Ombudsman Decision – 17 012 432
Report of the Monitoring Officer

Report to	**Cabinet**
Ward(s):	**N/A**
Key Decision:	**No**
Appendix 1:	**Report by the Local Government and Social Care Ombudsman 17 012 432**
Appendix 2:	**Facts of the Case**
Appendix 3:	**Redacted Homelessness letter**
Appendix 4:	**Council's Response to the Complaint**
Appendix 5:	**BDBC housing allocations policy in operation to October 2015** *– see page 11 for points scheme*
Appendix 6	**BDBC Allocations scheme from October 2015 –** *see 12.1(ii), pp10-13 for reasonable preference categories*
Appendix 7:	**Homelessness Case law - Hanton-Rhouila v Westminster CC 2010**
Appendix 8:	**Housing Register Review letter template - example**
Papers relied on:	**N/A**

Recommended that

1. Cabinet notes and acknowledges the important public role of the Ombudsman in scrutinising and reviewing the actions of local authorities, together with the legally binding nature of findings of maladministration and injustice that he has made against the Council regarding the handling of an historic homelessness and housing matter

2. Cabinet recommends to Council for endorsement the actions already taken, namely the written apology to the applicant and the procedural change to the published scheme of allocations and to advise recipients of housing decision letters of their right to complain to the ombudsman.

3. Cabinet accepts and recommends to Council the recommendation in the report to pay compensation to the applicant of £4,500

4. Cabinet recommends to Council that the recommendation to make the applicant top of the list for each eligible property he bids for until that bid is successful, be rejected for the reasons stated in paragraph 3.8.1(c) of this report as it is not considered appropriate for Mr X to have priority over

applicants who may be fleeing abuse or violence, or are dealing with acute and life limiting medical conditions

5. Cabinet asks Council to note that instead of giving Mr X the priority recommended by the ombudsman, that the applicant's housing application has been reinstated with a registration date backdated to January 2013 reinstating him to the position he would have been had the maladministration not occurred

6. The recommendations in paragraphs 2, 3, and 4 be adopted and recommended to Council as the Council's formal response under section 31 of the Local Government Act 1974 and that the ombudsman be notified of the actions that the Council has taken or agreed to take

7. The recommendations in paragraphs 2,3, and 4 be adopted and recommended to Council as the Council's formal response under section 5A of the Local Government and Housing Act 1989 and be sent to all members of council and the monitoring officer.

8. That Cabinet notes that the Allocations Policy will be considered by the Scrutiny Committee when it undertakes its annual review of the housing allocation policy in September 2019

Background, corporate objectives and priorities

This report lays the Local Government Ombudsman's (LGO) report before the Council in compliance with the Council's statutory duties under Section 31(2) of the Local Government Act 1974.

Glossary of terms

Term	Definition
Affordable Housing Association Rent	Rents charged at up to 80% of market rent
Benefits Cap	This limits the amount of benefit payable to non-working people who are of working age. For a family with 2 children outside of London the annual cap applied is £20,000 and where the cap applies the deduction is made from housing benefit
CBL	Choice Based Lettings Scheme - https://www.basingstokehomebid.org.u
Full or Main Housing Duty	The 'main housing duty' is owed to those applicants who, the local authority is satisfied, are homeless, eligible for assistance and have a priority need, and is not satisfied that they became homeless intentionally. The main housing duty requires the local authority 'to secure that accommodation is available for occupation by the applicant' and also by his household
LGO	Local Government Ombudsman
Private Sector Lease Scheme	An initiative operated by a registered housing provider, managing privately owned properties within the borough in order to let to low income households. The scheme might be used to provide temporary accommodation when nominated directly by BDBC where full homelessness duties have been

	accepted. Equally however it may be accessed by potentially homeless or vulnerably housed households in order to avoid homelessness occurring

Main considerations

1 Executive Summary

1.1 This report evaluates and sets before Cabinet the position following the publication of a report on 21 March 2019 by the Local Government and Social Care Ombudsman (LGO). The report was issued after an investigation into the handling of an historic homelessness case which initiated over six years ago, in December 2012.

1.2 In carrying out its homelessness duties towards the applicant (Mr X), the Council adopted a course of action and took a view on the case at the time which subsequently impacted the priority he was given on the housing register - particularly when his application was removed from the register in 2015 after the Council's allocations policy changed. The Ombudsman has reviewed those actions and concluded that maladministration occurred which led to an injustice against the applicant. In his report he has made a series of recommendations for the Council to consider.

1.3 The report clarifies the reasoning behind the actions and historic decisions the Council took. It notes that the ultimate final legal determinant of the correctness of that decision could only have been by way of statutory review and court appeal processes - which did not happen at the time. Nonetheless, it is important to recognise the Ombudsman's jurisdiction in these matters and its pivotal role in dealing with complaints into local authority actions and services. It must also be emphasised that findings of maladministration and injustice made by the Ombudsman are legally binding.

1.4 In accepting the finding of maladministration and consequential injustice made against the Council, actions must be considered to put matters right. The Ombudsman 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 to Mr X.of £4,500 financial compensation is recommended to be approved by Council
- Changes have been made to the Council's published housing allocations scheme and housing register review decision letters (to inform applicants about their right to complain to the Ombudsman)

1.5 The Ombudsman also recommended the Council should "make the applicant top of the list for each eligible property he bids for until that bid is successful". The report will demonstrate that this recommendation would require the Council to step outside of its lawfully adopted housing allocations scheme. The immediate impact of doing this would be to disadvantage those critically urgent cases (such as families fleeing in fear of their lives, or at a risk of fatal harm, or who may be debilitated from an acute life-limiting illness). Mr X's housing needs cannot reasonably be deemed to be of greater priority than cases in these such circumstances. It would also disadvantage 58 other

households who have a similar need to Mr X but who have more priority as they have been waiting longer than his original application date of January 2013.

1.6 The Council is not bound to implement recommendations of the Ombudsman in the same way that it is required to accept his findings. The Council is therefore legitimately entitled to take the type of factors outlined in 1.5 above into account when deciding whether to accept or reject this particular recommendation. On the basis that the injustice suffered by Mr X is not considered to outweigh the needs of those other households who have a greater housing priority than he, the considered conclusion of this report is that this recommendation should be rejected.

1.7 Finally, in order to ensure that Mr X's injustice can be put right (by putting his case back into the date-ordered position he would have been had the maladministration not occurred), Cabinet is advised that his housing application date has been adjusted to January 2013 – the date he initially applied. This will effectively enable him to use the additional "date order" priority and be able to bid successfully on vacancies currently being advertised on the Council's Choice Based Lettings (CBL) system.

1.8 The Scrutiny committee will undertake its annual examination of housing allocations policy, scheduled for September 2019.

2 The Proposal

2.1 This report sets out the background and legally binding findings of an adverse decision against the Council issued on 21 March 2019 by the Local Government and Social Care Ombudsman.

2.2 The Ombudsman's report is attached in full at Appendix 1. It confirms the Ombudsman's decision to uphold a complaint made by an applicant (Mr X) into how BDBC handled his homeless application in 2012, and his subsequent application for social housing through our housing register. It concludes with a finding of maladministration and injustice.

2.3 In accordance with the statutory requirements under section 31(2) of the Local Government Act 1974 and section 5A of the Local Government and Housing Act 1989 and paragraph 2.8 (18) of the cabinets terms of reference and article 4 paragraph 4.5 xxiii in the Council's constitution, this report lays the Ombudsman's report before Cabinet for consideration. It details the actions that have been taken in response to the Ombudsman's findings and recommendations.

3 Key issues for consideration

3.1 <u>The Case</u>

3.2 The legislative provisions governing how Councils must deal both with homelessness and its housing register are complex, governed and regulated by substantial statute and case law. During the six year timescale of this case there have been significant changes to welfare reform, housing and homelessness legislation, as well as the Council's own housing allocations policy.

3.3 The key factual circumstances of the case are set out in Appendix 2. In summary:

a) Mr X approached the Council in December 2012 having returned to the country from abroad in an emergency to care for his daughters.

b) Mr X was placed in bed and breakfast and in January 2013 he moved into a three bedroom private sector leased property managed by a housing association.

c) In January 2013 the Council reached a decision that Mr X was "not homeless" because he held tenancy. Mr X claims he never received this notification. Mr X joined the housing register although his application received relatively low priority as the accommodation was considered affordable and suitable.

d) In October 2015 the Council implemented a new housing policy. Mr X's case was removed as he was considered to be living in suitable accommodation.

e) In December 2015 a change to housing benefit provisions under welfare reform ("the benefit cap") meant that Mr X's housing benefit entitlement no longer covered the full amount due and rent arrears began to accrue.

f) Mr X re-joined the housing register in July 2017 when he provided financial information to demonstrate the tenancy was no longer affordable. Mr X's request for his application to be backdated to January 20143 was declined

g) In January 2018 Mr X complained to the Ombudsman about the handling of his application, particularly that the Council had failed to give him a homeless decision in December 2012 and unreasonably removed him from the housing register in 2015. The Ombudsman decided to investigate the complaint.

3.4 **The Council's response to the complaint**

3.4.1 The Council's mitigations and response throughout the investigation is set out in detail in Appendix 3. In summary:

- The Council said it did reach a decision on Mr X's homeless application and referred evidence to the Ombudsman that it had notified him accordingly that he was not considered homeless as he had taken up the tenancy of a suitable property. The property in question was a three bedroom house for which the rent was fully covered by housing benefit for the first 3 years of the tenancy. The Council's decision that Mr X was not homeless had been based on sound legal principles and established case law (see Appendix 7).

- The Council's subsequent assessments of Mr X's housing register priority and eligibility to be on the register were consistent and stemmed from that initial homelessness assessment and priority in accordance with its allocations schemes. This included the decision to remove him from the housing register in 2015. Mr X's rent arrears accrued as a result of changes to Mr X's housing benefit entitlement as a result of benefit reform

2015 and as soon as Mr X provided the financial verification that his tenancy was unaffordable he was re-admitted to the register in July 2017.

3.5 **The Ombudsman's Conclusions**

3.5.1 As a result of his investigation the Ombudsman has taken a different view to the Council and concluded:

- To uphold Mr X's complaint that the Council did not give him a decision on his homeless application in December 2012 and that he was unreasonably removed from the housing register in October 2015.

- That the Council was wrong not to have accepted a full homelessness duty towards Mr X and does not consider the Council sent him a "not homeless" letter with details of his right to review. The Ombudsman's conclusions in this respect are set out in para's 64 to 79 of his report in Appendix 1.

3.5.2 The Ombudsman has also determined that injustice has been caused. He considers that had Mr X not been removed from the register he would have had sufficient date order priority to have been housed under the Council's new allocations policy. Consequently he would not have incurred arrears or faced subsequent possession proceedings against him.

3.5.3 To put matters right for Mr X the Ombudsman's has recommended the Council:

- Apologise to Mr X

- Make him top of the list for each eligible property (i.e. 2 and 3 bedroom vacancies) until that bid is successful (i.e. his nomination is accepted by the relevant landlord association)

- Pay Mr X £4,500 for

  Failing to deal with his homelessness and housing applications correctly

  The delay in rehousing his family to settled, affordable accommodation

  The stressful possession proceedings he underwent

  The arrears of £500 he still has after the Council has made discretionary housing payments, and

  The time, trouble and distress the Council caused him

3.5.4 To put matters right for other people the Ombudsman recommends the Council should tell people in its housing scheme and housing register review decision letters about their right to complain to the ombudsman

3.6 **The Role and Jurisdiction of the Ombudsman**

3.6.1 The task of the Ombudsman is to examine whether maladministration has occurred which has led to an injustice. The Ombudsman has a wide amount of discretionary power when making any decision on maladministration, and any such finding is legally binding. The only basis on which an Ombudsman's

findings could be challenged would be by way of Judicial Review. Given Parliament has given the Ombudsman such wide discretion courts may generally be reluctant to intervene – so the "bar" for challenging adverse findings would be extremely high.

3.6.2 By contrast, any recommendations made by an Ombudsman following maladministration findings are not binding. If a Council does not agree to carry out recommendations within an Ombudsman report or agree to proposed settlements by the Ombudsman, the Ombudsman could issue a further public report. The Council may then be obliged to publish a statement in a local newspaper explaining why it has refused to follow the Ombudsman's recommendations.

3.7 **The Ombudsman's Findings**

3.7.1 Irrespective of the fact that the Council held a different view on the handling of Mr X's case to that of the Ombudsman throughout the investigation, the matter has now been concluded and a finding of maladministration drawn. It is important the Council recognises and respects the prerogative of the Ombudsman to undertake an investigation and reach his own conclusions on a particular matter.

3.7.2 Even if the Council were minded to challenge the Ombudsman's findings in this case, the prospects of success would likely to be limited given the wide range amount of discretionary power available to the Ombudsman.

3.7.3 In the absence of the Council pursuing a judicial review, the Council's response to the Ombudsman's non-binding recommendations is therefore made within the context of the Council accepting his findings which are binding upon the Council and must be treated as such.

3.8 **The Ombudsman's recommendations**

3.8.1 In order to put matters right the Ombudsman's recommendations are:

i) To apologise to Mr X

Response: The Council has issued a written apology to Mr X for any inconvenience and distress he may have suffered in respect of the Council's handling of his housing application.

ii) To Pay Mr X £4,500 financial compensation

Response as the payment of financial compensation for maladministration is not an executive function, the recommendation is for Council to authorise the payment of the suggested compensation to Mr X

iii) To tell people in our housing scheme and housing register review decision letters about their right to complain to the ombudsman

Response This has been has already been implemented (see Appendix 6 at para 21.2 of full published allocations scheme and Appendix 8 - example of review decision letter). It should be noted however that under Section 204 of the Housing Act 1996, if an applicant is exercising their statutory right of

appeal the Ombudsman would not have jurisdiction to consider their complaint.

iv) To make Mr X top of the list for each eligible property he bids for until that bid is successful

Response This recommendation should be rejected for the following reasons:

a) Nominations for social housing vacancies within the borough have to be made in strict accordance with the Council's approved and published scheme of allocations. The detailed policies and procedures within that scheme are in place by virtue of statute - the Housing Act 1996 (as amended by the Localism Act 2011). Allocations schemes must set out how priorities between applicants will be decided and what procedures are followed in determining nominations. As a result, any applicant should be able to draw legitimate conclusions on how their application has been assessed and their realistic opportunities for securing housing.

b) A full copy of the Council's current allocations scheme is attached at Appendix 6. Applicants must have a housing need in order to join the housing register and are then categorised into 3 priority bands and ranked within those bands according to the date of their application (i.e. how long they have been waiting).

c) Housing applicants in the highest band (Band 1) are those with an urgent or critical need to move (see definition within the policy in Appendix 6 para 12.1(i)). Band 1 cases might involve situations where applicants are fleeing abuse or violence, are in fear of their lives, or dealing with an acute and life limiting medical condition. Notably, such is the urgency of such cases that only less than 1% of all applicants on the register tend to be awarded Band 1 priority. The vast majority (95%) of all applicants – including Mr X - are placed in date order in Band 2.

d) There is no express provision within the Council's allocations scheme to arbitrarily rank applicants for nominations in any order other than that set out within the scheme. If the Council were to implement the Ombudsman's recommendation (and "put him to the top of the list") it would, in so doing:

- Require the Council to step outside of its published scheme of allocations and adopted policies, and

- Have the potential to cause unfairness to an inestimable number of applicants who might be in a better position under the adopted scheme than Mr X, and who may otherwise have legitimately placed a bid for a property with the expectation of succeeding. This would include 25 applicants currently in Band 1 who require similar accommodation as Mr X but have a critical or urgent need to move, as well as 58 other households who currently have a similar need to Mr X to move (i.e. are in Band 2) but who have more priority as they have been waiting longer than his original application date of January 2013.

e) Having therefore had regard to all the facts, the Council could not reasonably be expected to adopt a course of action which may prejudice the housing options and opportunities of so many other social housing applicants within the borough whilst also rendering it open to challenge (legal or otherwise) by them

as a result. Counsels has advised that it is reasonable for the Council to reject this recommendation and has commented upon this report.

3.8.2 Additional Remedy

An alternative action to ensure that Mr X's injustice was rectified is to put his case back into the date-ordered position he would have been had the maladministration not occurred. His application date has therefore been amended to January 2013 rather than July 2017.

It should be noted that of the 240 two or three bedroom properties advertised on CBL between 1 October 2018 and 31 March 2019, only five applicants who finished first on a short list held an application dated earlier than 22 January 2013. This effectively means that the additional date order priority now given to Mr X's application should enable him to bid successfully on vacancies currently being advertised through CBL.

4 Options Analysis

4.1 These are assessed as follows:

i. Option 1 – Challenge the Ombudsman's findings

This is not recommended for the reasons outlined in section 3.6 above, having regard to the limited prospects of success and costs of such proceedings and generally for not being in the public interest.

OPTION REJECTED

ii. Option 2 - Reject all recommendations in the report and do nothing

This option is not recommended. Even though the Council may not have concurred with the Ombudsman's findings throughout the investigation, his findings are nonetheless binding.

The Council has a responsibility to consider the Ombudsman's recommendations. Regardless of any legal requirements for doing this it would also be consistent with good governance not to reject or disregard them arbitrarily or without good reason.

In addition to the reputational risks of simply rejecting all the recommendations it would do nothing to resolve the difficult circumstances in which Mr X is currently in, in a fair and equitable manner. This has to be a key consideration.

OPTION REJECTED

iii. Option 3 – Accept all the recommendations within the report.

This option is not recommended.

The Council has to comprehensively consider the wider impact, risks and costs associated with implementing each of the Ombudsman's recommendations in a balanced way. As outlined in section 3.8.1, three out of

the four recommendations would be reasonable accept. However the recommendation to make the applicant top of the list for each property he bids on should be rejected. The Council cannot ignore the fact that if it were to adopt this recommendation it would require it to step outside of its lawfully adopted scheme of allocations, as well as potentially cause harm to a significant number of other households on the register whose needs are not considered to be outweighed by Mr X's.

OPTION REJECTED

iv. <u>Option 4 – Accept most of the Ombudsman's recommendations but reject the recommendation to make the applicant top of the list for each eligible property he bids on.</u>

In mitigation of rejecting one of Ombudsman's four recommendations, Cabinet's attention is drawn to the fact that Mr X's housing application date has been retrospectively adjusted to January 2013. This should effectively enable him to bid successfully on current vacancies advertised on CBL with immediate effect.

RECOMMENDED OPTION

4.2 It should be noted that, as identified in 3.6.2, if a Council does not agree to carry out recommendations within an Ombudsman report or agree to a settlement proposed the Ombudsman may issue a further report. If the Council does not take satisfactory action it may be required to publish a statement in a local newspaper explaining why it has refused to follow the Ombudsman's recommendations.

There is therefore a risk that pursuing this option could lead to reputational damage. However the rationale within this report provides a solid and transparent reason for justifying the Council's actions in this respect. Indeed it is to be assumed that Parliament has not made the Ombudsman's recommendations binding specifically in order to allow Councils to take into account a wider range of matters before arriving at its own judgement.

Corporate implications

5 Legal Implications

5.1 <u>Findings and Recommendations of the LGO</u>

5.1.1 In relation to this complaint, the Local Government Ombudsman (LGO) has found that there has been maladministration on the part of the Council and that this has caused injustice to Mr X. This is a finding of the LGO. Findings of the LGO are binding. The LGO has a wide measure of discretion in arriving at its decision and its findings are subject to challenge only by way of judicial review.

5.1.2 Following on from the LGO's finding of maladministration causing injustice, the LGO has also made a number of recommendations to the Council. The status of these recommendations is different to the status of findings of the LGO. Unlike a finding, which is binding, the Council is not bound to accept a recommendation of the LGO. Therefore, whilst the LGO has the power to

make recommendations, it cannot make recommendations that have legal effect and which a Council is bound to follow.

5.1.3 Whilst only a small number of recommendations are not followed (in approximately 0.6% of all case), it is open to the Council to consider the impact on the fair and efficient allocation of its scares resources in deciding whether to accept a recommendation of the LGO, or in appropriate cases to reject such a recommendation.

5.1.4 If the Council does not agree to carry out the recommendations in a report from the LGO, the LGO may issue a further report and the Council must issue a statement in the local newspaper explaining why it has refused to follow the LGO's recommendations

5.2 Consideration of the LGO Report

5.2.1 Section 31(2) of the Local Government Act 1974 requires the Ombudsman report to be laid before the Council and it shall be the duty of the Council to consider the report and notify the LGO of the action which it has taken or proposes to take.

5.2.2 The timescale for complying with the requirements in section 31(2) of the Local Government Act 1974 are within three months of receipt of the report from the LGO or such longer period as the LGO may agree. By letter dated 1 March 2019, the LGO agreed an extension of the time scale to the end of July 2019 in view of the impact of purdah ahead of the upcoming local government elections.

5.2.3 The cabinets terms of reference include within paragraph 2.8 (18) of the Council's constitution that Cabinet consider, determine and report to Council matters on which there has been a finding of maladministration by the Local Government Ombudsman.

5.2.4 Article 4 paragraph 4.5(xxiii) of the Council's constitution requires Council to consider reports on lawfulness and maladministration.

5.2.5 Section 5A of the Local Government and Housing Act 1989 requires the council's monitoring officer to prepare a report to the executive of the authority following the issue of a report by the LGO which makes a finding of maladministration following an investigation by the ombudsman. This is the report. The monitoring officer is under a duty as soon as is practical after such report has been prepared to arrange for a copy of it to be sent to each member of the authority. The cabinet, as the authorities' executive, is then under a duty to consider the report within 21 days after copies of the report are first sent to cabinet.

5.2.6 Once cabinet has considered this report, the cabinet is required to prepare a report specifying what action it has taken in response to the report; what action it proposes to take in response to the report and by when and the reasons for taking the action or taking no action. This report will form the report to be taken to Council. Once this report has been prepared cabinet is to arrange to send a copy of it to each member of the council and the monitoring officer.

5.2.7 The Local Government Act 2000 section 92 gives the council a discretionary power to pay compensation where there is maladministration and the applicant has been adversely affected.

6 Financial implications

6.1 The cost of £4,500 will be met from existing budgets.

7 Risk management

7.1 A risk assessment has been completed in accordance with the council's risk management process and has identified no significant (Red or Amber) residual risks that cannot be fully minimised by existing or planned controls or additional procedures.

8 Equalities 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 him accommodation to meet his and his family's needs.

8.2 The council is committed to promoting equality in all of its services and meeting its Public Sector Equality Duty.

9 Consultation and communication

9.1 In line with the Local Government and Social Care Ombudsman's requirements public notices were placed in the local media informing people of the outcome of the report and where it can be viewed.

9.2 Responses were issued to the local media following the distribution of a press release by the Local Government and Social Care Ombudsman.

9.3 A further statement or press release will be issued confirming and explaining the council's response to the recommendations determined by Cabinet and Council.

10 HR implications

10.1 There are no HR implications identified in this report.

Conclusion

11 Summary and reason for the decision

11.1 For the comprehensive reasons set out within this report, the decision is to recommend that:

11.1.1 Cabinet notes and acknowledges the important public role of the Ombudsman in scrutinising and reviewing the actions of local authorities, together with the legally binding nature of findings of maladministration and injustice he has made against the Council regarding the handling of an historic homelessness and housing matter

11.1.2 Cabinet recommends to Council for endorsement the actions already taken as a satisfactory response to the Ombudsman's recommendations:

- an apology already made to the applicant concerned

- in order to put matters right for other people, recommendations to tell people in our housing scheme and housing register review decision letters about their right to complain to the ombudsman have been implemented

11.1.3 That for reasons set out in the report, Cabinet confirms and recommends to Council that the recommendation to make the applicant top of the list for each eligible property he bids for until that bid is successful, be rejected but that cabinet asks council to note that the applicant's housing application has been reinstated with a registration date backdated to January 2013 thereby reinstating him to the position he would have been had the maladministration not occurred

11.1.4 Cabinet recommends to Council the payment of the £4500 compensation to Mr X

11.1.5 That the above recommendations in be adopted and recommended to Council as the Council's formal response under section 31 of the Local Government Act 1974 and that the ombudsman be notified of the actions that the Council has taken or agreed to take

11.1.6 That the above recommendations in be adopted and recommended to Council as the Council's formal response under section 5A of the Local Government and Housing Act 1989 and be sent to all members of council and the monitoring officer

11.1.7 The Scrutiny committee will undertake its annual examination of housing allocations policy, scheduled for September 2019.

12 The options considered and rejected

Option 1 – Challenge the Ombudsman's findings
Option 2 - Reject all recommendations in the report and do nothing
Option 3 – Accept all recommendations within the report.

Date: 11th June 2019

Decision taken by: Cabinet

Lead officer	Ann Greaves Monitoring Officer
Report author	Ann Greaves
Version	Cabinet
Dated	25th April
Status	OPEN
Confidentiality	It is considered that information contained within this report (and appendices) do not contain exempt information under the meaning of Schedule 12A of the Local Government Act 1972, as amended, and therefore can be made public.

Local Government & Social Care OMBUDSMAN

Report by the Local Government and Social Care Ombudsman

Investigation into a complaint against Basingstoke & Deane Borough Council (reference number: 17 012 432)

08 February 2019

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- apologise
- pay a financial remedy
- improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Officer 1	Housing Officer
Officer 2	Senior Housing Officer

Report summary

Housing: Housing Allocations

Mr X complained the Council did not give him a decision on his 2012 homelessness application and then unreasonably removed him from the housing register.

Finding
Fault causing injustice and recommendations made.

Recommendations
To remedy the injustice caused to Mr X we recommend the Council should:

- apologise to Mr X;
- make him top of the list for each eligible property he bids for until he makes a successful bid;
- pay Mr X £4,500 for:
    - failing to deal with his homelessness and housing applications correctly;
    - the delay in rehousing his family to settled, affordable accommodation;
    - the stressful possession proceedings he underwent;
    - the arrears of £500 he still had after the Council made discretionary housing payments; and
    - the time, trouble and distress the Council caused him.

To put matters right for other people we recommend the Council should tell people in its allocations scheme and in its housing register review decision letters about their right to complain to the Ombudsman.

The complaint

1. The complainant, whom we will refer to as Mr X, complains the Council:
   - failed to give him a decision on his December 2012 homelessness application;
   - unreasonably removed him from the housing register in 2015;
   - only reinstated him on the register from July 2017, refusing to backdate this to January 2013; and
   - did not tell him he could make a complaint to us.

Legal and administrative background

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we 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. We 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)***

3. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. ***(Local Government Act 1974, sections 26B and 34D, as amended)***

4. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. ***(Local Government Act 1974, section 26(6)(c), as amended)***

5. We cannot investigate a complaint if someone has appealed to a tribunal or a government minister or started court action about the matter. ***(Local Government Act 1974, section 26(6), as amended)***

Homelessness law

6. The following is the law in force when Mr X applied as homeless in 2012.

7. If a council has 'reason to believe' someone may be homeless or threatened with homelessness, it must take a homelessness application and make enquiries. The threshold for taking an application is low. The person does not have to complete a specific form or approach a particular council department. ***(Housing Act 1996, section 184 and Homelessness Code of Guidance for Local Authorities paragraphs 6.2 and 6.6)***

8. A council will apply four tests to decide what, if any, duty it owes to a homeless applicant. It will make enquiries to find out if the applicant is:
   - eligible for assistance (which mostly relates to immigration status);
   - homeless or threatened with homelessness;
   - in priority need (as legally defined, for example, has dependent children); and
   - not intentionally homeless.

9. A council must offer interim accommodation while it considers a homelessness application if it has reason to believe the applicant may be homeless, eligible for assistance and in priority need. ***(Housing Act 1996, section 188 and Homelessness Code of Guidance for Local Authorities 2006, paragraph 6.5)***

10. There are no time limits for completing enquiries. However, the Homelessness Code of Practice recommends that councils aim to complete their enquiries within 33 working days.

11. After completing its enquiries, the council must give the applicant a decision in writing. If it does not accept a homelessness duty, it should fully explain its reasons in the letter. The letter should include information about the right to seek a review and the timescales for doing so. ***(Housing Act 1996, section 184)***

12. If a council is satisfied someone is eligible, homeless, in priority need and not intentionally homeless it will owe them the main homelessness duty. The council carries out the duty by arranging temporary accommodation until it makes a suitable offer of social housing. Since 9 November 2012 councils can also end the homelessness duty by offering a minimum twelve-month suitable private sector assured shorthold tenancy. ***(Housing Act 1996, section 193)***

13. The law says councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of his or her household. The accommodation must be affordable. This duty applies to interim accommodation and accommodation provided under the main homelessness duty. ***(Housing Act 1996, section 206)***

14. To prevent homelessness a council can suggest alternative housing solutions, where these are appropriate and acceptable to the applicant. The council should make clear to the applicant the implications and likely outcomes of available housing options. It should tell an applicant the difference between having a priority need under homelessness law and having a reasonable preference under the allocation scheme. A council must not avoid its duty to take a homelessness application, make enquiries and, if required, provide accommodation. ***(Homelessness Code of Guidance for Local Authorities 2006, paragraph 2.3 and 6.4)***

15. In Hanton-Rhouila and Westminster City Council [2010] EWCA Civ 1334, the court of appeal considered if Westminster City Council was wrong to find the applicant not homeless. Ms Hanton-Rhouila made a homelessness application and alleged priority need due to her health. In this case the Council took a homeless application and at the same time accepted Ms Hanton-Rhouila onto its home finders scheme. This scheme helped people find suitable private tenancies at a reasonable rent for a minimum of twelve months. Ms Hanton-Rhouila viewed private sector properties while the Council investigated her homelessness application. Before the Council completed its investigation Ms Hanton-Rhouila accepted and signed for a twelve-month private tenancy. The Council immediately made its decision she was not homeless. The court of appeal found the Council's decision procedurally correct as Ms Hanton-Rhouila was not homeless after she accepted the property and the Council had advised her of the consequences of accepting the property.

Housing Act 1996 (as amended)

16. Every local authority in England must have a scheme for determining priorities and the procedure it follows in allocating housing accommodation (their 'allocation scheme'). (***Housing Act 1996, section 166A(1))***

17. An allocation scheme must give reasonable preference to the following applicants:

- homeless people;
- people in insanitary, overcrowded, or unsatisfactory housing;

- 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)***)

The Council's allocation scheme

18. The Council is a partner in a local choice-based lettings scheme which enables housing applicants to bid for advertised properties.

19. The Council's allocation scheme in 2011 said its two key priorities were:

- homelessness prevention and meeting statutory homelessness responsibilities; and
- meeting the needs of vulnerable people.

20. Under the scheme the Council awarded points to applications. It gave band 2 to applicants with 50 or more points; band 3 to applicants with 30 or 40 points; and band 4 to applicants with 10 or 20 points. It defined its assessment criteria which included people threatened with homelessness; people it had a homelessness duty to; and, people with a local connection. The policy says the points are cumulative. The policy does not say what points the Council gives for each criterion. The Council has provided a Cabinet report from September 2007 proposing the move to "choice based lettings". This says the Portfolio Holder and Head of Housing will make the final decision on points and bands for the policy. The report foresees 13 housing needs categories, each adding 10 points. The Council has also provided the scheme guide it produced at the time which said it has 11 categories of need with 10 points for each.

21. The Council changed its allocations scheme in May 2015. It now gave band 2 to applicants it had accepted a homelessness duty to and those threatened with homelessness. It added applicants in private sector homes in financial hardship to band 2. However, applicants who only had a local connection and no other housing need could no longer join the register. The Council made minor amendments to the scheme in 2017 and 2018.

22. Under all versions of the scheme the Council decides priority within bands by application date. All schemes entitle a couple or single parent with two children of the same gender to two bedrooms and allow an applicant to ask for an internal review of a decision about their application. None of the Council's schemes tell applicants they can make a complaint to us.

Housing benefit and the benefit cap

23. For private tenants, a council assesses housing benefit using the Local Housing Allowance. This pays a flat rate based on the area and the size of property you need. In 2012 the local housing allowance in Basingstoke for applicants who needed a two bed-room property was £695 a month.

24. In April 2013, the Government introduced a limit to the total amount of some benefits that working-age people can receive. The Government has set a different level depending on whether you live inside or outside London. Before 7 November 2016 for a couple or family living outside London the benefit cap was £350 a week. From 7th November 2016, the Government introduced a phased reduction in the benefit cap. Outside London for a couple or family the benefits cap reduced to £296.35 a week. If the benefit cap applies the Council takes the deduction from housing benefit.

How we considered this complaint

25. We exercised discretion to consider this complaint from December 2012. This is because of Mr X's circumstances and the allegation the Council did got give him a decision on his first homelessness application.

26. We considered information from Mr X and the Council.

27. We gave Mr X and the Council the opportunity to comment on a draft of this report. We considered the comments they made before issuing a final report.

What we found

What happened

28. Mr X worked abroad and lived with his wife in a privately rented flat. In late 2012 Mr X had to return suddenly to England to take care of his two daughters as the Courts removed them from the care of his ex-partner. He had to give up his job and flat. In early December 2012 he had a meeting with the Police, the Council's Social Care Team and Officer 1, a Housing Officer. His immediate problem was he had nowhere to live. A friend had let him and the children stay for a few days but this could not continue.

29. On 7 December 2012 Officer 1 filled out a Housing Options form for Mr X and a checklist for the Council's rent bond approval. Officer 1 said Mr X needed a two-bedroom property immediately and had no money for rent in advance or fees. She said Mr X was eligible for assistance, homeless, had a priority need and was not homeless intentionally.

30. On 14 December Mr X told the Council his friend had asked him to leave. The Council contacted the friend who agreed Mr X could stay until 17 December. Mr X completed a housing register application. The Council placed Mr X and his children in bed and breakfast accommodation on 17 December.

31. On 18 December Officer 2, a Senior Officer, emailed a Housing Association to ask it to provide accommodation for Mr X. He said the Council had a full housing duty to Mr X.

32. On 21 December 2012 the Council showed Mr X a self-contained property but it was not big enough. The Council told Mr X about a possible three-bedroom property. The Council officer noted she told Mr X this was only a possibility as the Council had to confirm to the landlord it would pay the extra rent as Mr X was a two-bedroom need. The same day Mr X left the country to sort out his affairs abroad. He returned on 7 January 2013. The Council Officer told Mr X to come to the Council office on 7 January.

33. On 7 January 2013 Mr X signed a six-month assured shorthold tenancy with the landlord. He still lives in this property. Mr X complained about the standard of the accommodation and said the carpets were filthy and it had no furniture. The Council's Social Care Team gave Mr X two inflatable beds for the children.

34. Neither the Council or the landlord sent Mr X an offer letter. Mr X says he told the Council he could not afford the rent of £850 a month and it would prevent him getting a job. The Council says it did not offer Mr X this property, it referred him to the landlord under its rent bond scheme.

35. Officer 1 made a note of a conversation she had with Mr X on 9 January 2013 when he complained about the condition of the property. She said:- "*I advised that*

I appreciate it's a difficult situation but we have fulfilled our duty in providing him housing as he is homeless".

36. The Council filled out a new housing register application for Mr X and said he was a council tenant. The Council put Mr X's housing application in band 4 with 10 local connection points. Mr X made bids for properties but his band 4 priority meant he was unsuccessful.

37. In July 2014 Mrs X joined Mr X and he added her to the application.

38. In 2014 the landlord increased the rent to £900 a month. In 2015 the benefits cap affected Mr X's claim and his housing benefit reduced.

39. In 2015 the Council changed its allocations scheme. In June 2015 it asked Mr X for financial information; which he provided. In 2015 Mrs X gave birth to twins. Mr X told the Council and added them to the application. In August the Council sent Mr X a letter and said it had assessed his housing application and he was in band 4 with 10 points and needed three bedrooms. In October 2015 the Council decided Mr X could afford the private rent and said how it considered he could economise. Under its new policy it removed him from the housing register.

40. In February 2016 Mr X made a new housing application because he was getting into arrears because of the benefit cap. The Council asked Mr X for financial information. The Council says Mr X did not provide this so it took no action. Mr X applied again in October 2016. The Council asked Mr X for financial information it says he did not provide so it took no action.

41. The Council made discretionary housing payments to Mr X's landlord to meet some of the shortfall between his rent and housing benefit.

42. Mr X's landlord increased the rent again in October 2016 to £1,025 a month. Mr X says the landlord did not tell him until July 2017 when it sent a rent statement. His arrears increased.

43. In July 2017 Mr X applied again to join the housing register. The Council asked for financial information which he provided. The Council decided he could not afford the rent. It registered his application in band 2 from July 2017. Mr X asked for a review of this decision. He said the Council should backdate his application and band to January 2013 when the Council placed him in his current home under its homelessness duty. Mr X engaged a Solicitor who also wrote to the Council. The Solicitor said in 2013 Mr X approached the Council for housing assistance and it provided his current home.

44. Officer 1 dealt with the review. On 4 October 2017 she wrote to Mr X's Solicitor to say she was "minded to" uphold the Council's decision. The Solicitor replied the Council placed Mr X in his current home as temporary accommodation because he was homeless. The Solicitor said the Council had not given Mr X a decision on his homelessness application and so his accommodation remained temporary. The Solicitor said the Council put Mr X on the housing register in 2013 due to homelessness and should not have removed him from it.

45. Mr X worked with the Council's Homeless Prevention Team to find cheaper accommodation. On 5 October 2017 the Homeless Prevention Team referred Mr X and his family to another social housing provider for one room in a hostel where the family would share the kitchen and bathroom with other people. It said this would be more affordable than Mr X's current home as the rent was £176 a week. Mr X said he had been in temporary accommodation since 2013. The Senior Homeless Prevention Officer replied the Council would class the room as

alternative temporary accommodation. Mr X was not happy with the alternative accommodation suggested.

46. On 5 October Mr X asked the Council for a backdated discretionary housing payment as he did not know about the last rent increase.

47. On 10 October Officer 1 sent Mr X her review decision on his housing application. She did not change the decision and said his application and band 2 date remained July 2017. In response to Mr X's and his Solicitor's argument the Council had not ended its homelessness duty to Mr X she said: -

"Mr X approached the council for housing assistance on 7 December 2012. He had returned to the UK to take care of his children after they were removed from their mother's care. Mr X and the children were staying with friends as a short term measure. This accommodation ended on 18 December 2012 and the family were accommodated in emergency accommodation."

"The council initiated their enquiries pursuant to s184 from the date of his initial approach. While the enquiries were continuing, Mr X was offered the accommodation (he lives in). He accepted this offer and moved into the accommodation on 7 January 2013."

"A s184 letter does not appear to have ever been issued. The council accept that once a duty to make enquiries has arisen under s184, it is not able to cease enquiries simply because an applicant has accepted rented accommodation."

"This was a procedural error by the council in not having issued a decision to close off the housing application. While the council accept this should have been done, it is notable that no legal challenge was made regarding this within the relevant time."

"As no decision was taken to accept any duty to Mr X at this time there is no continuing housing duty towards him."

48. On 19 October 2017 Mr X received a notice seeking possession because his rent arrears were £3,540.

49. On 3 November the Council took a homelessness application because of the notice seeking possession. On 21 November it accepted a homelessness duty and offered Mr X the same hostel room with shared bathroom and kitchen as temporary accommodation. Mr X refused this. On 24 November the Council told Mr X it has ended its homelessness duty to him because he had refused a reasonable offer of temporary accommodation. Mr X's Solicitor asked for a review of this decision and then appealed to court. We cannot consider this second homelessness application as Mr X used his right of appeal.

50. The court listed Mr X's possession hearing for 5 March 2018. On 26 February the Council agreed Mr X's application for a backdated discretionary housing payment towards the rent. It paid the landlord £2,241. This left Mr X with arrears over £500. The landlord said he would ask the court to adjourn the possession hearing on condition Mr X paid £5 a week towards the arrears.

51. In August 2018 Mr X applied for another discretionary housing payment to cover the shortfall in the rent. In October 2018 the landlord again summonsed Mr X for rent arrears. The landlord's solicitors confirm Mr X paid the £5 a week but says the landlord renewed the action because there was a shortfall in the rent from the end of July until October. The landlord's solicitor says the Council paid a backdated discretionary housing payment on 15 October 2018 and so the solicitor

asked for an adjournment of the hearing. Mr X agrees the Council wrote to him in mid-October to say it had agreed the discretionary housing payment.

52. The Council says the landlord's solicitors are wrong and it made the payments in full. The Council has provided evidence from November 2018 that it paid Mr X a discretionary housing payment covering July to November 2018. It has not provided evidence of when it paid this.

53. The Council has now sent us a copy of a letter addressed to Mr X dated 18 January 2013. This says it has found Mr X not homeless because he has an assured shorthold tenancy secured under the Council's rent bond scheme. The letter gives Mr X his review rights. The Council now says it sent Mr X this letter. The Council says it has no proof it posted this to Mr X, but as it wrote it and filed it electronically on 22 January 2013, it is reasonable to assume it sent it. Mr X says he never received this letter.

54. Between 1 July 2017 and 27 February 2018 the Council allocated 177 properties it says would be suitable for Mr X to band 2 applicants. The successful applicants had waiting times of between 1 month and over 100 months. Most applicants waited between 20 and 35 months. If Mr X had remained in band 2 from January 2013, he would have waited 55 months by July 2017.

The Council's response to us

55. The Council says its Housing Options form of 7 December 2012 and email of 18 December 2012 use incorrect terminology which could cause confusion. It says we should not treat these documents as a decision. It says their existence could not cause injustice to Mr X as he did not know about them so the Council did not give him a false impression of the duty it owed to him.

56. The Council says it had to make a fully considered decision taking into account all issues and it is not unreasonable that a delay arose in sending Mr X its decision letter. It further says the Christmas holidays had an impact on Mr X's case. It cites Hanton-Rhouila v Westminster City Council. The Council says it had to consider the facts as they stood on 18 January 2013 when it made its decision. It says on 18 January 2013 Mr X had moved into accommodation so was not homeless.

57. The Council says it referred Mr X to the landlord but the Council did not offer Mr X the accommodation, the landlord did.

58. The Council says if it had accepted a homelessness duty to Mr X in 2013, his housing application would have still been in band 4. It says at the time it gave 10 points when it accepted a homelessness duty, so it would have given Mr X's application 20 points. It says Mr X was unlikely to make a successful bid while in band 4.

59. The Council says under its 2015 policy Mr X had no reasonable preference so it closed his housing application.

60. The Council said neither Mr X nor his Solicitor raised the issue of the Council's acceptance of Mr X's homelessness application when asking for a review of the housing register decision. It says they only raised this after it issued the review decision.

61. The Council says if it accepted Mr X as homeless this would not mean it would necessarily have made him an offer from his housing application. It might have offered him a twelve-month private tenancy or Mr X might have made his own arrangements.

62. The Council says it made a mistake when it said it had not given Mr X a decision on his 2012 homelessness application. It says it is willing to provide a remedy for this. Otherwise it says it followed the correct law and procedures when dealing with the application and caused no injustice to Mr X.

63. The Council says it has paid more than £10,000 to Mr X's landlord in discretionary housing payments and we should consider this if we consider it should provide a remedy to Mr X.

Conclusions

64. In early December 2012 the Council knew it owed Mr X the main homelessness duty, its internal records say this. The records do not use incorrect terminology; they state the facts at the time. We are satisfied the Council had completed its enquiries in December 2012, it was not waiting for more information and it knew it owed Mr X the full duty. The Council should have sent Mr X a notice accepting it owed him the main housing duty in December 2012. It did not do this. Instead it arranged a property available on a six-month assured shorthold tenancy. Mr X had nothing to do with finding this property. He was out of the country from the day the Council told him it was a possibility until 7 January 2013 when the Council told him to come to the office and he signed for it. The Council did not send Mr X an offer letter or tell him it intended to find him not homeless if he signed for the property.

65. We do not accept the decision in Hanton-Rhouila v Westminster City Council applies. In that case the Council was still investigating the homelessness application when the applicant accepted a twelve-month private tenancy. Westminster City Council told the applicant the consequences of taking a private sector tenancy. In this complaint the Council had completed its investigation, decided it owed Mr X the main homelessness duty, then found him a six-month private tenancy, then wrote the decision he was not homeless. The Council has no evidence it discussed with Mr X if its approach in finding a six-month tenancy was acceptable to him or that it advised him of the consequences of accepting that accommodation.

66. We do not accept the Council's argument that its need to consider all the issues and the Christmas holidays meant it was not in position to send Mr X a decision letter between 7 December 2012 and 7 January 2013. It had made a decision by 7 December 2012. When a council sends notice accepting a homelessness duty it does not have to give reasons; it sends a relatively simple letter which it is likely to have a template for.

67. Before the Council made a decision on Mr X's homelessness application it had a duty to provide him with interim accommodation. If the Council had acted correctly and given Mr X the decision it owed him the main housing duty, the self-contained accommodation it found for him would have been temporary accommodation. It would have remained temporary accommodation until the Council made Mr X an offer under the allocation scheme or settled accommodation under its homelessness duty.

68. When a council provides temporary accommodation, the applicant can ask for a review of its suitability. Mr X told the Council the property was not suitable. The Council's actions denied Mr X the right of review. Instead of reviewing suitability the Council told him he was in a "difficult situation". However, despite the Council now saying it had no housing duty to Mr X and no part in offering him

accommodation, its notes say it told Mr X the Council had fulfilled its duty by providing him with accommodation.

69. The Council did not prevent homelessness, it had already decided Mr X was homeless. The Council could not end its main homelessness duty by the offer of a six-month assured shorthold tenancy. The tenancy had to be a minimum of 12 months.

70. The Council is at fault as it denied Mr X his full housing rights as a homeless person the Council had a duty to assist. Although the Council has now found a letter dated 18 January 2013 saying Mr X was not homeless, the balance of the evidence is it did not send this. Mr X says he did not receive it and we accept this. When Mr X received other decisions he considered wrong, he used his review or appeal rights.

71. Officer 1 who dealt with Mr X's homelessness application in 2012 and housing register review in 2017 said the Council had not issued it. The Homelessness Prevention Team was not aware of it and offered Mr X a room in a hostel as alternative temporary accommodation. If sent, the letter would be unlikely to withstand a review or court appeal as Mr X was homeless.

72. The Council says if it had accepted a homelessness duty to Mr X this would only result in 10 extra points and his housing application would have remained in band 4. The Council says Mr X would not have made a successful bid from band 4.

73. One of the two main priorities for the allocations policy was homelessness prevention and meeting statutory homelessness responsibilities. We cannot see how the Council could meet one of its overriding priorities by giving 10 points to applicants it has a homelessness duty for. This would mean a homeless applicant without other needs had no chance of a successful bid. As the Council treated applicants with 10 and 20 points the same; an applicant who was homeless had no more priority that someone with no housing need but a local connection.

74. In 2015 the Council changed its allocations scheme. Under this scheme the Council gave band 2 to applicants it owed a homelessness duty to. It also gave band 2 to applicants who could not afford their private rent. The Council removed Mr X from the housing register as it decided he could afford the £900 a month rent. If the Council had not denied Mr X his full homelessness rights in 2012, Mr X would have band 2 under this policy. The Council then would not have asked Mr X for financial information.

75. In 2017, after again asking for personal information, the Council decided Mr X could not afford his rent and gave him band 2 from July 2017. Mr X asked for a review of this. Mr X and his Solicitor did raise Mr X's homelessness status in the review. In reply to the review the Council accepted it had not sent Mr X a letter to end its homelessness duty.

76. The Council did not deal with the consequences of this. It said because it had not made a decision on Mr X's application it had no continuing housing duty. This is wrong. Until the Council made a final decision on his homelessness application it had a duty to provide Mr X with interim accommodation. The Council said it was notable Mr X had not made a legal challenge within the relevant time. Mr X could not appeal against the decision until he received it. The time limit runs from when an applicant receives a decision.

77. When his landlord applied for possession because of rent arrears Mr X should not have needed to make a new homelessness application. At this point the Council accepted it had not sent him a decision on his 2012 application.

78. A person with a housing need unhappy with a council's decision on a housing register application can complain to us. This applies even if they have had an internal review of the decision. The Council's allocation scheme does not say this.

79. The Council did not tell Mr X he could complain to us. This is fault. It did not cause Mr X significant injustice as he found this out himself.

Injustice

80. The Council caused injustice to Mr X as it should have given him the band 2 priority he was entitled to under the 2015 allocations scheme. He should have kept the band 2 until the Council made him an offer that met its homelessness duties or an offer from its allocations scheme. The Council's 2011 allocation scheme only gave band 4 to homeless applicants. Under the 2015 scheme it gave band 2. However in 2015 the Council wrongly removed Mr X from the allocations register. It prevented Mr X making a successful bid for social housing.

81. The Council says if it had accepted the homelessness duty it could have offered a twelve-month private sector tenancy to discharge its duty. This is true. However, it is due to the Council's actions it missed the opportunity to do this.

82. The accommodation the Council provided was suitable in size and location. However, it was expensive and as Mr X's housing benefit reduced it became unaffordable. If Mr X had band 2 for his homelessness status it is likely he would have made a successful bid. He would not then have faced having to apply for discretionary housing payments and the possession proceedings for rent arrears. He would not have needed to provide personal information to the Council about his finances to show he could not afford the rent. The Council would have rehoused him before it offered him one room with shared kitchen and bathroom as alternative accommodation.

83. The Council asks us to consider the large amount of money it paid Mr X's landlord in discretionary housing payments. Mr X gained no financial benefit from this. It is the Council's fault it paid so much public money to the landlord. If the Council had acted correctly it would have rehoused Mr X and would not have needed to continue the payments.

Recommendations

84. To put matters right for Mr X we recommend the Council should:

- apologise to Mr X;
- make him top of the list for each eligible property he bids for until he makes a successful bid;
- pay Mr X £4,500 for:
    - failing to deal with his homelessness and housing applications correctly;
    - the delay in rehousing his family to settled, affordable accommodation;
    - the stressful possession proceedings he underwent;
    - the arrears of £500 he still had after the Council made discretionary housing payments; and
    - the time, trouble and distress the Council caused him.

85. To put matters right for other people we recommend the Council should tell people in its allocations scheme and its housing register review decision letters about their right to complain to the Ombudsman.

86. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. ***(Local Government Act 1974, section 31(2), as amended)***

Decision

87. We have completed the investigation and uphold this complaint. There was fault by the Council which caused injustice to Mr X. The Council should take the action identified in paragraphs 84 and 85 to remedy that injustice.

Appendix 2 - Facts of the Case

1. Mr X moved to Basingstoke from abroad in an emergency in December 2012 to care for his two daughters following their removal from the care of his ex-wife by the Courts.

2. He initially stayed with friends/ relations and attended a housing advice interview on 7 December 2012, also completing a housing register application. When this arrangement ceased on 17 December 2012 he was placed in bed and breakfast accommodation by the Council pending an investigation into his circumstances and determination of the extent of homelessness duties which may be owed under Part 7 of the Housing Act

3. On 21 December 2012 Mr X was advised of a possible opportunity of a 3 bedroom house through the private sector lease scheme [at the time operated by Chapter 1 Housing Association.]. On that same day he departed B&B in Basingstoke over the Christmas and New Year period to travel abroad to sort out some affairs.

4. Upon returning to Basingstoke on 7 January 2013, Mr X attended the Council offices and on the same day signed a six month tenancy of the 3 bedroom house.

5. Mr X complained about the standard of the accommodation as he considered the carpets were filthy and it had no furniture. However the total rental cost for the tenancy was covered in full by housing benefit and there was no issue of affordability at the time. This remained the case until December 2015.

6. On 18 January 2013 the Council reached a decision on Mr X's homeless application, determining that he was not homeless as accommodation was available for him at the 3 bedroom Chapter 1 property. The letter included the required information about his right to a review of this decision. A redacted copy of this notification letter is attached at Appendix 3. Mr X claims never to have received this letter and the Ombudsman does not consider it was sent or received by Mr X. Unfortunately the copy of this letter was mis-filed under the Council's ANITE system – [a factor referred to later in (13)]

7. Mr X completed a new housing register application from the Chapter 1 property on 22 January 2013. He was assessed as having a low priority (10 points) which placed him in Band 4 within a ranked then date ordered Banding system of Band 1 (top) to Band 5 (bottom). This low priority was based on him having a local connection through living in the borough having yet also occupying suitable rented accommodation. Effectively this meant that he stood little prospect of rehousing.

8. A copy of the Council's allocations policy governing that decision is attached at Appendix 5 (refer to page 11 of that document). Mr X was notified of this assessment in a letter dated 1 February 2013, which included details of his right to request a review of any aspect of this decision. He did not seek such a review.

9. The Council implemented a new housing allocations policy from October 2015. Under the new policy, existing applicants could only remain on the housing register if they fell within certain categories of housing need (listed within the scheme document, Appendix 6, section 12.1(ii) pp10-13). The need categories include being accepted as owed a full housing duty under homelessness legislation or living in unsuitable private rented accommodation. As set out in (6) and (7) above,

neither of these factors were considered to exist in Mr X's case. His application was therefore removed from the housing register and he was notified accordingly, together with his right to request a review. He did not request such a review.

10. In December 2015 a change to housing benefit provisions under welfare reform ("the benefit cap") meant that Mr X's housing benefit entitlement no longer covered the full amount due and arrears began to accrue. He applied to re-join the register in February and October 2016 but on both occasions failed to respond to requests to provide the requisite financial information to determine whether the property was unaffordable and therefore unsuitable. His housing register application did therefore not progress and on both occasions Mr X was advised of this.

11. On 14 July 2017 Mr X made a further housing register application. On this occasion he supplied requisite financial information and his application was registered from this date.

12. On 18 August 2017 Mr X engaged a solicitor and requested a review of the assessment of his application. He argued his application should not have been closed in 2015 and asked that his application date be backdated until 2013.

13. On 10 October 2017 Mr X was notified by the Council's reviewing officer that the original assessment decision still stood. Although the reviewing officer did not have the "not homeless" decision letter at hand owing to the miss-file [see (f) above] she concluded that this may have been a procedural error over four years previously, but this did not change the basis of his grounds for appeal. The relevant "not homeless" decision letter was recovered in November 2017 when a root and branch review of files was undertaken to prepare Mr X's case papers for the Ombudsman enquiry.

14. In October 2017 Mr X was issued notice by his landlord because his rent arrears had reached £3,540 due to the benefit cap. He made a homeless application to the Council and a full housing duty towards him was duly and correctly accepted on 21 November 2017. He was therefore offered emergency hostel accommodation at Oakley Lodge.

15. Mr X refused the offer because he did not deem it suitable. The Council regarded the offer as suitable and on 24 November 2017 notified Mr X that it had ended the homelessness duty to him. Mr X pursued a review of this decision. The Council carried out a comprehensive review which concluded on 1 March 2018 that the offer had indeed been suitable. Mr X pursued an appeal through the County Court of the Council's decision which was ultimately heard on 18 August 2018.

16. The detail surrounding Mr X's appeal is not considered here or in the Ombudsman report and did not form the basis of the Ombudsman's investigation given Mr X was pursuing his right of appeal. However it should be noted that on 16 December 2018 the Appeal Court confirmed that it upheld the Council's decision and Mr X's appeal was dismissed on all grounds.

17. Since 27 June 2016 the Council has used Discretionary Housing Payments (DHP) to address the majority of the shortfall in Mr X's rent due to the benefit cap. The total amount of DHP awarded to Mr X (on top of his benefit entitlement) since this

date is has been £11,860.09 and is currently being paid at a weekly amount of £106.87.

D 12468

BAND B COMPLETE

Your Ref:
My Ref: IF/NA
Enquiries To: [redacted]

[redacted]

SCANNED
23 JAN 2013
B&DBC

18 January 2013

Dear [redacted]

Housing Act 1996 Part VII

We refer to your recent application made on the grounds of homelessness. The council is required by Section 184 of the Housing Act 1996 Part VII to formally notify you of our decision and the reasons for it.

We have made appropriate enquiries and have reached a decision that you are eligible for assistance as defined under section 185 and 186 of the Act, but are not threatened with homelessness as defined under Section 175.

This decision has been reached on the basis that you have accommodation open to you at [redacted] (secured under the council's rent bond) which is available for you to occupy, which you are legally entitled to occupy, to which you can secure entry and which is reasonable for you to continue to occupy. As such you are not homeless

The legal definition of 'homeless' which the council must give consideration to in assessing your case is contained in Part 7 of the Housing Act 1996 section 175-178. It states that a person is homeless if

- They have no accommodation physically available for them to occupy in the UK or elsewhere or
- Have no accommodation available which they are legally entitled to occupy or
- Have accommodation which is available and which he or she is entitled to occupy, but cannot secure entry to that accommodation or
- Has accommodation available, which they are entitled to occupy, but that accommodation consists of a moveable structure and there is no place where the applicant is entitled or permitted both to place and reside in it or
- Has accommodation available, which he or she is entitled to occupy and entry can be secured to it, but that accommodation is not reasonable to continue to occupy.

In assessing your case therefore the council must decide whether there is accommodation, whether it is available for your occupation, whether you have the right to occupy it, whether you can physically enter it and whether it would be reasonable for you to continue to occupy it.

In undertaking this assessment the council notes that you have now secured a private sector property at [redacted] on an assured shorthold tenancy. As a result it is our opinion that you have accommodation physically available to you which you are legally entitled to occupy, can secure entry to and which it is reasonable for you to continue to occupy. As such it is our decision that you are not homeless.

Full regard has been given to both the Codes of Guidance (England) 2006 and 2009 that accompany the Housing Act 1996, to the Homelessness Act 2002, to Article 8 of the Human Rights Act 1998 and to the Council's Homeless Strategy 2008-2011 in reaching this decision.

The council has a duty to advise and assist you with any aspect of your housing situation. If you wish to make use of this service please contact the council on 01256 845250.

You are entitled to a review of this decision under section 202 of the Act. If you wish to do so you should put your reasons in writing to the Head of Residents Services within 21 days of the date of this notification.

In order to fully comply with the council's duties under the Act a copy of this notification will be retained at the council's Parklands Reception.

Yours sincerely

[redacted]

Appendix 4 - BDBC response to the complaint

The Council's position in response to the complaint and suggested maladministration was as follows:

- That the Council had reached a proper decision on Mr X's homeless application and notified him accordingly. The decision was that he was not considered homeless as he had taken up the tenancy of a Chapter 1 leased property. The Council provided evidence from our systems administrator that the notification letter (which included information about his right to review) had indeed been written and filed, and on balance, therefore, sent to him. A redacted copy of the letter is attached above at Appendix 3.
- The Council's decision that Mr X was not homeless was based on sound legal principles and established case law. The particular case law relied on in that decision – *Hanton-Rhouila v Westminster CC 2010* – is set out in Appendix 5
- The Council properly assessed Mr X's housing application against its housing allocations policy scheme in 2013 and 2015. As a result of moving to the leased property in 2013, which he has since continued to occupy, Mr X was able to occupy a decent 3 bedroom property. His rent was covered in full by housing benefit until December 2015.
- When Mr X made subsequent applications to re-join the housing register in 2016 he did not provide supporting information to demonstrate the unaffordability of his rent. Arguably it was these failures rather than any error on the Council's part that precluded him from re-joining the housing register.
- The Ombudsman has suggested the Council's failures have led to Mr X accruing rent arrears and failing to secure settled accommodation. The Council suggested that the development of rent arrears occurred as a result of changes to Mr X's housing benefit entitlement as a result of benefit reform. Mr X's inability to secure suitable accommodation through the housing register stems from his failure to provide financial information in support of his new register application following the change to the allocations policy as early as 2016.
- Mr X unreasonably turned down the offer of alternative accommodation made to him in November 2017 when he made a homeless application as a result of ensuing possession proceedings. The Court has upheld the Council's view that a suitable offer had been made. Had he accepted this offer, Mr X's housing situation would by now have been resolved.

Basingstoke and Deane

Basingstoke and Deane homebid

Housing scheme guide

Under Basingstoke and Deane Homebid, finding a home is easier. It gives you greater opportunity to find a home of your choice in an area you prefer.

www.basingstokehomebid.org.uk

0300 011 2460 | Basingstoke and Deane Borough Council, Civic Offices, London Road, Basingstoke, RG21 4AH

Welcome to Basingstoke and Deane homebid

Contents

Need more help?

If you need more help you can contact us by phone on **01256 844844** or **01256 845250,** Or come to the Housing and Benefits reception desk at the Civic Offices. Our opening hours are:

8.30 – 5.00 Monday – Thursday

8.30 – 4.30 Friday

About Basingstoke and Deane Homebid

Basingstoke and Deane Homebid is a new way of looking for social housing.

Rather than us deciding which housing to offer you, you can now choose which properties interest you.

All available properties are advertised on the internet at **www.basingstokehomebid.org.uk** and in a newsletter published weekly available to look at in a number of locations throughout the borough.

You look at the newsletter or website to find properties that interest you. You can bid for properties if you are on the housing register, or if you are a tenant of one of our partner Housing Associations and have registered for a transfer.

You can bid for properties in a number of ways:

- **Online using the website**
- **Using our automated 24 hour phone hotline**
- **By sending us a text message**

To help you decide which properties to bid for, you can see what priority of applicant was successful for recently let homes. This information is available both in the newsletter and on the website.

Before you bid for a property, you can find out where you would be in the shortlist for that property at the present time.

This information is available on the website and telephone hotline.

How to use the scheme

Register

How to register

To apply to join the Housing Register you must be over 16 years of age.

You will need to complete an application form, which can be obtained from the Councils Housing Department or downloaded from **www.basingstoke.gov.uk/housing/info/needsregister**. The application form enables you to apply for a Housing Association rented home.

Along with your application form you will be asked to provide some documents from the list below:

- Passport
- Driver's licence
- Proof of children's identity (if applicable)
- Birth Certificate
- Child Benefit award letter
- Tax Credit award letter
- Proof of children's residency if joint custody (if applicable)
- Court Order
- Child Benefit award letter
- Statement of Arrangements
- Proof of address such as household bill, bank statement
- Proof you are no longer an owner of a property (if applicable)
- Solicitor's letter confirming sale or transfer of ownership
- Statement from Land Registry
- Proof that notice has been served (if applicable)
- Copy of Notice/Possession Order
- Proof of Local connection
- Proof of eligibility to join the Housing Register such as Passport, Contract of Employment, last payslip, certificate or card for Workers Registration Scheme
- Proof partner is eligible (if living outside of the UK) such as Home Office documents, Passport certificate or card for Workers Registration Scheme.

Before you are offered a property you will be asked to provide further documents to support your application. We will tell you what documents to provide and when to provide them.

All documents provided must be up to date and valid.

If you do not fill in the application form properly it will be returned to you. Your application will be accepted from the date the fully completed form is received.

If you do not provide us with the documents required within a calendar month of submitting your form your application may be cancelled.

What happens once I have registered?

Either at the start of the scheme or when you are accepted on to the housing register we will write to tell you:

- Your unique reference number and memorable date password
- Your points award and the band your application has been placed in .
- The minimum number of bedrooms you are entitled to.

You must tell us if there are any changes in your circumstances so that we can reassess your application and if necessary make changes to your band and points award.

Choose

How are properties advertised?

Properties are advertised each week on the website at **www.basingstokehomebid.org.uk**, and in the newsletter that is available in a variety of locations.

Properties appear on the website at one minute past midnight on Thursday, and are available for bidding until midnight on the following Monday.

The adverts tell you the landlord, location, size, rent and other features of the property to help you decide which properties are right for you.

The advert also tells you if there are any special requirements that the applicant must meet, such as age requirements or local connection.

A key to the terms and symbols used in the press adverts and the website can be found on the back cover.

Expressing your interest in a property

You can bid for up to three properties each week. You can express your interest in one of the following ways:

On the website

Visit www.basingstokehomebid.org.uk and login using your housing application number and the date of birth of the main applicant, or your new memorable date if you have changed it.

By telephone

Call our 24hr automated bidding line on 0300 011 2460

By text message

Send a text message to 07781482317.

Offer

All bids received will be put in priority order to produce a list of eligible applicants for each property advertised.

The landlord of the property will carry out any outstanding eligibility checks, (e.g. rent checks, household circumstance checks).

If your name is at the top of the list you will normally be invited by the housing association to view the property unless there are reasons why we are unable to do this, for example, you have rent arrears or your current landlord is taking legal action against you for breaching a tenancy condition. You will be informed if this is the case by the housing association. If we are unable to offer the property to the applicant at the top of the list we will move to the next applicant and so on.

If you decide to refuse the property it will be offered to the next person on the priority list. You will not normally be penalised for refusing a property and will continue to be able to bid for properties advertised.

If you are offered a property you will not be short listed for other properties until you have decided to either accept or refuse the offer.

If you accept the property you will be advised when you can move in. You will also be given an appointment to sign the tenancy agreement and collect the keys.

Feedback

We publish information about homes that have been successfully let. We tell you the number of applicants that bid for the property, the band and effective date of the successful applicants. This information is published in the newsletter and is available in the Recent Lets section of the website. This information will give you a better idea of how popular a particular property or area is and how long you would normally have to wait. You can then decide whether to look for other types of property or areas where you may not have to wait as long.

Which properties can I bid for?

You are only able to bid on properties that you are eligible for. For example, if you require only one bedroom you will not be able to bid for a two bedroom property.

The table below show which households are eligible to bid on which property types

Eligible Households	Size/type of accommodation
Single person	**Bedsit**
Couples * **Single person**	**1 bed flat** (above ground floor)
Couples **Single person**	**1 bed flat** (ground floor)
Couples **Single person** Priority will be given to applicants who are disabled or require ground floor accommodation on medical grounds.	**1 bed bungalow**
Couples **Single person** (with a need for an additional bedroom to accommodate contact arrangements with children or a carer) Households with one or two children where the design of the property renders it suitable for family accommodation Single persons who are existing Registered Social Landlord tenants within the borough and wish to release larger accommodation	**2 bed flat** (above ground floor)
Couples **Single person** (with a need for an additional room to accommodate contact arrangements with children, or who have a carer). Households with one or two children where the design of the property renders it suitable for family accommodation. Single persons who are existing RSL tenants within the borough and wish to release larger accommodation	**2 bed flat** (ground floor)
Couples **Single people** (with a need for an additional room to accommodate contact arrangements with children, or who have a carer). **Households with one or two children** where the design of the property renders it suitable for family accommodation. Priority will be given to applicants who are disabled or require ground floor accommodation on medical grounds.	**2 bed bungalow**

Which properties can I bid for?

Eligible Households	Size/type of accommodation
Couples **Households with one child.** **Households with two children.** **Single persons** who are existing RSL tenants within the borough and wish to release larger accommodation.	**2 bed house**
Households with one or two children. **Households with two – four children.** Priority will be given to applicants who are disabled or require ground floor accommodation on medical grounds	**3 bed bungalow**
Households with one child. **Households with two to four children.** Priority will be given to applicants who are disabled or require ground floor accommodation on medical grounds	**3 bed ground floor flat**
Households with one child (aged 10+). **Households with two to four children (all aged 10+).**	**3 bed upper floor flat**
Households with one child. **Households with two to four children**	**3 bed house**
Couples **Households with one child.** **Households with two to four children**	**3 bed lower level maisonette**
Couples **Households with one child (aged 10+).** **Households with two to four children (all aged 10+).**	**3 bed upper level maisonette**
Households with three plus children.	**4 bed house**
Households with four plus children.	**5 bed house**

* 'Couples' are regarded as joint or shared applicants who intend to live together as a family/household unit.
It includes applications from single sex households.

The symbols that appear on the adverts indicate any restrictions about who is able to bid for a property.

Number of bids

You are allowed to make up to three bids in each advertising period. You can withdraw your bids and re-use them on another property up until the close of bidding.

Accommodation for Disabled People with Access Needs

Properties which are deemed accessible (i.e. housing that has been designed or adapted to meet the needs of disabled people) will be prioritised for people who have access needs (or families with a disabled member who has access needs).

Disabled people with access needs (or families with a disabled member who has access needs) will be considered for other vacancies by virtue of their ranked position on the housing list where it is reasonable and practicable to adapt that property.

Local Connection

Applicants wishing to be considered for vacancies within the borough but in rural areas (outside of Basingstoke town) will only be shortlisted if they have a relevant local connection.

How are applications prioritised?

Housing and transfer applications received for Social Housing will be assessed and placed in one of five bands below. Within each band applications will be placed in date order, with the application with the oldest date having the highest priority. The date that is normally used is the date your application was registered with us.

Moving between bands

If your circumstances change and you move up a band the date used will be the date you moved into that band.

If you move down a band the date used will normally be the date that you were previously in that band.

Time limited bands

If your application is placed in Band 1 the time limit you can remain in this band is three months. At the end of the time allowed your application will be reassessed and the priority reduced.

There are a few exceptions to this rule where it is unlikely that suitable housing will become available within the timescale.

Band 1	**Critical**
Band 2	**50 plus points**
Band 3	**30 and 40 points**
Band 4	**10 and 20 points**
Band 5	**no points**

There are 11 categories of housing need. For each which apply 10 points each will be allocated:

- overcrowding
- roofless or 'sofa surfing'
- transfers
- shared accommodation
- threatened with homelessness
- welfare or social reasons
- medical or physical disability reasons
- mental health reasons
- leaving tied accommodation (including armed forces personnel)
- unsuitable accommodation
- accepted homeless

Additional priority (10 Points) are awarded for having a local connection with the borough.

Bidding on the website

The web site address to use when placing a bid is www.basingstokehomebid.org.uk.

Through the web site you can find full details about the scheme including everything in this document. You can search for properties that meet your needs and see the full details of those properties. You can also place a bid, withdraw a bid, find out if you are eligible and what your current queue position is.

You can only bid for properties where you match what the advert asks for.

For example, if the property advert states **'Suitable for a couple and two children only'** – regardless of your banding/priority – only couples with two children can bid for that property.

- Type **www.basingstokehomebid.org.uk** in to the address bar of your internet browser.
- Click the **Login/My Account** option then enter your unique reference number and memorable date.
  At this stage your login will be confirmed and details of any current bids will be shown.
- Click the **Property search** option. Select any search criteria that you require (for example you may wish to search for a particular size of property) and click search.
  A list of properties matching your search criteria will be displayed.
- If you are eligible for a property then an Apply Now button will be displayed. Your current queue position should you bid for this property will also be shown but note that this can change as other people bid. If you are not eligible then the reason you are not eligible will be displayed.
- For a property that you are eligible for click the Apply now button. You will be shown the property details and asked to confirm your bid. When you confirm your bid you will be told that your bid has been successfully placed.

What you need to bid

In order to bid you will need:

- Your unique reference number
- Your memorable date password
- The property reference number(s) that you want to bid for

Bidding on the phone

The number to call when placing a bid is 0300 011 2460.

You will be charged the local rate for this call but note that this rate will vary depending on your telephone service provider.

Through the telephone system you can place a bid, withdraw a bid, find out if you are eligible and what your current queue position is.

You can only bid for properties where you match what the advert asks for. For example, if the property advert states 'Suitable for a couple and two children only' – regardless of your banding/ priority – only couples with two children can bid for that property.

Bidding using the telephone system is done using the number keypad on your telephone. As well as using the numbers on the number keypad you will also need to use the hash key.

- Start by calling the bidding line on **0300 011 2460**
- **What you will hear**
  "Welcome to Basingstoke and Deane Homebid.
- "Please enter your unique reference number, followed by the **hash key**."

  "You have entered the following unique reference number"

  (the reference you entered will be read back to you)

  "Press **1** to confirm your unique reference number, or press **2** to re enter"

  "Your unique reference number has been accepted"
- "Please enter the day of your memorable date, followed by the **hash key**."

  "Please enter the month of your memorable date, followed by the **hash key**."
- "Please enter the year of your memorable date using all four numbers, followed by the **hash key**.

  For example one nine six five to represent nineteen sixty five."
- "Thank you, your details match our records."

  "Press 1 to make an application, press 2 to review your applications or press 3 to exit."

Making a bid

- "Please enter the property reference number of the property you wish to make an application on, followed by the **hash key**."
- "You have entered the following property reference number"

  (the property reference number that you entered will be read back to you. If you are not eligible you will be told why, if you are eligible you will be told your current queue position. Note that your queue position will change as other people bid)
- "Press **1** to confirm, **2** to change the property reference number"

  "Your bid has been accepted"

Bidding on the phone

Review/cancel your bids

- "You have bid on these properties"

  (If you have already bid for properties you will be read a list of the properties with a number for example property one number 9491)

- "Press the number of the property that you wish to cancel the bid for followed by the **hash key**"

  The property reference number and current queue position will be read out to you. You will be told: "Subsequent bids may affect your queue position, and some properties may be offered to the most suitable candidate."

- "Press **1** if you are sure you want to cancel your bid otherwise press **2** to exit"

Exit

- "Thank you for using the system goodbye."

What you need to bid

In order to bid you will need:

- Your unique reference number
- Your memorable date password
- The property reference number(s) that you want to bid for

Bidding by text message

You can bid for properties using text (SMS) messages using a mobile phone.

You can only bid for properties where you match what the advert asks for.

For example, if the property advert states **'Suitable for a couple and two children only'** – regardless of your banding/priority – only couples with two children can bid for that property.

Charges

SMS charges do vary depending on who your mobile phone provider is but are usually **10p or less** per message.

How to bid using a text message

In this example the unique reference number is 12345, the memorable date is 16th March 1975, the first property reference number is 336699 and the second property reference number is 445566.

You can bid for up to 2 properties per text message.

- Start a new text message on a mobile phone
- Type: Your unique reference number followed by a space
- Type: Your memorable date password followed by a space - use 2 digits for day and month and 4 digits for the year e.g. 16/03/1975
- Type: The first property reference number followed by a space If you have finished bidding go to Step 6
- Type: The second property reference number followed by a space
- Send the text message to **07781 482317**

You will receive a text message confirming that your bid(s) have been made or, if they have not been made why they have not been made.

What you need to bid

In order to bid you will need:

- Your unique reference number
- Your memorable date password
- The property reference number(s) that you want to bid for

Further information

What do the symbols mean?

Property details


Single person


Couple


Family with younger children

Family with older children


Family with no dependent children

Bedrooms

Max Age

Min applicant age


No children allowed

Off street parking


Adapted


Has Garden

Supported Housing

Sheltered Housing or Extra Care Sheltered Housing


Pets allowed / Pet restrictions

Key worker only

Energy efficiency


Car free scheme


Lift available

Types of property


Choice based lettings property
Rented property for eligible people on the housing register.


Shared ownership property
A property for people who may be able to buy a part share in a property.


Private sector property
An approved property available from a private landlord available to anyone.

Allocations scheme

This allocations scheme relates to the exercising of the Council's functions under Section 166A of the Housing Act 1996.

The allocation scheme reflects, where appropriate, relevant guidance issued by the secretary of state under Section 169 of the Housing Act 1996, together with all current and relevant orders and circulars.

This allocation scheme contains:

Contents

1. Aims and objectives

1.1 The key objectives of this Allocations Scheme are to:

- Help applicants in housing need (as defined in Section 12) to find suitable housing.
- Make efficient and best use of social housing stock in the area.
- Afford priority to those applicants in urgent housing need.
- Create a simpler system to use.
- Respond to the housing needs of local people.
- Encourage and assist applicants to take an informed, measured and long term view on their housing options.

1.2 The Allocations Scheme details all aspects of the allocation process, including who has responsibility for decisions, the policy on offering choice to applicants, how applications will be assessed and how decisions will be made with regard to the allocation of housing in the borough of Basingstoke and Deane.

2. Strategic Fit

2.1 The allocation policy accords fully with the aims and objectives of the Council's Housing and Homelessness Strategy 2016/20 https://www.basingstoke.gov.uk/housing-strategy and the Council Plan https://www.basingstoke.gov.uk/councilplan. It also accords with the Council's Tenancy Strategy

3. Scope

3.1 The Council maintains the Housing Register for all applicants who qualify to apply for social housing tenancy within the borough of Basingstoke and Deane.

3.2 The Council also has a website called 'Basingstoke Homebid' which provides a framework for choice based lettings. This website enables housing applicants to view available properties and make bids on those vacancies for which they are eligible and interested in. The majority of the council's Registered Providers (Housing Associations) advertise their vacant properties on the website and the council supplies nominations of the top ten applicants in accordance with the council's allocations scheme to the Registered Providers for each property that is advertised.

3.3 Once a nomination has been made, the Registered Provider considers a letting in accordance with the Registered Provider's own lettings policy.

3.4 Applicants are shortlisted for nomination according to the priorities contained within this allocations scheme. Some Registered Providers may reject

nominations made by the council, for reasons set out in their independent exclusion policies. These may also include reasons based upon the Registered Provider's own eligibility criteria relating to size / property types.

3.5 If the Registered Provider refuses a nomination made by the council, the Registered Provider will be required to provide written confirmation of the reasons for their rejection to both the council and the applicant, within 3 working days. Applicants will be able to request that the Registered Provider reviews its decision according to its own independent appeals procedure. Applicants who refuse 3 reasonable offers may be demoted on the housing register and details of this can be found on page 14 of this document.

3.6 Sovereign Housing Association, Vivid Housing Association and Clarion Housing Association advertise their vacant properties on the Homebid web-site. Some other Registered Providers Housing Associations offer a proportion of their vacancies to applicants from their independent waiting lists according to their own independent schemes of allocations. In addition, some Registered Providers operate their own transfer list for existing tenants wishing to transfer and details of this would need to be obtained from the individual Registered Provider.

3.7 Registered Providers may make some properties available for rent at "Affordable Rent" levels (typically these levels are set at up to 80% of market rent levels and tend to be higher than social rent). Registered Providers may refuse a letting to potential applicants where the Registered Provider can demonstrate that the nominee will be unable to afford the rent due to insufficient income. In such circumstances, the council will require the Registered Provider to provide written confirmation of the reasons for their rejection to both the council and the applicant, within 3 working days. Applicants will be able to request that the Registered Provider reviews its decision according to its own independent appeals procedure.

3.8 Some Registered Providers may offer fixed term and introductory tenancies. The term of these is determined by the Registered Provider and the type and duration of the tenancy will be clearly described on the specific property advert.

4 Eligibility to join the Housing Register

4.1 Certain people from abroad, including some subject to immigration control, are not eligible for an allocation of social housing. These are known as restricted persons. These regulations are set by Government and are updated regularly.

4.2 Allocations and nominations under the allocations scheme can only be made to eligible persons. The council cannot allocate social housing under the scheme to:

- A person from abroad who is subject to immigration control unless he/she is of a class prescribed by regulations made by the Secretary of State, or currently a tenant of a Registered Provider.
- A person from abroad who is not subject to immigration control (including British citizens) but who is not habitually resident.

- Two or more persons jointly if either of them falls under the categories mentioned above.
- Other classes of person from abroad specified by the Secretary of State. (No person excluded from entitlement to Housing Benefit shall be included in any class prescribed by the Secretary of State.)

5 Applicants who qualify for inclusion on the housing register

5.1 The council will consider all applications to join the housing register in accordance with its allocations scheme. Applicants will be accepted onto the housing provided they:

- are eligible to be considered for social housing and
- are 16 or over
- have a local connection with the Basingstoke and Deane Borough Council area.
- are a qualifying person.

5.2 To have a local connection to the borough of Basingstoke and Deane you will need to meet one of the following criteria:

- The applicant has been continuously resident in the borough for two years up to and including the date of their application to the housing register.
- The applicant is employed in the borough and the work is of a permanent contractual nature amounting to a minimum of 16 hours per week and local employment has been held continuously for at least 2 years up to and including the date of application. (Where an applicant's sole local connection was by virtue of employment and that employment is lost, they will no longer qualify to be on the housing register.)
- The applicant has an urgent and critical need to move on medical grounds and meets the criteria as described in section 12 of this policy. In such cases the local connection criteria will be 12 months residence instead of 2 years.
- The applicant is a victim of high risk domestic abuse. Applicants meeting this criteria are not subject to the two years continuous residence qualification.
- The applicant has a need to move to offer or receive care and/or support to/from close adult family members where no other support is available in the locality. A close family member would normally be recognised as parents, siblings, adult children and grandparents and they would also have to have been continuously resident in the borough for 2 years. Care and support in this context maybe defined as similar to that provided in an Adult Services commissioned care and support package as described in the Care Act https://www.gov.uk/government/publications/care-act-statutoryhttps://www.gov.uk/government/publications/care-act-statutory-guidance/care-and-support-statutory-guidanceguidance/care-and-support-statutory-guidance.
- This could be practical and/or emotional support and assistance with managing the home and undertaking any duties that the person cannot perform independently, on a regular basis.

- The applicant is a tenant of social housing in England and is employed or has been offered employment within the borough of Basingstoke and Deane AND a failure to move would cause hardship (as defined in Section 12 of this document onwards.) A copy of a signed contract of employment will be required to verify this as well as documents confirming the hardship issues. Employment in this context will mean a contract of more than 12 months, working more than 16 hours per week and will not include voluntary work.
- The applicant is serving in the armed forces
- The applicant is a former member of, the armed forces, and is not currently residing in the district (but had previously resided in the borough for 2 years, immediately prior to being posted in the armed forces.)
- The applicant is a former member of the armed forces who is applying for social housing within 5 years of discharge.
- The applicant is a bereaved spouse or civil partner of a member of the armed forces or a seriously injured reservist who is either currently employed or resident in the borough.
- The applicant is a care leaver placed outside the borough of Basingstoke and Deane, by Hampshire County Council.
- The applicants are accepted homeless and the main rehousing duty has been accepted by Basingstoke and Deane under Section 193 of the Housing Act 1996 and have been placed outside the borough by the council.

5.3 An applicant will normally be a qualifying person and therefore qualify to join the housing register and for an allocation under the council's allocations scheme, if they:

- Have a household (applicant and partner) income of less than £50,000 per annum (prior to any deductions, inclusive of benefits but excluding Disability Living Allowance and Personal Independence Payments and/or capital and savings of less than £30,000 (exceptions **may** be made for people with more than this amount of savings and assets and **will** be made in respect of any lump sum received by a member of the Armed Forces as compensation for an injury or disability.
- Are in housing need (as defined in section 12.)

Local Connection to rural areas

5.4 For non-urban areas (outside of Basingstoke Town) qualifying applicants in housing need will be prioritised for a nomination if they have a relevant local connection with the area in which the vacancy occurs and then by their position in their band. An area in this context will be regarded as a parish and a full list of these can be found by following this link Housing Application Form. If there is no suitable housing stock in the applicant's rural area of choice, they will be able to bid on suitable properties in adjacent parishes and within the urban Basingstoke area. The current local plan suggests that some rural developments of a significant size that are planned over the next few years, should meet the wider housing need of Basingstoke and Deane, not solely those households in the immediate locality of the new development. This means that the major new

developments adjacent to Chineham, Rooksdown, Oakley and Old Basing will be allocated to those people with a local connection to Basingstoke and Deane rather than just to those with a connection to the relevant parish. Some rural developments have legal agreements attached to them which specify the local connection criteria for the particular development. Details of any such agreements are always clearly stated on any relevant adverts on the Homebid web-site.

6 Applicants who are not qualifying persons and do not qualify for Inclusion on the Housing Register

6.1 Applicants will not normally be qualifying persons if they:

- Cannot demonstrate that they can meet the council's local connection criteria
- Have a combined household income of more than £50,000 (prior to any deductions, inclusive of benefits but excluding DLA and PIP) or combined savings or capital of more than £30,000.
- Are home owners. This may include any applicant who has rights to their home under the Matrimonial Causes Act 1973. This includes those who own a home abroad.

6.2 The Council recognises that some exceptional circumstances may exist where access to the Housing Register should be granted to home owners who do not have the financial resources to secure suitable or adapted accommodation. These exceptional circumstances might include:

- Households who attract reasonable preference and need to sell their home but who have insufficient equity in the property, so that once sold, they will not be able to resolve their own housing situation in the private sector
- An older person who needs specialised housing for older people, and does not have sufficient resources to secure this in the open market and where suitable care and/or adaptations cannot be provided elsewhere. A disabled person whose home is deemed unsuitable for adaptations Emergency medical reasons that meet the criteria as in Band 1.

6.3 The applicant will be required to provide appropriate documentation, e.g. proof of shared ownership, property valuation, proof of income, reports from social care team, hospital, GP, occupational therapist regarding the suitability and viability of adaptations in their current property and any risk to health or life in order for an assessment and decision to be made by a housing officer.

7 Joint/Shared applications

7.1 Joint or shared applications will be considered from any applicants who intend to cohabit or live together as a family /household unit and that they are in a relationship as defined in Section 10. This includes applications from same sex households. Applications from existing tenants of Registered Providers will be placed in the name(s) of whoever is on the tenancy only. (Joint applications from

siblings and friends will not normally be considered as Registered Providers would not be willing to offer joint tenancies in these circumstances.)

7.2 In the event of a relationship breakdown, both parties of a joint application will be required to complete a new application form. If both the applicants are in housing need as set out in this allocations scheme, they will both be awarded the original effective date of the application (this won't apply if the application is for a transfer and the applicant will not be giving vacant possession of their property.)

8 Verification

8.1 The council will verify all information provided by the applicant that is relevant to their eligibility and qualification for an allocation of accommodation. Further verification, which may include inviting the applicant for an interview or completing a home visit, will be required just prior to the applicant being allocated a property and the council may check information with other sources as allowed by law. Gypsies and Travellers that apply for housing in the borough will also have their circumstances verified but a more flexible approach to understanding their qualification, on the basis of residence, will be used.

8.2 Applicants may be required to provide documentary evidence that all persons included on the application are resident at the address supplied at the point of application. Applicants will also be required to provide any additional proof considered appropriate to confirm their circumstances at any point during their application.

9 Supporting vulnerable applicants to apply for housing

9.1 Any person, who needs support in applying for housing, whether that is assistance with the on-line application form or with bidding on properties each week, can be assisted by the housing team. The council will also be able to provide detailed housing advice for all applicants including those people who may not qualify to join the housing register. .The council offers a wide variety of customer access which includes the Basingstoke and Deane web-site, web messages, e-mail, telephone and face to face contact.

10 Households

10.1 Any person wishing to be included as part of an applicant's household must satisfy the Council that they are a permanent member of the applicant's household and show that it is reasonable to expect them to reside with the applicant on a continuing basis.

10.2 In the case of a separated household or where residence of children is shared between parents, it would not normally be considered reasonable for a child who has a suitable home with one parent to be taken into account when considering the housing needs of the other parent.

10.3 In all such cases, an assessment will be carried out to decide who should be considered to be part of the household and the following factors will be taken into consideration along with any other relevant facts:

- Access of people included on the application to other suitable accommodation
- Previous living arrangements
- Actual living arrangements
- Preferred living arrangements
- Evidence of longstanding residence and commitment to being part of a household.
- Likely longer term living arrangements
- Information from Children's or Adult services.

11 Remaining on the Housing Register / Renewals

11.1 Applicants will be required to renew their housing application on an annual basis, on the anniversary of their relevant application date – known as the "renewal" date.

11.2 If applicants fail to voluntarily renew their application they will be sent a written reminder to do so within 28 days of the renewal date and a failure to respond to this reminder will lead to the cancelation of the application.

11.3 In order to remain on the Housing Register, applicants will need to retain a continuous local connection

11.4 Applicants are required to inform the council of any changes in their circumstances. Failure to inform the council of any changes, may result in your application being suspended/reviewed and any bids placed during this time may not be considered.

12 Prioritising Applications for Housing

12.1 Allocations for nominations to housing are made according to a banding scheme, consisting of 3 bands. An applicant's banding will be determined by an assessment of whether they attract reasonable preference and are therefore in housing need.

i) Band 1 – applicants who have been assessed as qualifying for reasonable preference and have been granted additional preference in recognition of their urgent need to move.

1) Any applicants assessed as meeting the categories below will remain in Band 1 for a period of 3 months. Assessments for placement into Band 1 will be carried out by senior housing officers in conjunction with supporting evidence provided by relevant expert professionals. Applicants who are placed in Band 1 may be made one suitable offer of accommodation via direct matching.

2) A summary of Band 1 categories and criteria is set out below:

- Management transfers
- Critical cases
- Armed Forces personnel in urgent housing need
- Director's discretion

3) Management transfers

(a) These will be **exceptional** transfer cases where the tenant needs to be moved immediately because of serious violence or harassment, that has been substantiated and where no other management action can be taken to resolve the situation.

(b) The decision to recommend exceptional priority of this type to the designated Council Officer will be made by the tenant's Registered Provider and priority will only be awarded in such circumstances if the Registered Provider agrees to accept a nomination to the pending vacancy from the Council's Housing Register. Applicants in this category will be made one suitable offer of accommodation, usually of the same size and type as the property they need to move from and which is considered safe for them to live in. It may also be necessary for the housing officer dealing with the case to support the applicant to bid or in some cases the applicant will be direct matched to a property. The Registered Provider will be required to submit a detailed report in support of the application for this priority.

4) Critical rehousing cases

(a) Those cases where an inability to secure their own accommodation will inevitably lead to fatal harm, and that the risks posed by the applicant's current housing conditions are such that death or critical injury to the applicant and/or a member of their household is imminent, and that the situation can only be resolved by a move to alternative accommodation.

(b) This might include cases where an applicant requires an urgent medical hospital discharge but the existing accommodation open to them is totally unsuitable or un-adaptable. Applicants who are assessed as having a life threatening condition that is directly linked to their unsuitable housing will also be considered under this category. This will require support and verification from a GP or other health professional in conjunction with an Occupational Therapist and determined by a Senior Housing Officer

(c) Those existing tenants of Registered Providers, living in Basingstoke and Deane, who live in houses or bungalows and have two or more spare bedrooms according to Housing Benefit criteria,

will also be placed in this category. When an applicant requires smaller accommodation, the normal eligibility criteria will not apply and such applicants will only be offered accommodation that exactly meets their bed-space requirements.

5) Armed Services personnel with a critical housing need (as above)

(a) This category will include:

- Serving members of the armed forces who need to move because of a serious injury, medical condition or disability as a result of their service.
- Applicants who were formerly serving members of the armed forces.
- Serving members or former members of the Reserve Forces who need to move as a result of a serious injury, medical condition or disability sustained as a result of their service.
- Bereaved spouses and civil partners of members of the armed forces, who are having to leave services family
- accommodation following the death of their spouse or partner.

6) Director's discretion

Any exceptional cases whose circumstances are not set out/defined in the above categories.

ii) Band 2 – applicants who have been assessed as qualifying for reasonable preference.

1) Assessments for placements into Band 2 will be carried out by a housing officer in conjunction with supporting evidence provided by relevant expert professionals. A summary of Band 2 categories and criteria is set out below.

- No fixed abode
- Homeless within 56 days
- Accepted Homeless
- Overcrowding
- Sharing Facilities
- Armed Forces Personnel not in urgent need and who are eligible for inclusion on the housing register
- Welfare/Social Grounds
- Medical/Disability Grounds
- Mental Health/Disability Grounds
- Unsuitable Accommodation

2) No legal right to occupy/homeless

People who are owed a housing duty by the council under section 190(2), 193(2.) Or 195(2) of the Housing Act 1996 including homeless households in priority need who are intentionally or unintentionally homeless. This will include households who the council has placed into short term accommodation in line with the council's prevention and relief duties under the Homeless Reduction Act 2017. The short term accommodation will be provided by Sovereign or Vivid Housing Associations but not exclusively.

3) Will become homeless within 56 days and valid notice given

An applicant threatened with homelessness whose right to occupy accommodation is being brought to an end

4) Overcrowding

Applicants in accommodation where they are lacking one or more bedrooms according to the local housing allowance bedroom standard as defined here Local Housing Allowance. There may be exceptional instances where separate bedrooms for household members may be warranted on medical or social grounds. In making an overcrowding assessment, it will be assumed that best use is made of all rooms within the accommodation which could appropriately be used as a bedroom. This will also include pregnant applicants who will require an additional bedroom once their baby is born and who are at least 28 weeks pregnant.

5) Sharing Facilities

Applicants with private sector accommodation, sharing cooking, washing or toilet facilities with other people who are not part of their application.

6) Armed Services Personnel

Applicants who are current or ex-service personnel and who do not meet the critical rehousing definition.

7) Welfare/social grounds

Where the accommodation has a significantly detrimental impact on the welfare and social needs of an applicant and/or a member of their family who resides (and will continue to reside) with them as part of their household **and** that this will be resolved by a move to alternative

accommodation. Welfare and social grounds might include people with Learning Disabilities or Autism whose needs are not being met by other statutory services. Applicants will only be placed in this category if other remedies are not available to address the issues they are experiencing.

8) Medical/disability grounds

Where an applicant has a medical condition or disability that impacts on their mobility and the property by type or design is not appropriate for their needs/exacerbates their condition/ is difficult for them to manage and there is a prognosis that the situation will not improve if they remain in their current home and will demonstrably be alleviated by a move to alternative accommodation. This applies to applicant and/or member of household who resides with them as part of their family.

9) Mental Health/Disability Grounds

Where an applicant has a diagnosis of a mental health illness or disorder (which disrupts thinking, feeling, mood, ability to relate to others and daily functioning) and which cannot be managed by medication or other specialist medical intervention and is caused or exacerbated by their housing circumstances or the property by type or design is not appropriate for their needs/exacerbates their condition and there is a prognosis that the situation will not improve unless a move to alternative accommodation is facilitated.

10) Accommodation is unsuitable/unsatisfactory

(a) Where the accommodation is not suited to an applicant's needs, or is unsatisfactory, and has not been accounted for elsewhere within the allocations scheme. The following factors will be considered under this category:

- Split households (where household members have previously occupied accommodation as one household),
- Hardship (where a failure to move to a locality would cause hardship.) This may include social housing tenants from elsewhere in England who are currently employed or have been offered a contract of employment in the borough of Basingstoke and Deane and are experiencing hardship. •

Where an applicant's home is assessed as being in serious disrepair and is considered to be unsafe by the council but cannot be remedied by the applicant or the landlord within a reasonable timescale and can be resolved by rehousing. Assessments will be carried out by Environmental Health Officers, having regard to Category 1 hazards under the Housing Health Safety Rating System.

- Situations where a risk of domestic violence is likely to occur if a move cannot be effected,
- Applicants living in self-contained private rented accommodation who are in financial hardship
- Applicants in tied accommodation.
- Children in flats that are part of a 'child –free' scheme or where the accommodation is deemed by the landlord to be unsuitable for children.
- Foster carers where their current accommodation is not suitable to accommodate a foster child placement and alternative social housing is the only solution.

11) Transfer applicants who are under-occupying by one bedroom

(a) Where an applicant is currently a tenant of a Registered Provider in the Basingstoke and Deane area and they have one spare bedroom, as defined by the Housing Benefit regulations. When an applicant requires smaller accommodation, the normal eligibility criteria will not apply and such applicants will only be offered accommodation that exactly meets their bed-space requirements.

iii) Band 3 – applicants who have been assessed as qualifying for reasonable preference but with reduced priority.

1) Assessments for placement into Band 3 will be carried out by a housing officer, who will obtain relevant evidence from partner organisations.

2) The council has the ability to reduce an applicant's priority under its allocations scheme. This means that if an applicant falls into any of the categories below, the applicant's priority will be reduced by placing them in Band 3 for 12 months or until the situation is resolved. After 12 months in Band 3 the applicant will be reassessed and if they are still in a reasonable preference category and their reason for demotion has been resolved, they will be placed back into Band 2 and awarded the effective date of their re-entry into that band. Applicants assessed as having one or more reasonable preferences will be subject to reduced priority for rehousing if they fall into any of the categories listed below.

13 Reduction of priority due to unacceptable behaviour

13.1 Behaviour that could lead to a Registered Provider or other landlord obtaining possession of an applicant's current property. The following are the categories of unacceptable behaviour that could lead to a reduction of priority.

1) Owing housing related debts

(a) A debt in this context is defined as a significant amount of housing related debt and maybe accrued by the following:

- current or former tenant's arrears (exceptions may be made for those people who have accrued arrears due to Welfare Reform changes)
- costs resulting from damage to a former tenancy
- service charge arrears
- care and support charge arrears
- legal costs arising from court action with a current or former tenancy with a Registered Provider.
- failure to repay loans from the council (claims on the rent bond, rent in advance, rent deposits and bed and breakfast recharges)
- debts unreasonably incurred in relation to the Council's Rent Deposit and Rent in advance schemes or provision of Bed and Breakfast.

(b) The above relate to debts accrued in the previous 6 years prior to the application being made. Applicants will remain in Band 3 until the debt has been paid in full or a payment plan has been agreed and adhered to for at least 6 months. Exceptions to this may include those applicants who require immediate housing (Band 1) and those in need of emergency decant due to fire or flood etc. The onus will be on the applicant to contact the Council when the debt is cleared or a payment plan established and abided by. All cases of applicants having housing related debt will be considered individually and an appeals procedure will be in place.

2) Other types of unacceptable behaviour resulting in a 12 month demotion:

(a) Before an applicant is placed in this category a detailed evidence gathering process will be undertaken. Applicants will be informed in writing of the reasons for their demotion, given details of how to appeal and also given information about how to rectify their position in terms of the housing register. Types of unacceptable behaviour in this context could be physical or verbal abuse to staff, anti-social behaviour in the community, being a perpetrator of domestic abuse or not being truthful when applying for social housing. Each case will be judged individually and an appeal procedure will be in place.

3) Reduction of priority due to worsening of housing circumstances

(a) This will apply when an applicant has done or failed to do something which has led to a worsening of their housing circumstances. This might include:

- An applicant colluding with a landlord or family member to issue them with a notice to quit.
- An applicant deliberately overcrowding their property by moving in friends or family, who have never lived with them before.

- An applicant who gives up an affordable and suitable accommodation to move in with relatives, resulting in them sharing facilities and being overcrowded. This will be subject to an assessment of financial circumstances at the time.
- An applicant who unreasonably gives up suitable accommodation to move into less settled or unsuitable housing.

(b) Any applicants who have worsened their own circumstances as described above will be placed in Band 3 for 12 months. Any applicants who have had their priority reduced in this way will be placed back into Band 2 with a new effective date of their re-entry into the band after the 12 month demotion period has expired.

4) Reduction of priority due to the refusal of 3 reasonable offers of accommodation

Applicants that have refused 3 reasonable offers of accommodation will have their priority reduced and be placed in Band 3 for 12 months. A refusal in this context could arise from a written offer or a failure to appear at an arranged viewing. A 'reasonable' offer will be determined by the Registered Provider making the offer. After the 12 month demotion, the applicant will return to Band 2 with their original effective date, unless their circumstances have changed. Applicants demoted for this reason will be able to continue to bid whilst in Band
3.

5) Reduction of priority due to placement in supported housing

An applicant who is placed into supported housing will be placed into Band 3 until they are nominated and accepted as suitable for move on by the supported housing provider. They will then be placed back into Band 2 with their original date of application at this time. An applicant who is evicted from supported housing will not be awarded their original date.

6) Notification of reduced priority and appeals

An applicant whose priority has been reduced will be notified in writing and the notification will contain details of why their priority has been reduced and how they can rectify this. The letter will also contain details of the appeals procedure.

14 Determining Between Applications

14.1 When determining an allocation or nomination for a vacancy, the Council will consider allocating from those applicants who have bid, direct matches and those applicants who have been assisted to bid according to the following rank orders:

- Suitable applicants within Band 1 the “Critical / Urgent” rehousing band (by date order of approval as an agreed critical / urgent case)
- Suitable applicants within Band 2 (by date order of entry into the band) and then by date of application from then on.
- Suitable applicants within Band 3 (by date order of entry into the band.)

14.2 Assessing what households are eligible for designated property “types” (NB these are not listed in priority order unless otherwise stated).

15 Occupation/Property Eligibility Criteria

15.1 As a general approach, vacancies will be allocated in order to make best use of housing stock whilst addressing housing need. This assessment will also achieve an appropriate balance between the following range of factors:

- Whether the vacancy is designated as older persons accommodation (formerly known as sheltered housing).
- Management issues (e.g. child density, “child” or “car free” schemes, etc.).
- Balancing competing levels of demand between different household types.
- The particular design, layout and room sizes of the property
- In non-urban areas outside of Basingstoke town, any alternative stock availability within the locality.
- Whether the vacancy is deemed accessible to meet the needs of a disabled person (see section 17 below.)
- The current status of relevant allocations quota (see section 14 below)
- Housing Associations’ individual allocations policies An applicant’s ability to maintain a tenancy (particularly when moving on from supported housing or in relation to Affordable Rents.)

The following rules will also be applied:

Size/type of accommodation	**Eligible households**
Bedsit	Single person
1 bed flat (above ground floor)	Couples or single person
1 bed house	Couples or single person
1 bed flat (ground floor)	Couples or single person *Priority will be given to applicants who are disabled or require ground floor accommodation on medical/mental health grounds.*

1 bed bungalow	Couples or single person *Priority will be given to applicants who are disabled or require ground floor accommodation on medical grounds.*

2 bed flat (above ground floor)	Single person (with a need for an additional to accommodate contact arrangements with children or a carer) Households with 1 or 2 children where the design of the property renders it suitable for family accommodation. Single persons who are existing tenants of a registered provider within the borough and wish to release larger houses or bungalows. Pregnant women (28 weeks pregnant or more) Couples will be considered if there are no other applicants with a 2 bed need.
2 bed flat (ground floor)	Single Person (with a need for an additional bedroom to accommodate contact arrangements with children, or who have a carer Households with 1 or 2 children where the design of the property renders it suitable for family or accommodation. Disabled people in need of ground floor accommodation. Single persons who are existing tenants of a registered provider within the borough and wish to release larger houses or bungalows. Pregnant women (28 weeks pregnant or more) Couples will be considered if there are no other applicants with a 2 bed need. *Where property is suitable priority will be given to applicants who are disabled or require ground floor accommodation on medical grounds*
2 bed bungalow	Single People and couples (with a need for an additional room to accommodate contact arrangements with children, or who have a carer Households with 1 or 2 children where the design of the property renders it suitable for family or accommodation Pregnant women (28 weeks pregnant or more) Couples will be considered if there are no other applicants with a 2 bed need. *Where property is suitable priority will be given to applicants who are disabled or require ground floor accommodation on medical grounds*
2 bed house	Households with 1 child Households with 2 children Pregnant women (28 weeks pregnant or more) Couples will be considered if there are no other applicants with a 2 bed need.

3 bed bungalow	Households with 2 – 4 children *Where property is suitable priority will usually be given to applicants who are disabled or require ground floor accommodation on medical grounds*
3 bed ground floor flat	Households with 2 - 4 children *Where property is suitable priority will be given to applicants who are disabled or require ground floor accommodation on medical grounds*
3 bed upper floor flat	Households with 2 – 4 children (all aged 10+)
3 bed house	Households with 2 – 4 children
3 bed lower level maisonette	Households with 2 -4 children
3 bed upper level maisonette	Households with 2 – 4 children (all aged 10+)
4 bed house	Households with 3+ children
5 bed house	Households with 4 + children

16 Accommodation for disabled people with access needs

16.1 Properties which are deemed as accessible (i.e. housing that has been designed or adapted to meet the needs of disabled people) will be prioritised for people who have access needs (or families with a disabled member who has access needs.) These applicants may be 'direct matched' to suitable adapted properties.

16.2 Applications for designated older person's accommodation (formerly known as sheltered housing) will be considered where one or both applicants are aged over 55.

17 Quotas

17.1 The Council may choose to make a percentage of annual lets available to certain groups of applicants, via quota schemes and these will be set out in an annual lettings plan. Some properties will be allocated specifically for transfer applicants. The council will consider annually whether a proportion of properties will be used to house applicants meeting the 'Right to Move' criteria.

18 Local Lettings Schemes

18.1 Allocations outside of the agreed rules may be made where local lettings policies have been approved for particular developments or estates. This will facilitate particular types of housing in certain areas to be allocated or prioritised for

particular groups of people (such as car free schemes and reducing child density in certain areas). (*s.167 (2E) Housing Act1996).*

18.2 The operation of any new local lettings schemes will be approved by the relevant Head of Service and Portfolio Holder and published alongside the Council's main Allocations Policy.

19 Statement on Choice

19.1 The council and its partner Registered Providers are fully committed to enabling applicants to play an active role in choosing where, and in what property type and tenure, they wish to live, while continuing to house those applicants in the greatest housing need and complying with all relevant legislation. Applicants who are threatened with homelessness or accepted as homeless may have bids placed for them by the housing team or be direct matched to suitable properties, if appropriate.

20 Monitoring of the policy

20.1 The council is subject to the general public sector equality duty in the Equality Act 2010. The council and its partner Registered Providers are committed to providing equality of opportunity to all individuals who apply for re-housing. Monitoring of applications and lettings within the context of this policy will take place on at least an annual basis to ensure that everyone is being treated fairly.

21 The right to review

21.1 Applicants have the right to request a review of any aspect of their housing application assessment made by the council, under the Housing Act 1996, Part 6. The Housing Act suggests that the following types of decision are subject to the right of review:

- Non award of reasonable preference, to which she or he would otherwise be entitled, on the grounds of unreasonable behaviour.
- Facts of the applicant's case, which are likely to be, or have been, taken into account in considering whether to allocate accommodation.
- Eligibility for accommodation.
- Decision regarding the type of property for which an applicant will be considered.
- Decision regarding the extent of the applicants' household to be considered for housing with him or her.
- Decision regarding the applicant's medical condition or other welfare needs.
- Determination of the applicant's entitlement to reasonable preference.
- Determination of whether the applicant should receive additional preference on the grounds of urgent housing needs or otherwise.

1) The process of review

(a) Requests for a review can be made in writing (including electronically), by telephone or verbally to a housing officer within 21 days of the original notification of the decision. Ideally, requests for review should be addressed to a housing officer.

(b) The review will be carried out by an officer who was not involved in the original decision. The reviewing officer will consider the assessment of the application as a whole and ensure that the circumstances of the applicant at the time of review, not just at the time of the original decision, are taken into account. The reviewing officer may consider it appropriate to arrange for a home visit or other investigations to be made before a final decision can be reached.

(c) If the original decision is overturned by the reviewing officer, an applicant's housing needs assessment will be affected. This means that an applicants' priority could increase or decrease if the reviewing officer finds that the original assessment was flawed or disproportionate.

(d) A review will be completed and the outcome notified in writing within 56 days of the request being received (unless agreed otherwise with the applicant).

21.2 You are also free to contact the Local Government and Social Care Ombudsman on 0300 061 0614 if you are dissatisfied with any decision reached in regard to your application for social housing.

22 Applications for Extra Care Housing

22.1 In order to ensure Extra Care Housing schemes are viable communities operating effectively, an overall balance between residents who have either low, medium or high care needs must be achieved. The optimum ratio for high/low/medium/care within schemes will be one third of each across all residents of the scheme at any one time. Nominations for Extra Care tenancies will be made according to a combined housing, care and support needs assessment to ensure this balance is maintained.

22.2 Housing needs for these purposes will be assessed in accordance with the council's allocations scheme. Care and support needs assessments will be undertaken following an initial desk top housing needs assessment and will be undertaken by the relevant care / support provider and Hampshire County Council Adult Services. All assessments will be co-ordinated and overseen by the relevant housing officer. Applicants who currently live out of area or who are unknown to Adult Services may be required to have an assessment in the short stay suite at an Extra Care scheme in Basingstoke and Deane.

22.3 The balance of care needs and hours of care and support is set out in the table below:

Care level	Hours delivered / week	Proportion of service users
Low need	up to 5 hours	33%
Medium need	6 – 10 hours	33%
High	11 + hours	33%

22.4 Consideration will be given to refusing applications to extra care schemes where assessed care / support needs are considered too great to be manageable.

22.5 Applicants for extra-care who are currently home owners with substantial equity in their homes will be directed towards the Shared Equity units at Newman Court.

22.6 No applicant will be refused for a letting by a Registered Provider without full written notification to the applicant, Hampshire County Council and Basingstoke and Deane Borough Council.

Glossary of Terms

Term	**Definition**
Adult Services	A department of Hampshire County Council that provides and enables care and support services for vulnerable adults who are assessed as meeting their eligibility criteria.
Choice Based Lettings	A method of letting Registered Provider properties by advertising them and allowing applicants for housing to bid on the properties that they are eligible for.

Critical Rehousing	A type of priority given to applicants on the housing register when an inability to secure their own housing will lead to fatal harm.
Direct Match	A process of matching an applicant to a particular property without going through the CBL process but in accordance with the scheme of allocations.
Director's discretion	This is priority awarded in exceptional cases, whose circumstances are not addressed elsewhere within the scheme of allocations. Officers make a written recommendation for priority, which is then put before a corporate director for a decision.
Extra Care Housing	A type of housing generally designated for older people with care and support needs. In Basingstoke and Deane, the allocation of social housing units within an Extra Care setting is made in conjunction with the Adult Services assessment of a person's care and support needs. Some Extra Care properties are available to purchase directly from the Registered Provider.
Fixed Term and Introductory Tenancies	Fixed terms tenancies are offered for 5-6 years by some Registered Providers. They are reviewed before the fixed term expires and a decision is made whether to extend the tenancy or bring it to an end. Introductory tenancies are offered by some Registered Providers and this means that a tenant is offered an assured short-hold tenancy for 12 months or so and this is reviewed and converted to an assured tenancy if the tenancy is conducted satisfactorily.

Homebid	A website that advertises available Registered Provider properties in Basingstoke and Deane on a weekly basis. Eligible applicants are able to bid on the advertised properties by logging on to the Homebid site and are then considered for a property in priority order, as set out in the allocations scheme.
Local Housing Allowance (LHA)	A housing benefit that helps pay the rent if you rent from a private landlord. It is administered by the council. The amount of LHA that you are eligible for depends on the area in which you live.

Local Lettings Policy	A policy which allows certain flexibilities to be made within the normal allocation scheme in response to a specific set of circumstances. A local lettings policy could facilitate certain types of housing being allocated to or prioritised for particular groups of people. An example of this could be a child free scheme.
Local Plan	A plan for the future development of the local area, drawn up by the local planning authority in consultation with the community.
Management Transfer	A type of priority given to exceptional transfer cases on the housing register when an immediate move is required and no other option is appropriate.
Older Persons Accommodation	A type of housing designated for older people. Applications where one or both applicants are over 55 will be considered for this type of accommodation.

Qualifying Person	In the context of the housing allocations policy, this means a person who meets the qualification criteria to join the housing register.
Reasonable Offer of Accommodation	An offer of accommodation that is within the applicant's area of choice and eligibility criteria.
Reasonable Preference.	The Housing Act 1996 (as amended) requires Local Authorities to provide 'reasonable preference' in their scheme of allocations to people with high levels of assessed housing need. This includes homeless people, those who need to move due to welfare or medical grounds, people living in unsatisfactory housing and those who would face hardship unless they move to a particular locality within the Local Authority's area.
Registered Providers	Formerly known as housing associations, Registered Providers are the owners and providers of affordable housing in Basingstoke and Deane.
Right to Move	An initiative launched by government via Statutory Guidance issued in March 2015. It is intended to ensure that existing social tenants, who are seeking to move between local authority areas in England, in order to be closer to work or to take up an offer of work, will not be disadvantaged.

Supported Housing	Housing with on-site support provided. Supported Housing is normally offered for a period of 6 month to 2 years and it is expected that applicants will move on when they no longer require the support provided.
Strategic Fit	This section of the policy describes how the housing allocations policy fits in with the council's main aims, objectives and other corporate strategies.
Twelve months demotion	An applicant is placed in Band 3 for a period of 12 months due to unacceptable behaviour. Unacceptable behaviour in this context is generally defined as behaviour that would lead to a landlord obtaining possession of a property.

Document revised June 2018

Next due for review April 2019

Appendix 7 – Homelessness Case Law

Hanton-Rhouila v Westminster City Council 24th November 2010

Ms Hanton-Rhouila presented to Westminster City Council as a homeless person in March 2009, and was referred to a team who specialise in helping applicants into suitable accommodation in the private rented sector. Ms H-R was enrolled onto the Home Finders Payment scheme (offering financial assistance to facilitate private sector lettings). After a caseworker interview on April 28, 2009, Ms H-R was given temporary accommodation. Shortly afterwards, the Private Sector Initiatives Team found her a private sector property through the Home Finders Payment Scheme, and she signed up to an Assured Shorthold Tenancy. Straight away, Westminster confirmed that they were rejecting her homelessness application and considered her to be not homeless (without completing their enquiries under s.184, 1996 Act).

Ms H-R exercised her right to a review of that decision under s.202, 1996 Act, on the basis that she claimed that Westminster had not told her that this would be the consequence of accepting the private sector tenancy. The Council's decision was upheld at review and an appeal to the County Court was dismissed.

A further appeal was heard at the Court of Appeal, but Ms H-R was unsuccessful in arguing that the review decision was perverse. It was held that the review officer had been entitled to conclude that the appellant was not homeless once she had accepted the private sector property and to reject the factual assertions made by Ms H-R about the handling of her case.

As an aside, Westminster accepted that it was **good practice** to take steps to ensure that Mrs R was advised of the effects of accepting the property on her Part 7 application, but there was no formal requirement that it be in writing. The Court noted that it would be good practice for the advice to be in writing, but agreed there was no requirement.

(Extracted from Luba et al, "Housing Allocations and Homelessness Law and Practice (5th Edition) ", Lexis Nexis, 2018 paras 9.91 – 10.5

<u>Appendix 6 -</u> Example of Review letter (redacted) – relevant para highlighted

[redacted]

Our ref: [redacted] 21 December 2018

Dear [redacted]

Review of application to Housing Needs Register following Part 6 Assessment: Final decision

1. I refer to your application for a review, provided for under the council's Allocations Scheme, of our decision of 23 October 2018 that you do not qualify to join the council's housing needs register as you are not seen to meet one of the reasonable preference criteria as set out in the Allocations Scheme. I would also refer you to my letter dated 13 November 2018.

2. **<u>I am writing to inform you that I uphold the original decision that you do not qualify to join the housing register as you do not meet any of the reasonable preference criteria as set out in the Allocations Scheme.</u>**

3. Please accept my apologies that the rest of this letter is written in a technical manner. This review constitutes a legal decision, and the courts who consider housing cases require me to show that I have made my decision by applying the correct law and tests in line with our Allocations Scheme. This means that the remainder of this letter has to be written in line with the demands of the legislation and the scheme, and this can make the decision complicated to understand. Please do not hesitate to contact me if you are unsure what this letter means or if you need me to explain any part of it.

4. Under section 166A (9) of the Housing Act 1996, any applicant has a right to a review of the facts of their case which are likely to be, or have been, taken into account in considering whether to allocate accommodation. The council's policy included in our Allocations Scheme requires a review to be carried out by an officer who was not involved in the original decision. Therefore I have, as requested, undertaken a review of your case. In line with our policy I have reconsidered all relevant facts and law applicable at the time of the review.

<u>Review decision</u>

5. In the circumstances relevant to your application I have considered the following:

- The facts of your case (including all details known to the local authority).

Appendix 6 - Example of Review letter (redacted) – relevant para highlighted

- The overall assessment of your housing needs in the context of the council's banding scheme.
- The facts taken into account by the decision maker in making the initial assessment.
- Letter from your GP [redacted], received by the council on 7 December 2018.

[redacted]Correspondence with your current landlord [redacted]

- The council's Allocations Scheme.
- The Code of Guidance which accompanies the Act.

Allocations Scheme

6. In considering your request for a review I note that it is necessary for me to consider your circumstances in line with our Allocations Scheme. I note therefore item 5.1 of the Scheme which states that:

"Applicants will be accepted onto the housing register provided they:

- *Are eligible to be considered for social housing and*
- *Are 16 or over and*
- *Have a local connection with the Basingstoke and Deane borough council area and*
- *Are a qualifying person*

7. As with the decision maker I accept that you are eligible for social housing and are over 16. I am also of the view that you have a local connection with the Basingstoke and Deane borough. The issue therefore is whether you are a qualifying person.

8. An applicant will normally be a qualifying person and therefore able to join the housing register if they:

- Have a household income of less than £50,000 per annum (prior to any deductions, but inclusive of benefits except for Disability Living Allowance and Personal Independence Payments) and / or capital and savings of less than £30,000 and
- Are in housing need

9. I am satisfied that you meet the income criterion. Therefore in order to have be a qualifying person you must have a demonstrable housing need

Housing Need

Appendix 6 - Example of Review letter (redacted) – relevant para highlighted

10. In order for you to be recognised as being in Housing Need it is necessary for you to meet one of the criteria shown at section 12 of the Allocations Scheme. With regard to band 1 I conclude that you are not an exceptional management transfer case, do not meet the definition of a critical rehousing case and are not a member of the Armed Forces with a critical housing need. I note also that you do not meet director's discretion for a move. I therefore conclude that you do not meet these criteria.

11. With regard to band 2 I note that you have a legal right to occupy [redacted] and are not owed a duty under sections 190 (2), 193 (2) or 195 (2) of the Housing Act 1996. Nor are you threatened with homelessness within the next 56 days following the serving of a valid notice. You are not sharing facilities with someone who is not part of your application. Additionally I can see no information to suggest that you are a current or former member of the armed services. I also conclude that your current accommodation does not have a significantly detrimental impact upon your welfare or social needs, and you do not have a medical condition or disability that impacts upon your mobility and will not improve if you remain at [redacted] or will demonstrably be alleviated by a move to alternative accommodation. In addition I am not of the view that your household is overcrowded in your current accommodation. I also note that you are not a transfer tenant under occupying by one bedroom. I conclude therefore that you do not meet any of these criteria.

12. I have therefore considered in further detail whether you qualify for inclusion on the housing register due to mental health grounds, and whether your accommodation is unsuitable/ unsatisfactory.

13. With regards to your mental health, I have paid particular attention to your comments in your initial review request and a letter from your GP [redacted], received by the council on 7 December 2018.

[redacted]

<u>Appendix 6 -</u> Example of Review letter (redacted) – relevant para highlighted

[redacted]

Appendix 6 - Example of Review letter (redacted) – relevant para highlighted

[redacted]

[redacted]

30. Therefore your property is not deemed as unsuitable by your landlord and as a result I take the view that you do not meet the criteria to be awarded reasonable preference under unsuitability grounds.

31. **As a result of the information we hold I conclude that that you do not meet any of the relevant criteria for having a housing need, and as a result I uphold the initial decision that you do not qualify to join the council's housing needs register**.

32. I would advise you in the meantime to continue to search for alternative accommodation through Homeswapper to find a mutual exchange as a potential swift and viable solution to your current situation.

33. In reaching this decision I have had regard to all relevant matters that relate to the facts of your case, and have given these appropriate weight and consideration. I have ignored all facts and matters that are not relevant. I am satisfied that the facts of your case support the decision I have reached, and I have applied the correct aspects of our Allocations Scheme to the facts before me. Furthermore I have made my decision with full regard to the Code of Guidance for Local Housing Authorities in England 2012.

34. Please note that the final review decision can only be challenged by judicial review on the grounds that the local housing authority has infringed a requirement of public or administrative law, or has failed to comply with the duty to supply the grounds for a decision.

35. I also take this opportunity to advise you of your right to contact the Local Government Ombudsman, who is independent of the council, either by writing to PO Box 4771, Coventry, CV4 9EH, by completing the complaint form at www.lgo.org.uk or by phoning 0300 061 0614.

36. Please note also that in order to comply with the council's duties under the Act a copy of my final decision will be retained at the council's Parklands reception for 28 days.

37. If you require further information please contact myself by phone on 01256 845732 or by fax on 01256 845200 or by emailing tom.roworth@basingstoke.gov.uk.

Yours sincerely

<u>Appendix 6 -</u> Example of Review letter (redacted) – relevant para highlighted

Tom Roworth
Senior Homeless Prevention Officer