

## COMMITTEE: STANDARDS & GENERAL PURPOSES

**Date: 22 September 2020**

Wards: All

**Subject: Local Government and Social Ombudsman Report – Homelessness and temporary accommodation**

Lead officer: Hannah Doody, Director of Community & Housing

Lead member: Councillor Martin Whelton, Cabinet Member for Regeneration, Housing and Transport

Contact officer: Steve Langley of Head of Housing

### Recommendations:

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1. Standards & General Purposes Committee to consider the contents of this report regarding the Local Government and Social Care Ombudsman (LGSCO) decision and report.
  2. Standards & General Purposes Committee to note the actions already taken to remedy this matter, namely the written apology to Mr X, the award of compensation, amendments to the Homeless Placement Policy and the refresh of the Housing Options Toolkit.
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## 1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report evaluates and sets out before the Standards & General Purposes Committee the position following the publication of the report on the 07<sup>th</sup> August 2020 by the Local Government and Social Care ombudsman (LGSCO). The report was issued after an investigation of the historic homelessness case which began in October 2017.
- 1.2. In carrying out its homelessness duties towards the applicant (Mr X), The Housing Service adopted a course of action and took a view on his case at the time which subsequently meant he was rehoused in the West Midlands. The LGSCO has reviewed those actions and concluded that maladministration occurred which led to an injustice against Mr X. In his report the LGSCO made a series of recommendations for the Council to consider.
- 1.3. The report clarifies the reasons behind the actions and historic decisions that officers took. It should be noted that the ultimate final legal determinant of the correctness of that decision could only have been made way of statutory review in accordance with s202 Housing Act 1996 and the County Court appeal process, which did not happen at the time.
- 1.4. In accepting the finding of maladministration and consequential injustice, actions must be considered to put matters right. The LGSCO has made a series of recommendations in this respect and accordingly the report confirms that:

- An apology has been made to Mr X
- A payment of £1,768 compensation has been made to Mr X
- Changes are being made to the Council's housing placement policy
- The LGSCO also recommended that the Council should remind staff of the need to consider Council policies when placing a homeless household. Staff should be reminded of the need to make clear notes setting out reasons for their decisions.

## **2 THE CASE**

- 2.1. The legal provisions governing how the Council must deal with homelessness and temporary accommodation are complex, governed and regulated by substantial statute and case law, and in this particular case the case of *Nzolameso v Westminster City Council*. During the 4 year timescale of this case there has been significant changes to welfare reform and housing and homelessness legislation.
- 2.2. The key factual circumstances of this case in summary are: Mr X approached the Council as homeless in October 2017. Mr X was placed in interim accommodation in Birmingham.
- 2.3. On the 28<sup>th</sup> April 2018 the Council accepted a full housing duty. The Council offered Mr X permanent housing in the private rent sector in the West Midlands. This was exclusive use of a 2-bed house. Mr X accepted the offer and the Council ended its housing duty to him in August 2018.
- 2.4. Mr X asked the Council for a review of its decision to end its duty towards him on the basis of the suitability of the accommodation in the West Midlands. At that time Mr X was represented by Shelter. Mr X said he would be isolated and unable to attend his university course or easily obtain a job.
- 2.5. On the 4<sup>th</sup> September 2018 the Council wrote to Mr X to say it had not upheld his review. The Council confirmed in writing that Mr X could appeal to the County Court if he was unhappy with the Council's decision.
- 2.6. Mr X appealed to the County Court and the Court ordered that the Council's decision of the 4<sup>th</sup> September should be withdrawn on a technical matter. The Council then carried out a further of its decision to end its duty to Mr X
- 2.7. The Council wrote again to Mr X on the 22<sup>nd</sup> February 2019 with a second review decision. The Council upheld its decision to end its duty to Mr X and said the offer of private rented accommodation was suitable. The Council said it would be willing to pay Mr X one month's rent and a deposit to assist him to find accommodation in the area of his choice.
- 2.8. The Council confirmed in writing Mr X could appeal to the Council Court if he was unhappy with the decision. No appeal was subsequently lodged. Mr X subsequently found accommodation in London and the Council paid the rent in advance and deposit.
- 2.9. After Mr X moved to London he complained about the handling of his homeless application, particularly that the Council had failed to consider

his employment status and unreasonably rehoused him to the West Midlands causing him to lose his job. The LGSCO decided to investigate the complaint.

### **3 THE COUNCIL'S RESPONSE TO THE COMPLAINT**

- 3.1. The Council's response throughout the investigation is set out in summary below.
- 3.2. The Council said it did consider Mr X's employment history and had taken the view that he was unemployed, and had made a claim for universal credit.
- 3.3. The Council has a homeless placement policy that sets out the circumstances that will be taken into account when placing homeless households. This sets out which households have priority for a local vacancy, which have priority for a vacancy within 90 minutes and which can be placed anywhere in the country. Where a person is in settled employment, then depending on the location of that employment, they will have priority for location either within the borough or within 90 minutes of it. This policy was developed in response to the case law in *Nzolameso v Westminster City Council*. The Council decision that Mr X was to be placed in the West Midlands was based on sound legal principles, established case law and mirrors the practices of many other London Housing Authorities.
- 3.4. The Council's assessment of Mr X's employment status was that he was not working and was not on benefits at that time but had applied for universal credit. In those circumstances, the Council's policy allowed temporary accommodation to be offered anywhere in the country, hence the interim placement of Mr. X in Birmingham.
- 3.5. Shelter did not raise any issues in its suitability review regarding Mr X's employment status during its Housing Act review.
- 3.6. Mr X had left the West Midlands at the time of the LGSCO complaint to live in the London area.

### **4 THE OMBUDSMAN'S CONCLUSIONS**

- 4.1. As a result of his investigation the LGSCO has taken a different view to the Council and concluded that the injustice has been caused. The LGSCO found that after Mr. X had been placed in interim accommodation in Birmingham, he informed the Council that he was employed locally and also self-employed. The Council did not investigate that assertion and it was that failure to investigate which led the LGSCO to make a finding of fault. He did not further investigate the complaint about the Council's two decisions to end its duty towards Mr. X as the first was the subject of an appeal to the County Court and Mr. X could similarly have appealed the second but did not do so.
- 4.2. Irrespective of the fact that the Council held a different view of the handling of Mr X's case to that of the LGSCO throughout the investigation, the matter has been concluded and finding of maladministration drawn.

- 4.3 Officers recognise and respect the prerogative of the LGSCO to undertake an investigation and reach his own conclusions on a particular matter.

## **5 THE COUNCIL'S RESPONSE**

- 5.1. Officer have comprehensively considered each of the LGSCO's recommendations in a balanced way. All four of the LGSCO's recommendations have been considered reasonable to accept.
- 5.2 Given that there was no express provision with the Council's Placement Policy for consideration of self-employment status, this now been amended as a result of the LGSCO recommendations. This should have the effect that the potential to cause injustice has been mitigated.
- 5.3 The Council has also reviewed its written guidance to officers and has updated this to reflect the importance of robust and reasoned decision making and note keeping.

## **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1. The cost of £1,768 will be met from existing budgets. The cost of £1,768 will be met from existing budgets. The amendments to the Homeless Placement Policy including the Housing Options Tool Kit will have no financial consequences

## **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. In relation to this complaint the LGSCO found that there had been maladministration on the part of the Council and this has caused injustice to Mr X. The only way to challenge such findings is by way of judicial review. In the circumstances, despite the fact that officers do not fully agree with the outcome of the investigation, it is reasonable to accept the findings and to comply with his recommendations.
- 7.2 Under section 30 of the Local Government Act 1974, the Council is obliged to publicise the report in a local newspaper and any other media it considers appropriate and also to make copies of the report available for inspection at the Civic Centre. Section 31 requires the report to be considered by a committee with delegated authority to consider these matters. This Committee has that authority under Part 3B of the Constitution.
- 7.3 The homeless statutory scheme is government is governed by the code of guidance and associated case law.

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. The Council has paid due regard to its duties under the Equality Act 2010 by taking into account Mr X's individual circumstances and offering accommodation to meet his and his family's needs.

**9 CRIME AND DISORDER IMPLICATIONS**

- 9.1. None for the purpose of this report

**10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 10.1. Non for the purposes of this report

**11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

Appendix 1 – LGSCO Report Recommendations and Findings

