



Report Title: **Commission for Local Administration investigation report into complaint no 06/A/12508**

Forward Plan reference number: 31

Report of: **Assistant Chief Executive, Policy, Performance, Partnerships & Communication**

Wards(s) affected: not applicable

Report for: non key decision

1. Purpose

1.1 To receive and consider the attached investigation report of the Local Government Ombudsman, and to determine action to be taken in the light of the finding of maladministration, and the Ombudsman's recommendations.

2. Introduction by Cabinet Member for Community Cohesion and Involvement

2.1 All our residents are entitled to good customer service and it appears that on this occasion we fell short of that standard and our record keeping was not as it should have been. While not accepting the Ombudsman's interpretation of the homelessness legislation I agree that we should offer compensation of £250 to Ms D to recompense her for the trouble involved in pursuing her complaint.

2.2 I am pleased to see that steps are being taken to ensure staff are fully trained, especially in relation to accurate record keeping.

3. Introduction by Cabinet Member for Housing Services

3.1 This report was discussed with the Assistant Director for Housing, including the issue of the Ombudsman's role in this case. I am pleased that the recommendations will resolve this issue satisfactorily.

4. Recommendations

4.1 That the findings of the investigation report be noted.

4.2 That the General Purposes Committee agree a payment to Ms David of £250 compensation for her time and trouble in pursuing the complaint.

4.3 That the guidance to officers on the issues raised by the complaint be reviewed in the light of the 2006 Homelessness Code of Guidance.

4.4 That any training needs be addressed, particularly in relation to the importance of clear and accurate record keeping.

Report Authorised by:
Sharon Kemp



Assistant Chief Executive, Policy, Performance, Partnerships & Communication

Contact Officer: Ian Christie, Feedback and Information Manager
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5. Chief Financial Officer Comments

5.1 The Chief Financial Officer has been consulted over the contents of this report and notes that the only direct financial implication arising from this report is the proposed £250 compensation which will be paid from the Housing Services budget. Clearly investigations of this type are resource intensive in terms of officer time and the proposed recommendations should reduce the likelihood of a similar case occurring again.

6. Head of Legal Services Comments

6.1 The Head of Legal Services has been consulted in the preparation of this report, and confirms that the legal implications set out at paragraphs 10.1 and 10.2 below are accurate. In addition, the content of paragraph 13.4 below is an appropriate response to the Ombudsman's recommendations.

7. Local Government (Access to Information) Act 1985

7.1 No background papers were use in the preparation of this report.

8. Strategic Implications

8.1 This report is presented in order to comply with the statutory requirement for the Council to respond to a finding of maladministration within 3 months. The investigation report was issued on 24 July 2008.

9. Financial Implications

9.1 Any compensation payment approved will be charged to the Strategic and Community Housing budget.

10. Legal Implications

10.1 The Local Government Act 1974 requires the Council to consider an investigation report and to determine action to be taken within three

months of its receipt. The real names of the persons concerned are not used in the investigation report. A press announcement has been made giving the public notice of the existence of the report, and it has been made available for public inspection.

- 10.2 The Council has power to incur expenditure that it considers appropriate to compensate a complainant on a finding of maladministration. This has been delegated to the General Purposes Committee pursuant to Part Three, Section C, of the Constitution. If the Local Government Ombudsman does not receive notification from the Council within the time permitted, or is dissatisfied with the action taken, or does not receive confirmation that action has been taken to his satisfaction, then a further report on the matter may be issued.

11. Equalities Implications

- 11.1 There are no specific equalities implications.

12. Background

- 12.1 The attached investigation report was issued on 24 July 2008, following the investigation by the Local Government Ombudsman of a complaint against the Council. The investigation involved an examination of documents and interviews with relevant Council officers.
- 12.2 The solicitors for 'Ms David' complained that the Council wrongly failed to take a fresh homelessness application from their client, or to offer her housing assistance or interim accommodation, when she and her two month old child presented as homeless at the Council offices in January 2005. The complaint was upheld for the reasons given in the investigation report.
- 12.3 The Council argued that because it had previously found that 'Ms David' was not homeless when she applied as such in 2004, it was not under an immediate duty to offer her temporary accommodation in 2005, notwithstanding the fact that officers had accepted an application from her. On the contrary, it was considered appropriate to first make some limited preliminary enquiries to establish whether there was reason to believe that she was homeless on this occasion. Officers considered this an appropriate step given the doubts over whether Ms David was in fact telling the truth about her homelessness when she applied in 2004.
- 12.4 The Ombudsman ruled that, notwithstanding the fact that it was not his role to tell the Council how to interpret the legislation, he nevertheless considered that it would have been good practice for the Council to have acknowledged the fact that establishing a reason to believe that Ms David was homeless in 2005 was a relatively low test, and so should have provided temporary accommodation at the point of application without further enquiry. He then went on to find maladministration on the grounds of a lack of clarity in the terminology that officers had used in processing the application, coupled with inadequate record keeping, especially in relation to decisions made.

12.5 The Local Government Ombudsman recommends that the Council:

- pay Ms David £250 compensation for her time and trouble in pursuing the complaint
- review the guidance to officers on the issues raised by the complaint in the light of the 2006 Code of Guidance, and
- address any training needs, particularly in relation to the importance of clear and accurate record keeping.

13. Comments of Assistant Director of Strategic & Community Housing

13.1 Despite my concerns about the adequacy of the Homelessness Service's record keeping at the time of Ms David's application in January 2005, I am satisfied that the Council's interpretation of the homelessness legislation was reasonable, a view shared by Counsel.

13.2 The 'reason to believe' threshold is, indeed, low. However, given the existence of a threshold, it is reasonable for local authorities to make limited enquiries to establish that an applicant is homeless, rather than to simply rely on the applicant's unsubstantiated claims.

13.3 Contrary to the Ombudsman's interpretation of the legislation, a local authority's acceptance of a homelessness application does not, in itself, infer acceptance of homelessness or a duty to provide accommodation. In a minority of instances, an applicant or their advocate will insist that a homelessness application is completed in order to secure the right to appeal an unfavourable homelessness decision.

13.4 Even though it is not the role of the Ombudsman to offer a definitive legal interpretation of the homelessness legislation or to question the Council's reasonable interpretation of that legislation, I propose that the Council pays Mrs David the £250 compensation recommended by the Ombudsman, undertakes a review of the guidance provided for officers, and addresses any training needs in respect of record keeping.

13.5 In order to address the concerns raised by the Ombudsman, priority will now be given to establishing applicants' circumstances on the day they claim to be homeless and, where the Council has reason to believe that they are not homeless, a 'not homeless' decision will be issued on the day that homelessness is claimed. This will obviate the need for unnecessary placements in temporary accommodation.

14. Conclusion

14.1 Officers propose that the Local Government Ombudsman's recommendations be agreed.

15. Appendix

15.1 The Local Government Ombudsman's investigation report is appended.

Report

on an investigation into
complaint no 06/A/12508 against
London Borough of Haringey

24 July 2008

Millbank Tower Millbank London SW1P 4QP

Investigation into complaint no 06/A/12508 against London Borough of Haringey

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Key to names used

Ms David	The complainant
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Report summary

The complainant complained that the Council wrongly failed to accept a fresh homelessness application from her, or to offer her housing assistance or interim accommodation, when she and her baby presented as homeless at the Council's offices in January 2005, saying that she had been denied access to the property where she had been staying, but where she had no right of occupation.

The Ombudsman considered that the complaint raised significant issues about councils' interpretation of Sections 183, 184 and 188 of the Housing Act 1996.

The Council accepted a homelessness application from the complainant even though it doubted that she was homeless further to previous applications that she had made. It then undertook preliminary 'enquiries' before it decided that it had reason to believe that she was or might be homeless and carried out enquiries under Section 184. It did not offer her Section 188 interim accommodation until ten days after she presented as homeless. The Council subsequently accepted her as homeless and offered her accommodation that she accepted. In the meantime the complainant and her young baby stayed with various friends.

The Ombudsman was concerned that the Council had made reference to its need to satisfy itself that it had reason to believe that the complainant was genuinely homeless before it considered whether it needed to secure interim accommodation for her. Councils' duties under Sections 184 and 188 – that is, to make enquiries, and to secure that suitable accommodation is available for the person - are triggered by the relatively low threshold test of whether there is reason to believe that an applicant is or "may be" homeless (among other things).

Although it was not his role to offer a definitive legal interpretation of the homelessness legislation or to question the Council's reasonable interpretation of that legislation, the Ombudsman found that there was a lack of clarity in the terminology that the Council had used in dealing with this case, and a lack of clear records, especially records of what decisions were being taken, when, or under which provisions of the Housing Act. He concluded that these failings amounted to maladministration.

The Ombudsman concluded that the complainant had sustained an injustice in terms of the time and trouble to which she had been put in pursuing her complaint.

The Ombudsman recommended that the Council should pay the complainant £250; should review its guidance to officers on the issues raised by the complaint in the light of the Homelessness Code of Guidance 2006; and should address any training needs, particularly in respect of clear and accurate record keeping.

Introduction

1. Ms David's solicitors complain that the Council wrongly failed to take a fresh homelessness application from their client, or to offer her housing assistance or interim accommodation, when she and her two month old child presented as homeless at the Council's offices in January 2005.
2. The law generally requires me to report without naming or identifying the complainant or other individuals.¹ The names used in this report are therefore not the real names.

Legal and Administrative Background

3. Section 183(1) of the Housing Act 1996 states that "The following provisions of this Part [Part 7 of the Act] apply where a person applies to a local housing authority for accommodation, or for assistance in obtaining accommodation, and the authority have reason to believe that he is or may be homeless or threatened with homelessness."
4. Section 184(1) of the Act states that "If the local housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they shall make such inquiries as are necessary to satisfy themselves (a) whether he is eligible for assistance, and (b) if so, whether any duty, and if so what duty, is owed to him under the following provisions of this Part."
5. Section 188(1) of the Act states that "If the local housing authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a decision as to the duty (if any) owed to him under the following provisions of this Part."
6. Section 206(1) of the Act states that "A local housing authority may discharge their housing functions under this Part only in the following ways: (a) by securing that suitable accommodation provided by them is available, (b) by securing that he obtains suitable accommodation from some other person, or (c) by giving him such advice and assistance as will secure that suitable accommodation is available from some other person."
7. At the relevant time Section 210(1) of the Act stated that "In determining for the purposes of this Part whether accommodation is suitable for a person, the local

¹ Local Government Act 1974, Section 30(3)

housing authority shall have regard to Parts IX, X and XI of the Housing Act 1985 (slum clearance; overcrowding; houses in multiple occupation).”²

8. Under Section 175 of the Act, a person is homeless if he or she has no accommodation in the UK or elsewhere which is available for his or her occupation and which he or she has a legal right to occupy. Section 175(2) states that a person is homeless if he has accommodation which he occupies or is entitled to occupy, and which is available for his occupation, and which it is reasonable to continue to occupy, but he cannot secure entry to it.
9. Section 182(1) of the Act states: “In the exercise of their functions relating to homelessness and the prevention of homelessness, a local housing authority or social services authority shall have regard to such guidance as may from time to time be given by the Secretary of State.”
10. Paragraph 3.2 of the Homelessness Code of Guidance 2002³, which was in force at the time of the events of this complaint, states that “When first considering an application, the housing authority will need to decide if they have reason to believe that the applicant may be eligible, homeless and have a priority need, even before they have completed their inquiries. If the applicant meets these criteria, the housing authority have an immediate duty under s.188 to ensure that suitable accommodation is available until they make their decision on the homelessness case.”
11. Paragraph 3.10 of the 2002 Code states that, “Where, under s.184, a housing authority have reason to believe that an applicant may be homeless or threatened with homelessness, they must make inquiries to satisfy themselves whether the applicant is eligible for assistance and homeless, or threatened with homelessness.” Paragraph 3.12 states that “The obligation to make inquiries, and satisfy themselves whether a duty is owed, rests with the housing authority and it is not for applicants to “prove their case”. The nature and scope of inquiries will vary in individual cases, but they should be carried out as quickly as possible.
12. Paragraph 4.1 of the 2002 Code states that “An interim duty to secure that accommodation becomes available for an applicant and his or her household can arise immediately on consideration of an application – before a housing authority has completed its inquiries. Under s.188(1), where a housing authority have reason to believe that an applicant may: i) be homeless; ii) be eligible for assistance, and

² From April 2006 Section 210(1) of the Act reads “In determining for the purposes of this Part whether accommodation is suitable for a person, the local housing authority shall have regard to Parts 9 and 10 of the Housing Act 1985 (slum clearance and overcrowding) and Parts 1 to 4 of the Housing Act 2004.”

³ Homelessness Code of Guidance for Local Authorities, Office of the Deputy Prime Minister, July 2002

iii) have a priority need for accommodation, they must secure that accommodation is available.”

13. Paragraph 12.1 of the 2002 Code states that “Section 206 provides that housing authorities may discharge their functions to secure that accommodation is available for applicants in one of three ways. [See paragraph 6 above] In all cases the accommodation secured for the applicant must be suitable. This applies in respect of all powers and duties to secure accommodation under Part 7, including interim duties such as those under s.188(1) and s.200(1).”
14. Paragraph 7.3 of the Homelessness Code of Guidance 2006⁴, which concerns the interim duty to accommodate, states “The threshold for the duty is low as the local authority only has to have a reason to believe that the applicant *may* be homeless, eligible for assistance and have a priority need. (See paragraph 6.5 for guidance on the “reason to believe” test.)” (Emphasis from the Code of Guidance.)
15. Paragraph 6.5 of the 2006 Code states that “If a housing authority has reason to believe that an applicant may be eligible for assistance, homeless and have a priority need, the authority will have an immediate duty under s.188 to ensure that suitable accommodation is available for the applicant ... Authorities are reminded that ‘having reason to believe’ is a lower test than ‘being satisfied’.”
16. Paragraph 6.12 of the Code states that “Under S.184, where a housing authority has reason to believe that an applicant may be homeless or threatened with homelessness, it must make inquiries to satisfy itself whether the applicant is eligible for assistance and, if so, whether any duty and if so what duty is owed to him or her under Part 7. In order to determine this, the authority will need to establish whether the applicant is homeless or threatened with homelessness ...”
17. Paragraph 6.16 of the Code states that “Housing authorities should deal with inquiries as quickly as possible ... Housing authorities are obliged to begin inquiries as soon as they have reason to believe than an applicant may be homeless or threatened with homelessness and should aim to carry out an initial interview and preliminary assessment on the day an application is received. An early assessment will be vital to determine whether the housing authority has an immediate duty to secure accommodation under s.188”.
18. The Court of Appeal in *Rikah Begum –v- Tower Hamlets LBC (2005) HLR 34* (applying the earlier House of Lords decision in *R –v- Harrow LBC ex p Fahia [1998] WLR 1396*) decided that, if an authority has reason to believe an applicant is homeless, it must accept the application and make necessary enquiries. The authority has reason to believe an applicant is homeless if the application is not based on exactly the same facts as the previous application. It also found that the

⁴ Homelessness Code of Guidance for Local Authorities, Department for Communities and Local Government, July 2006

test of whether there had been a 'relevant change of circumstances from those that existed at the time of the previous application' was not an appropriate test.

Investigation

19. My investigator has made written enquiries with the Council about Ms David's complaint. I have also discussed some of the issues highlighted by the complaint direct with a senior officer of the Council. We invited the complainant and Council to comment on two drafts of this report before the conclusions were added. I have taken account of their comments in preparing the final text and reaching my conclusions.

The Main Events of the Complaint

20. Ms David presented as homeless at the Council's offices on 11 January 2005. She had previously made homelessness applications, but the Council had not accepted that she was homeless. On 10 January 2005 she says she was physically excluded from the property where she had resided with her two month old son. She says that she went to the Council's Housing Department for help on that day, but was told that she should return to the property. The Council has no record of this visit. On that evening she was placed in emergency overnight accommodation by Social Services.
21. When Ms David presented as homeless on 11 January an officer initially told her that it would not accept a fresh homelessness application from her, on the grounds that there had been no significant change of circumstances since her previous application in November 2004. But the Council then reversed this decision while Ms David was still at its offices, and took a fresh application from her. The Council did not offer her interim accommodation. The Council says the record keeping is so poor that it cannot be sure whether any further action was taken before the caseworker telephoned Ms David on 2 February and obtained a new address from her.
22. On 20 January 2005 Ms David's solicitors wrote to the Council saying that their client had been staying with a friend for a few days, but that she needed to leave; she hoped to be able to stay temporarily with another friend but, if that proved impossible, she and her baby would be street homeless. The solicitors asked the Council to provide interim accommodation for Ms David.
23. On 21 January the Council confirmed that Ms David's new application that had been opened on 11 January "is currently being investigated". It invited Ms David

to apply for Section 188 interim accommodation "if she genuinely has nowhere else to stay". Her solicitors say that their client was so upset at the way she had been treated that she declined interim accommodation and chose to remain with a friend. Ms David had provided a temporary forwarding address, but then moved from that address to a series of other temporary addresses with friends and acquaintances. (On 14 February her solicitors wrote to the Council pointing out that she had had to keep moving from one temporary address to another because she was homeless and had not been offered interim accommodation.) The Council made attempts to trace her by telephoning her and by carrying out home visits. The Council eventually found her in occupation at one address on 15 February. On 16 February the Council issued a decision under Section 184 of the Housing Act 1996 confirming that it accepted a duty under Section 193 to ensure that accommodation would be available to Ms David. The Council also offered her temporary accommodation.

24. In a letter to Ms David's solicitors dated 27 April 2006 the Council disputed that it had refused to take an application from her on 11 January 2005: "This is not so. We did open an application and started investigations on that date." The Council accepted that the caseworker had been in two minds whether to open the case again, and had asked for advice from his managers; this indecision might have come across to Ms David as refusal to take an application. The Council added "Section 188 obliges a local authority to provide accommodation where there is "reason to believe" that a person is homeless. Due to the difficulties with past applications we had reason to doubt rather than believe that she was genuinely homeless when she re-applied on 11 January 2005." After a series of failed home visits, Ms David had eventually been tracked down on 15 February 2005 "and at this point the council accepted a Section 193 duty." The Council made her an offer of accommodation in discharge of its duty on 15 March 2005, which she accepted.

My Office's Enquiries with the Council

25. My investigator questioned why the Council had accepted an application from Ms David on 11 January 2005 when it clearly doubted that she was or might be homeless. Accepting the application seemed to imply that the Council agreed that she might be homeless, since Section 183 of the Act provides that the subsequent provisions of that Part of the Act apply "where a person applies ... and the authority have reason to believe" that the person may be homeless. The two parts of Section 183 together, when fulfilled, then trigger the duty to make enquiries under Section 184, and to secure that suitable accommodation is available, if appropriate, under Section 188.
26. My investigator asked whether the Council had wrongly deferred consideration of its duty to secure the availability of interim accommodation for Ms David under Section 188. That duty is triggered if an authority has "reason to believe that

an applicant *may* be homeless, eligible ... and have a priority need". The Council appeared to have wished to satisfy itself, by making Section 184 inquiries, that Ms David *was* homeless before offering her interim accommodation. My investigator put the view to the Council that, when Ms David presented as homeless with her baby on 11 January, having spent the previous night in a Social Services emergency hostel apparently having been barred from entering her former home, there would have been reason to believe that she might be homeless and, in those circumstances, the low threshold for triggering the Council's Section 188 duty had been crossed.

The Council's Response to my Office's Enquiries

27. The Council told my investigator that "The opening of a new homelessness application on 11 January 2005 does not imply necessarily that the council has *reason to believe* that she was homeless. It only indicates that she said she was homeless and we accepted a need to investigate ... We had good reason to doubt [Ms David's] assertion that she had been made homeless from [her address] or had, in fact ever lived there." The Council had previously sent correspondence to her and to her solicitors "which set out clearly our reasons for doubt and suspicion that we were dealing with a false application." The Council said "It would not have been reasonable to give [Ms David] temporary accommodation on 11 January 2005 as she was not claiming to have nowhere to stay and we had to be able to track her down to one of her transient addresses in order to be reasonably confident that she was, in fact, homeless." The Council also said that "At the end of the day we were obliged to give the applicant the benefit of the doubt as we do not have the resources for surveillance."
28. Because the Council had previously found Ms David not homeless (in 2004), it did not consider that, when she re-presented as homeless in January 2005, it could say that it had reason to believe that she was homeless without further investigation.
29. The Council agrees that the two parts of Section 183(1) must be fulfilled before its Section 184 duty to make inquiries is engaged: the Council had to be satisfied both that Ms David had 'applied', and that there was "reason to believe that she was homeless" before the Section 184 duty arose. But the taking of an application from Ms David was not contingent on the Council 'having reason to believe', and it did not therefore automatically trigger a duty to provide her with interim accommodation under Section 188. The Council had not believed Ms David because she had not given correct information in the past. It therefore felt obliged to carry out inquiries to satisfy itself that it had 'reason to believe' that she was homeless. Once it had so satisfied itself, it had offered her Section 188 interim accommodation while it completed its Section 184 inquiries.
30. The Council says that its Section 188 duty is to secure that accommodation is available for occupation. In Ms David's case, as at 11 January 2005, the Council

believed that accommodation was available for her at several different addresses. Once it was “reasonably satisfied that accommodation was *not* available”, it had satisfied the Section 188 duty by providing accommodation. It was common practice for authorities to establish that someone could stay at a certain address pending a home visit for verification purposes.

31. The Council has told me that it considers “that to accept an application under Part VII of the Housing Act is not necessarily equivalent to “having reason to believe” that a person is homeless. There are circumstances in which a local authority should quite properly make further inquiries to satisfy itself that it has reason to believe that a person is genuinely homeless before committing public money to provision of accommodation.”
32. The Council took advice from leading Counsel on the issues raised by this complaint. Counsel advised that the Council did not get the law wrong. It had taken a bona fide and tenable view of the law. It had been bound to accept Ms David’s application on 11 January 2005 even though it doubted whether she was homeless. The Council had to answer the question whether there was reason to believe that she might be homeless in a sufficiently informed way. If there was doubt, it had to make some enquiry in order to determine whether or not there was ‘reason to believe’ she might be homeless. Once there was a genuine and effective application, *and* once the Council was ‘satisfied’ that the applicant was or might be homeless, the operative part of Section 183 was engaged, and the subsequent provisions [such as Section 184 inquiries, and Section 188 interim accommodation] became effective.
33. Counsel concluded that the Section 188 duty to provide interim accommodation applies only if Sections 183 and 184 are engaged, and the Council has reason to believe that the applicant may be homeless. Section 188 does not apply merely on the basis that there is an application. Because in this case the Council did not have immediate reason to believe that Ms David might be homeless, it was entitled, if not bound, to make some limited enquiry (not necessarily excluding home visits) before embarking upon Section 184 inquiries and becoming subject to the Section 188 duty.
34. Counsel further advised the Council on the scope of any limited enquiries that it should make under Section 183 to determine if there was ‘reason to believe’ that the applicant might be homeless. Counsel advised that some preliminary enquiry may be made. Given that this goes only to the low threshold of whether the applicant may be homeless or threatened with homelessness and must not be pursued beyond the point, if reached, that it is or should be accepted that the applicant may be homeless, the preliminary enquiry will necessarily be limited. If it is not readily apparent that the applicant is plainly neither homeless nor threatened

with homelessness, then the provisions following Section 183 would apply. Other than that, what is permissible by way of preliminary enquiry is inevitably a matter of degree in the circumstances of the particular case. In general, preliminary enquiries will not be appropriate at all and, when they are, they should rarely be more than minimal.

The Complainant's Solicitor's View

35. In commenting on the Council's response to my investigator's enquiries, Ms David's solicitors gave their view that, if the Council had "accepted a need to investigate" their client's case, then interim accommodation should have been provided under Section 188, on the grounds that there was a very low threshold before the provisions of the Act were triggered. The solicitors also disputed that there was any factual basis upon which to suspect that their client had made a 'false' application. Ms David had had no accommodation that she had a right to occupy, so she was homeless. It was not unusual for a homeless applicant to stay at a variety of different addresses. Ms David disputes that she gave the Council false information. Her circumstances in the flat from which she became homeless had been very awkward, and she had to spend much time away from the property to avoid conflict. She says she had attended interviews when asked, and made numerous calls to the Council, even though this was difficult and she was on a limited income.
36. In their comments on the draft facts of this report, the solicitors expressed the view that the Council is misguided to say that it must be "reasonably satisfied" that accommodation was not available for Ms David (see paragraph 30) or that it must make further enquiries "to satisfy itself that it has reason to believe that a person is genuinely homeless" (see paragraph 31). The test requires only a 'belief', not that the Council must be 'satisfied'; and it only requires considering if the person 'may be' homeless, not whether he or she is 'genuinely homeless'. The solicitors referred to the Court judgement in *R (Aweys and others) –v- Birmingham City Council* [2007] EWHC 52 (Admin), where the Judge held that the threshold for the duty to make enquiries (under Section 184) is low, and that in most cases the making of an application of itself would mean that it would be difficult if not impossible for the council not to believe that the applicant might be homeless.

The Council's Response to the Draft Facts of this Report

37. The Council has given its view that the homelessness legislation gives people adequate protection through the review and appeal processes, and that it is necessary to take into account custom and practice in councils' administration of

the legislation. Councils are under pressure to accept applications even where they have reason to believe the person is not homeless, since acceptance confers a legal obligation to determine the application and consider requests for interim accommodation and storage of the person's belongings. The Council says it is considered good practice to accept applications from those who regard themselves as unintentionally homeless and in priority need, and who are prepared to pursue their application through to appeal (but see paragraph 51).

38. The Council maintains its view that accepting a homelessness application does not mean that it accepts that there is reason to believe that the person may be homeless. In Ms David's case, although she had spent a night in emergency accommodation (see paragraph 20), which might normally have given "reason to believe that she was homeless", she had previously given inaccurate information, and there were grounds to suspect that she might be making a false application; someone's willingness to spend time in temporary accommodation does not mean that he or she is homeless. In the particular and exceptional circumstances of Ms David's case the Council was justified in its view that it did not have reason to believe that she was homeless.
39. The Council disputes that it applied the wrong tests or that it was confused about its statutory duties; it interpreted the law in a permissible way. Section 183 did not exclude 'preliminary enquiries', and the threshold for triggering duties under Sections 184 and 188 was low but not non-existent. In this case officers considered that, in view of previous contradictory information, 'light touch' enquiries were necessary to help them take an informed view of whether there was 'reason to believe' before agreeing temporary accommodation. These preliminary enquiries were to establish where Ms David was living, and where her belongings were. The absence of file notes does not mean that officers were unclear what they were doing, and it would be unusual to find detailed legal analysis where a decision has been taken in the applicant's favour.
40. The Council disputes that taking an application from Ms David on 11 January 2005 committed officers to providing her with temporary accommodation. Its duty under Section 188 was to secure that accommodation was available for her, which officers did by satisfying themselves that she had temporary access to accommodation (with a friend) on that day. The solicitors acting for her at that time had not compelled the Council to provide temporary accommodation as they could have done. It would be wrong to suggest that accommodation was only eventually provided for Ms David because her subsequent solicitor became involved (see paragraph 22). If accepting an application automatically triggers a Section 188 duty which can only be satisfied by providing temporary accommodation, councils could be criticised for undertaking home visits to verify applicants' claim to be homeless. Tenants and home owners claiming homelessness on overcrowding grounds could also demand temporary accommodation pending investigation of their applications. The Council has commented that, when offered temporary accommodation only ten

days after her initial approach, Ms David had declined this. Her need for Section 188 accommodation therefore seemed to have been very short-lived.

Conclusion

41. Ms David's complaint has highlighted important issues relating to the way in which the Council has administered its duties under Sections 183, 184 and 188 of the Housing Act 1996. These are likely to be of interest to other councils, to lawyers, and to those applying to councils for assistance under the homelessness legislation.
42. The Council believes that it was entitled to open a homelessness application for Ms David on 11 January 2005, and then to make reasonable, limited, preliminary enquiries to enable it to decide whether there was reason to believe that she was homeless. The Council says that it had good reason to doubt that she was homeless. So the Council effectively accepted the application without having reason to believe that Ms David may be homeless. It then made 'enquiries' under Section 183, rather than Section 184 enquiries, to satisfy itself that she was indeed homeless.
43. On 11 January 2005 Ms David presented herself and her young baby as homeless, saying that she had been physically excluded from her accommodation, and that they had had to stay in an emergency hostel the previous night. On that basis, it might reasonably be expected that there was sufficient 'reason to believe' that she 'may be homeless or threatened with homelessness'. If that was the case, then the Council had a duty to commence Section 184 enquiries, and to secure that suitable accommodation was available for her under Section 188 until it made a decision on her application.
44. The Council suggests that it gave Ms David the benefit of the doubt by taking her application even though it did not believe that she was homeless. It has since obtained clear legal advice that it was entitled to make some limited preliminary enquiries before concluding that there was reason to believe that she might be homeless. It is the case that Section 183 does not explicitly prohibit preliminary 'enquiries', even though there is no express provision for them to be made. What is clear, however, is that Section 183 only requires that 'the authority have reason to believe that [the applicant]... is or may be homeless or threatened with homelessness' for Sections 184 and 188 (and the other provisions under this Part of the Act) to apply.
45. The Council invited Ms David to apply for interim accommodation on 21 January 2005, telling her solicitor that her new application was "currently being investigated". This implies that the Council was, at that time, making Section 184 enquiries. But it is unclear from the Council's records at what point the limited

preliminary enquiries to decide if there was reason to believe she might be homeless had become Section 184 enquiries to decide if she was eligible for assistance, and what duty was owed to her. Although the Council has emphasised that it needed to establish that she was homeless by tracking her down to one of her temporary addresses, I note that, in the event, the Council offered interim accommodation before it had succeeded in visiting her at one of those addresses on 15 February.

46. The Council has, at various times during its correspondence with Ms David's solicitor and with my office, referred to the need to determine that there was reason to believe that she was homeless, and to its duty to provide Section 188 accommodation only where there was reason to believe that a person was homeless. Sections 184 and 188 of the Act refer only to the need for authorities to have reason to believe that an applicant *may be* homeless. This is a crucial distinction, and it is of concern that the Council has confused the two tests. Establishing whether a person is actually homeless is part of the purpose of Section 184 enquiries: in line with Paragraph 3.10 of the 2002 Code of Guidance (and Paragraph 6.12 of the 2006 Code) (see Paragraphs 11 and 16), it is only when Section 184 has been engaged that the authority must make inquiries to satisfy itself whether the applicant *is* homeless or threatened with homelessness. It is therefore of concern that the Council believes that it needs "to satisfy itself that it has reason to believe that a person *is genuinely homeless*" [my italics] before considering whether it needs to secure interim accommodation for him or her (see paragraph 31). The test that it should have applied involved a lower threshold for the applicant to meet.
47. In trying to anticipate the decisions that it would need to make if it decided to commence Section 184 enquiries, the Council appears to have sought to engage Section 175 – that is, to decide if accommodation was available to Ms David or whether she was homeless – at the point when she presented as homeless.
48. The Council's initial response to Ms David's presentation as homeless was to refuse to accept her application on the basis of its view that there had been 'no relevant change of circumstances from those that existed at the time of her previous application'. It should instead have considered whether the application was 'based on exactly the same facts' as the previous application (see paragraph 18).
49. The Council took a series of decisions in Ms David's case: to decline to accept an application from her; to accept an application from her; to make preliminary enquiries under Section 183 to reach the point of deciding whether there was reason to believe that she might be homeless; to commence Section 184 enquiries to decide whether she was homeless and eligible for assistance; and to consider whether it needed to secure that interim accommodation was available to her under Section 188. But the Council's records are unclear, and do not explain what

decisions officers were taking, or thought they were taking, at any particular point. Good practice would require a clear record of each decision and the reason for it, especially in a case which the Council itself describes as exceptional. In particular, there should have been a clear record of when the Council took the significant decision that it had established that there was reason to believe that Ms David may be homeless, since its duty to secure that suitable accommodation was available to her would have arisen immediately at that point.

50. I acknowledge that councils are under considerable pressure to accept homelessness applications from people, some of whom may be found not to be homeless at all during the course of Section 184 enquiries. I acknowledge that councils do accept applications in circumstances where they do not have 'reason to believe' the applicant is or may be homeless. But the law is quite clear that, once an application is accepted and 'reason to believe' is established (whether it is established immediately or following limited preliminary enquiries), various duties are triggered, including the immediate duty to provide interim accommodation if that is the only way of securing that suitable accommodation is available for the person.
51. I have to add my concern at the suggestion that an applicant's willingness to pursue an application through to appeal (see paragraph 37) could or should be a relevant factor in accepting an application. The Council did not seek to amend this reference when it was provided with a draft of this report but now says that it places no such filter on applications.
52. I understand the Council's concern that it should not be expected automatically to offer all applicants interim accommodation pending investigation of their applications. I am not saying that it should. Its duty under Section 188 is to secure that suitable accommodation is available to the applicant. In many cases this will involve arranging and providing interim accommodation.
53. It is not my role to offer a definitive legal interpretation of the homelessness legislation, or to question the Council's reasonable interpretation of that legislation. Its view on its powers to make limited preliminary enquiries under Section 183, in particular, has been supported by Counsel's advice. But I would consider it good practice for councils to abide by the relatively low threshold test of "reason to believe" when considering their duties under Sections 184 and 188, rather than seeking to establish actual homelessness. That is, where an application is made and there is reason to believe the person may be homeless, for councils promptly to consider whether they need to commence inquiries under Section 184 and, in particular, to decide without delay whether there is a need to secure that suitable accommodation is available.
54. However the Council interpreted its duties under the Housing Act 1996, it should be able to demonstrate how and why it made the decisions it did in Ms David's case. I

have concluded that the lack of clarity in the terminology that the Council has used in dealing with this case, and its lack of clear records, particularly records of what decisions were being taken and under which provisions of the Act, amount to maladministration. I am not persuaded that this caused substantive injustice to Ms David, who declined to accept interim accommodation when it was offered to her, and who was subsequently offered accommodation in discharge of the full housing duty that the Council accepted on 16 February 2005. But I consider that she suffered some injustice in terms of the time and trouble involved in pursuing her complaint with me, and I recommend that the Council should remedy this by paying her the sum of £250. I also recommend that the Council should review its guidance to its officers on the issues raised by this complaint, in the light of the guidance offered by the current (2006) Code of Guidance, and address any training needs, particularly in relation to the importance of clear and accurate record keeping.

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24 July 2008