



Southwark Council
160 Tooley Street
London
SE1 2TZ

10 November 2020

Dear Sirs,

RE: SOUTHWARK COUNCIL'S POLICY AND PRACTICE ON OVERCROWDING

1. We write further to your response to our open letter within which we expressed concerns about the council's policy and practice on overcrowding.
2. In its response, the council has made broad brush arguments on migration, the housing crisis and pressure on local authorities (for 6 pages). It then goes on to make generic submissions in respect of the working and operation of its housing allocation scheme. What the council has failed to do is respond in any real detail, to any of the specific points we have raised.
3. While the council has seemingly conceded to point c of our recommended actions (paragraph 31 of the original letter) we urge the council to strongly consider our recommended actions points a and b.
4. We therefore ask the council to respond specifically to the following submissions and associated questions, which arise as a result of the concerns raised in our initial open letter.
5. In your response, please refer to each of the points made and questions raised in turn, by referring to each paragraph number, and or relevant Question (i.e. Question A, B or C). Whilst we have restated a number of the points made, when responding please read these submissions in conjunction with our initial letter.

Deliberate Act

6. Many applicants who are deemed to have caused their overcrowding by a 'deliberate act', are wrongly being allocated to Band 4, rather than Band 3. The Council has relied on clause 5.23 of its allocations scheme regarding the right to reduce an applicant's priority. However, in the cases we have highlighted in our initial letter, none of those applicants' priority had been correctly reduced under that clause.
7. The reasoning that is used by council officers when reducing an applicant's priority to Band 4 is simply and solely on the basis of a 'deliberate act.' The council therefore is in many cases relying on that *same* reasoning in order to reduce their priority from Band 1 and then again due to them allegedly having 'deliberately worsened their circumstances'.
8. Not only is the council's approach to 'deliberate act' leading to differential treatment amongst applicants in similar situations (with some households being placed in Band 3 and others in Band 4), but it also leads to statutory overcrowded families being treated less favourably than other less overcrowded households who are placed in Band 3 but who came to be overcrowded for the very same reasons.

Question A: In light of the above, please can the council confirm whether our view (stated in both in these submissions and in our initial letter), is an accurate explanation of its current housing allocations scheme. If not, please explain in detail why not, and if so, please confirm that the council will therefore send a clear message to housing officers that:

- i. **There is a difference between 'deliberate act' and 'deliberately worsening of circumstances', and what that difference is (see esp. the point made below regarding the latter);**
- ii. **All applicants who have been deemed to have caused their overcrowding by a 'deliberate act', will automatically be placed in Band 3, rather than Band 4;**
- iii. **They should not (as they have been more recently) use the same reasoning *twice* in order to reduce an applicant's priority from Band 1 to Band 3, and then from Band 3 to Band 4; and**

- iv. Any reducing of an applicant's priority on the basis of deliberately worsening of circumstances must clearly and strictly refer to the guidelines as stipulated in Clause 5.23 (again see esp. the point made below regarding the latter).

Deliberately Worsening of Circumstances

9. The 'deliberately worsening of circumstances' provision which allows the council to reduce an applicant's priority or prevent them from accessing the housing register altogether, is being wrongly applied in many cases. The council has been known to only overturn these decisions after a threat of judicial review proceedings (rather than through its internal reviews process).
10. The council's policy is that where there is clear evidence and a conclusion can properly be drawn that an applicant has deliberately made worse their circumstances in order to achieve higher priority on the register or to qualify to join the housing register, then reduced priority will be given.¹
11. In four years of supporting people with their housing register bidding accounts and helping them to understand Southwark council's housing allocations policy, we have never seen anyone placed into Band 4 for worsening circumstances. It is only recently that there has been a sudden change in decision making and council officers are arguing that families have deliberately worsened their circumstances in order to gain an advantage on the housing register, in circumstances where they clearly did not intend to make their situation worse in order to gain an advantage on the housing register.

Question B: In light of the above, please can the council confirm whether our view (as stated in these submissions and in our initial letter) is an accurate explanation of its current housing allocations scheme. If not, please explain in detail why not, and if so, please confirm that the council will therefore send a clear message to housing officers that:

- i. **Before they reduce an applicant's priority to Band 4 by invoking Clause 5.23, they need to be satisfied that an applicant properly understood the housing**

¹ Ibid, at 5.24.1

allocations policy and deliberately made worse their circumstances with a clear intention to exploit it.

- ii. In this regard, housing officers must be mindful of the fact that they are unable to reduce priority on these grounds, in cases where:
 - a. There is any reason to believe that the applicant had little to no understanding of the scheme, overcrowding or statutory overcrowding. In this situation, housing officers must have due regard to the realities many of the families affected, being from migrant backgrounds and have difficulty speaking and understanding English. Officers must ensure that they are mindful for the fact that understanding the complexities of the council's allocations policy is confusing and complicated enough even if you do speak English as your first language;
 - b. The applicant has moved into *less* overcrowded accommodation than they were in previously, and therefore cannot be said to have *worsened* their circumstances in order to gain any priority;
 - c. The applicant has moved into their overcrowded housing years before applying to join the council's housing register and were only made aware of their rights under the Scheme when finding out about and meeting with HASL; and
 - d. If they are going to reduce any applicant's priority they must provide clear evidence showing knowledge of the scheme and an intention to exploit it as described above.

Priority Star

12. We note that the only point raised in our initial letter that the Council has attempted to respond to, is that relating to awarding a priority star for all statutory overcrowded families, regardless of whether those conditions were caused by what the council deems to be a 'deliberate act.'
13. The council has asserted in its response that there was no intention to award statutory overcrowding priority stars to those who moved into properties which were unsuitable for them right from the beginning and whose statutory overcrowding conditions were caused

by “deliberate conduct”, but that the local authority has now awarded the statutory overcrowding star to all the applicants who are living in households which are statutorily overcrowded.

14. However, this is simply untrue and does not reflect either a proper interpretation of the allocations scheme, or what the council’s practice has been over the years. For example, throughout the past four years, the council’s practice has been that statutory overcrowded families who are not awarded Band 1 due to causing their overcrowding by what the council deems a ‘deliberate act’, and are placed in Band 3, are also awarded a priority star for statutory overcrowding to reflect their high housing need within that Band (this makes sense in order to prioritise statutory overcrowded families above those who are less overcrowded). However, since 2018 we have seen that in 7 cases those families are not being fairly prioritised as the council are refusing to award a priority star for statutory overcrowding relying twice on the family causing their overcrowding by a ‘deliberate act’.
15. This interpretation of the scheme has not only been adopted by housing officers over the years (which is clear from all the decisions made in this cohort of cases), but also by the housing applications manager, Ricky Bellot (see attached email as confirmation of the same).

Question C: In light of the above, please can the council confirm that this is and always has been its policy as published.

We ask that a substantive response to this letter is received no later than **24 November 2020**.

In the meantime, should you have any queries, please contact Ms Helen Mowatt and/or Housing Action Southwark and Lambeth by email to Helen.mowatt@pilc.org.uk / haslcases@gmail.com

Yours faithfully,

PILC and HASL