copy of a letter dated 1995 which Mr Y had sent to the Council on 4 December 1997. The copy sent to the Panel had been annotated and was not the copy which Mrs X had sent to the Council on request in 1997. Mr and Mrs X feel that this indicates that the Council was in possession of files predating 1997 all along. Officer A says that he then searched again for earlier information in respect of Mr and Mrs X's housing problems and found one copy letter, misfiled in Mr and Mrs X's Housing Benefit file, dated 1995. This was another copy of the letter enclosed with Mr Y's letter of 4 December 1997. He says there is no other record on any of the Council's files of any approaches made by Mr and Mrs X until 1997.
42. Mr Y wrote to the Council on 31 March 1998. He asked what aspect of Mr and Mrs X's case the Council expected the Panel to consider; under what legislation the Panel had been formed; and what rights of further review there were. Officer B said at interview that he was satisfied that the Council had fulfilled its duties to Mr and Mrs X, except for the issue of a formal decision notice. He said that if Mr and Mrs X had filled in an application form they would have received the same assistance and advice. He said that Mr and Mrs X should have understood that they were being treated as a family threatened with homelessness and that they should come back to the Council if they became homeless. Mr Y states that the advice and assistance offered was flawed because the Council failed to ascertain that its suggested solutions were affordable.
43. Mr X's relatives informed him of properties becoming vacant in Seatown. He checked with the Delta Housing Association, who confirmed that there were properties available and asked Officer A to support his application for the tenancy of one of them. Officer A did so. The tenancy was offered to Mr X on 4 May 1998 and the family moved in. The Council points out that it has allowed Mr and Mrs X to remain on the housing register even though they are assured tenants of a registered social landlord. Their points total was reassessed at 75.
44. Mr and Mrs X say that the property in Seatown is not suitable for their needs. It is a second-floor maisonette and Mrs X suffers from a medical condition which makes it painful for her to climb stairs. The property has two bedrooms, so it is not possible for Mrs X's son to return to live with the family although their housing register application does not include him. They say that they only accepted the property because the rent was affordable.

45. The Council has provided evidence to show that those applicants who were allocated three-bedroomed properties in Ayetown after Mr and Mrs X applied as homeless all had a significantly higher points score than they did. The same is true for the allocation of two bedroomed properties at ground floor level.
46. The Council's response to Mr Y's complaint that the Council failed to provide him with information which he requested is that this was unintentional, and it has offered an apology.

Conclusions

47. There is no doubt that Mr and Mrs X were threatened with homelessness in July 1997. Officer A recorded this fact at the time, and Officer B confirmed in March 1998 that when they presented themselves to the Council just prior to eviction they were threatened with homelessness, unintentionally so, and in priority need. Yet neither at that stage, nor shortly afterwards when the eviction warrant had been issued, did the Council invite them to complete a formal homelessness application. Nor was any formal determination made under section 184 of the Housing Act 1996. These failures on the part of the Council were maladministration.
48. What would a formal application and determination have involved? As part of the process, the Council would have had to give proper consideration to the family's circumstances. This would have included an assessment of its income, and Officer A had no details of that. The Council would have had a duty under section 197 of the Housing Act 1996 to consider whether suitable alternative accommodation was available. The courts have held that part of the test of suitability is the affordability of the accommodation available. Officer A states that he believed that suitable alternative accommodation was available in the area, although not necessarily where Mr and Mrs X wanted to live. However, he was unable to test whether the accommodation was suitable for Mr and Mrs X without finding out details of their financial circumstances. In my view the Council failed to consider properly the question of the availability of suitable alternative accommodation, and this, too, was maladministration.
49. It is not for me to form a view as to whether suitable alternative accommodation was in fact available. That was a matter for the Council, and if Mr and Mrs X disagreed, they should have had a right of review. They were denied these rights by the Council's failure to take and determine a homelessness application from

them, and the denial of these rights represents an injustice to Mr and Mrs X. They also lost the opportunity to use the appeal to challenge and possibly improve their housing circumstances over a period of 10 months during which they considered themselves unsatisfactorily housed in Beatown.

50. In practical terms the Council says that if it had received a homelessness application form, and if the family had not been able to find suitable alternative accommodation, then they would have been placed in its own temporary accommodation. The Council's housing register points scheme provides that it is likely that people in hostel or bed and breakfast accommodation will accrue a significantly higher number of points than those who secure accommodation elsewhere. Had Mr and Mrs X been placed in such accommodation the points then allocated to them may well have enabled the Council to rehouse them relatively quickly, although no formal offer of such accommodation was made.
51. A further issue is the clarity of the Council's points scheme itself. An applicant threatened by homelessness gains 10 points for Housing Register purposes. An applicant who is homeless and in priority need gains 50 points. The Council has interpreted this to apply only to those families placed in the Council's temporary accommodation. Mr Y believes that this interpretation is too narrow. But it is difficult to see how a homelessness applicant who finds accommodation, whether in the social or private rented sectors, can still be considered to be homeless. I do not therefore believe that the Council's interpretation of its points scheme is unreasonable in practice, although it could have been spelt out more explicitly.
52. The Council has provided evidence to show that, even if Mr and Mrs X had been awarded an additional 50 points, this would not have given them sufficient priority to be offered a three-bedroomed property in Ayetown. The evidence provided by the Council shows that the only two bedroomed properties available in Ayetown which were allocated to applicants with a similar points score were on the first or second floor, which Mr and Mrs X have said would be unsuitable. I cannot therefore conclude that Mr and Mrs X have been denied the offer of a property which would have been acceptable to them.

Finding

53. For the reasons given in paragraphs 47 and 48, I find maladministration by the Council causing the injustice to Mr and Mrs X I have described in paragraph 49.

Remedy

54. I recommend that the Council make the complainants an ex gratia payment of £500, together with a further payment of £250 for their time and trouble spent pursuing their complaint with the Council and with me. I also recommend that the Council reviews its arrangements for dealing with persons who are homeless and threatened with homelessness. This should include the Council's housing points scheme as it affects homelessness applicants and the publicity it provides in respect of its arrangements.
55. I believe that the apology offered by the Council to Mr Y for its failure to provide the information he requested is an appropriate remedy for his complaint.



J R White
Local Government Ombudsman
2 The Oaks
Westwood Way
Westwood Business Park
Coventry CV4 8JB

20 March 2000

ROCHFORD DISTRICT COUNCIL
DIRECTOR OF HOUSING (OPERATIONS)
HOUSING POINTS SCHEME
ASSESSMENT SHEET

The Council will award TEN (10 points) to housing applicants for each factor except for where otherwise indicated:-

(a) Insanitary, overcrowded and unsatisfactory housing conditions

- Lacking bathroom
- Lacking kitchen
- Lacking inside WC
- Lacking cold or hot water supplies, electricity or adequate heating (10 points for each facility lacking)
- Lack of access to garden for children
- Lack of bedrooms (10 points for each bedroom lacking)
- Sharing living room, kitchen, bathroom/WC
- Property in disrepair
- Property unfit for habitation
- Poor internal or external arrangements
- Underoccupation (5 points only)
- Children in flats or maisonettes above ground floor
- Inability to cope with garden
- Remoteness of location

(b) Temporary or insecure accommodation

- Tied tenancies
- Tenancies of a limited term
- Hostel accommodation
- Refuges for households escaping domestic violence
- Living in homes to be demolished or modernised
- Leaving institutional care
- Sharing with friends or relatives
- Facing eviction or repossession
- "Roofless"

(c) & (d) Families with dependent children or expecting a child

- Households containing at least one dependent child who lives or who might reasonably be expected to live with the applicant (10 points for each child)
- Households comprising or including a pregnant woman

(e) People with particular need for settled accommodation on medical welfare grounds (criteria may apply to any member of the household)

A mental illness or disorder

A physical or learning disability

Chronic or progressive medical conditions (e.g.. MS, HIV/AIDS)

Infirmity due to old age

The need to give or receive care

The need to recover from the effects of violence (including racial attacks) or threats of violence or physical, emotional abuse

Ability to fend or self restricted for other reasons

Young people at risk

People with behavioural difficulties

Need for adapted housing and/or extra facilities, bedroom or bathroom

Medical grade A (50 points)

Medical grade B (25 points)

Medical grade C (10 points)

Medical grade D (nil points)

(Note - A grading will be awarded by the Consultant in Public Health Medicine following medical evidence being received in support of the applicants need of alternative accommodation)

(f) People whose social or economic circumstances lead to difficulty in getting settled accommodation

Lack of an actual potential wage earner

Head of household unemployed or in part time or low paid work

Lack of capital assets

Households requiring accommodation which is unavailable at an affordable cost in the private sector (e.g.). families requiring large housing or people requiring specially adapted accommodation)

(g) Households accepted as homeless and in priority need

An additional 50 points will be awarded

(h) Special factors

Medical Grade A

Special Support - Director of Social Services

Special Advice of Chief Environmental Health Officer
(where property is deemed unfit for habitation)

Advice of A.D.H.A.C.
(Rent Agriculture Act 1976)

CONSIDERATION

FOR

URGENT

REHOUSING

Time spent on the list will be taken into consideration where two or more applicants have the same number of points.