

## **Appendix III: Letter to the Local Government Ombudsman from Maidstone Borough Council**

Thank you for allowing us the additional time to review this report, previous correspondence with the ombudsman and to consult with relevant parties. As requested we have spoken with our members to make them aware of the case, contacted all employees involved including former employees and the Mr and Mrs X, the owners of the temporary accommodation.

We have also had an informal conversation with the Local Government Association outlining our concerns about this report and the possible impact on other authorities if they are to be held accountable in the same way this report seems to find us. The LGA are sufficiently concerned that we would now like permission to release to them the draft report in accordance with Section 32 of the Local Government Act 1974, so that they can assess the potential impact of this. I'd appreciate it if you could confirm whether we can do this as soon as possible.

There are three fundamental points, that form the basis of this report, we would like to address

### **1.**

We strongly feel that the LGO has stepped outside its jurisdiction. As your report outlines, you would not normally investigate a complaint that could have been dealt with through the courts as identified in the Local Government Act 1974, section 26, (6) "A Local Government Commissioner shall not conduct an investigation under this part of this Act in respect of any of the following matters – (c) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law". In this case we believe it would have been reasonable to expect Mr and Mrs A to go to Court especially as they had a solicitor at the outset of the complaint and they could have requested damages via a County Court action in the small claims court and would not have needed legal representation.

Your reports states the reason for undertaking an investigation on this occasion is that the court would not recommend procedural improvements. Mr and Mrs A requested damages of around £30,000, not procedural improvements. Had the complainants case have been successful, the Council would have had to review our procedures in light of the outcome, as we would have still had to present it to our Members. However there are no significant procedural improvements recommended in this report, early on in the process the LGO were advised that changes had been made to procedures and were recommended to contact the Housing Manager. The LGO has not pursued or acknowledged any procedural changes with us.

### **2.**

The Recommendations in this report are formed on the basis that Mr and Mrs A didn't breach the rules of the property which they occupied and ignores the fact

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that the accommodation provider had received numerous complaints about them due to their behaviour, and importantly this would have included complaints from other individuals that we would have had a responsibility too. The context we are working in is that despite Mr and Mrs A's distress and claims they made about the behaviour of Mr and Mrs X the owners of the accommodation, they asked to return there following the Council reinstating its duty. Attached are copies of the rules provided to Mr and Mrs A and the Council's former license agreement. The report states that there is no evidence that these were provided to Mr and Mrs A but we argue that there is no evidence that these were not provided.

### **3.**

The Council has already admitted responsibility for the elements of fault that we were responsible for. Subsequently, as we have advised the LGO we have made a range of procedural changes to improve processes across the service. The LGO has not clearly acknowledged either of these points as stated in part 2.

With regard to individual points within the report, we have reviewed the document and outlined our key points of disagreement and agreement below using the paragraph or recommendation reference and text. Some of these points we have raised previously with other investigators, but hadn't had a response on and would appreciate some feedback on now.

#### **Maidstone Council comment reference 16004603**

Complaint (a) There was a failure to assist them until the family approached the Council in person. They had to use the out of hours' service and, despite attending the Council's offices in person at 2 pm, and advising of their homelessness previously, the Council did not arrange accommodation until 7.30 pm when they had two small children (including a baby of 13 months) And nowhere to go.

**Whilst it is accepted that the Council could have instigated contact with the family when notified through the housing register application that they were threatened with homelessness, the Council cannot agree with Paragraph 61 that there was a failure to provide temporary accommodation. There is no requirement in law to pre-book temporary accommodation for homeless households. Whilst in an ideal world this would be the case, in reality booking Temporary Accommodation in advance would be irresponsible, as funding is extremely limited and people frequently make alternative arrangements or receive intervention from third parties or family for example. Had the Council booked that place and the family had not taken it, this would have been a serious waste of very limited funding, for which we are accountable.**

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**Whilst the Council makes every endeavour to arrange Temporary Accommodation within working hours, this depends on the number of cases seen that day. Whilst Mr and Mrs A advised that they believed they would be homeless they did not advise they were attending the Council that day and there was nothing to suppose that they would.**

**The amount of restitution suggested by the report is out of kilter with an ombudsman judgement in April where Barnet were fined only £300 for repeatedly not taking an application from someone and passing her to a homeless shelter. Whilst Mr and Mrs A's situation as a whole was understandably distressing, unlike in the Barnet case the family were not refused housing but had to wait for confirmation of the name of the provider.**

Complaint (c) The Council allowed an unlawful eviction

**This is factually incorrect - The Council did not allow an unlawful eviction – the Council has no legal right to interfere with the decisions of a commercial activity. The owner of the business ended the contractual arrangement with the Council rather than the Council instigating it. The property was being used by the Council on a nightly basis and the owner could withdraw this arrangement at short notice. This type of arrangement is typical within all Councils for Temporary Accommodation.**

**If the Council was terminating its agreement with Mr & Mrs A then the approach taken would have been different. The facts of the case are that the proprietor ended the booking (a contractual arrangement which is not required to be in writing) with the Council resulting in the family having to leave the accommodation.**

Complaint (f) There was a failure to provide accommodation after the eviction

**The Council has already recognised this fault as part of our standard complaints process and offered to repay Mr and Mrs A.**

Complaint (i) There was a failure to respond to the complaint

**We acknowledge that we should have identified those elements not appropriate to be dealt with through the statutory process and should have taken Mr and Mrs A through the Council's complaints process.**

Injustice

Paragraphs 80-81- Mr and Mrs A say if the Council had dealt with their case properly, the eviction would not have happened and they would have been able to stay in the flat instead of moving into Bed and Breakfast accommodation. Whereas the Council considers Mr and Mrs A could not stay in the flat because Mrs X would not allow it. This suggests the Council considers it has no control at

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all over the third parties it uses to secure accommodation for applicants owed the main housing duty. We consider the Council should only make arrangements with third parties to discharge its homeless duties if those parties agree to comply with the law and behave fairly. In this case, the provider did not comply with the law because correct notice was not given.

**The parties are complying with the law, and the report is making a judgement that the provider is not acting fairly, which is not within the LGOs jurisdiction. The proprietor is not bound by law to give 28 days notice; as they are not a housing provider. The consequences of what the LGO are suggesting would mean that we would lose a vast majority if not all of our external providers which would mean we couldn't comply with our duty to accommodate. The LGO has not stated any case law on which they have relied to support their position.**

**It cannot be said with certainty that Mr and Mrs A would have been in a position to say that they would have been able to stay in the flat; the nature of temporary accommodation is such that we do occasionally have to move families, though this is avoided where possible. This is conjecture rather than fact. The report is also making an assumption that Mr and Mrs A were above fault in the situation.**

Paragraph 82 We consider Mr and Mrs A and their children suffered avoidable distress and inconvenience because of the fault identified in the previous section

- a) We do not accept that waiting 2 ½ hours was humiliating and caused distress.**
- b) & c) We do not accept this point. As stated previously the proprietor ended the booking because they believed there was a serious breach for which the Mr and Mrs A had been warned previously**
- d) We were not involved in this process and cannot be held accountable for it**
- e) The Council had acted as a mediator between the proprietor and the Mr and Mrs A previously.**
- f) We have already apologised for the inappropriate remark by the customer service advisor and the individual no longer works for the organisation**

Paragraph 84 There is fault in the way the Council dealt with Mr and Mrs A as homeless applicants and in its arrangements for accommodating them. This caused avoidable distress, inconvenience, financial loss and avoidable expenses.

**We do not agree with paragraph 84 for the reasons already outlined**

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### Recommendations

a) Apologise to Mr and Mrs A for the fault identified.

**We have apologised to Mr and Mrs A for the fault we have already acknowledged.**

b) Pay them £500 to reflect lost and broken belongings including a television. We are satisfied on a balance of probabilities, relying on the audio and video evidence of Mr X's conduct on the day of the eviction that there was some damage to their property and it is likely some belongings got left behind due to the pressure on Mrs A to leave immediately. As Mr and Mrs A are not in a position to provide receipts or further evidence of exact costs, a symbolic payment is appropriate

**This is a dispute between the proprietor and the family, this should be tackled outside of the Council. We do not know what was in the property or had the opportunity to verify the claims being made, nor were we asked to store the items for the family.**

**By applying the "balance of probabilities" test the Ombudsman appear to be acting as a Civil Court, taking into account evidence that has not been tried and tested to judicial standards and awarding payment that has not been quantified in any way whatsoever. It is justified as a "symbolic payment". The Courts do not award symbolic payments. The Ombudsman appears to be entering areas that should quite properly only be within the domain of the Courts and it is inequitable to pursue this course of action.**

c) Pay for the cost of bed and breakfast after the eviction

**As highlighted earlier we have already formally offered this.**

d) Pay their removal and storage costs of £370.

**We agree that this cost wouldn't have been incurred and agree to this.**

e) Pay them £750 which reflects some of the cost of takeaway food for the two months the family was in the Bed and Breakfast after the eviction. Without fault by the Council, Mr and Mrs A would have remained in the flat which had its own kitchen and not incurred these additional costs and;

**A local housing authority is not under a duty to provide food or facilities to provide food, other residents in other accommodation do not receive these facilities. It also cannot be assumed that Mr and Mrs A may have remained within the flat for that period as there is no guarantee that that accommodation would have continued. Again the report is also**

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**making an assumption that Mr and Mrs A were above fault in the situation.**

f) Pay them £2000 to reflect the high distress described in paragraph 82. We have taken into account in particular, that Mr and Mrs A's children were present on the day of the eviction. This is in line with our published guidance on remedies.

**As already documented throughout this document we do not support this finding and therefore do not support the recommendation. We do not feel that the LGO provides reasoning for the sum that is reached or how the distress reflects in comparison for previous cases that the LGO has investigated or that Courts have investigated.**

Paragraph 86 Within three months of our report, we recommend the Council reviews and formalises its working relationship with Mr and Mrs X in writing to avoid recurrence of the fault identified in this report and reports back to us with an action plan confirming how it plans to do this.

**We gave had an arrangement with these proprietors for 20 years and this is the first incident of this type. The council is reviewing its TA strategy and a report will be provided to the Councils relevant committee in December 2017. This recommendation will be considered as part of that review.**

Thank you in advance for reviewing these points.