

## EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

**Committee:** Housing Appeals and Review Panel      **Date:** Friday, 21 September 2012

**Place:** Committee Room 1, Civic Offices, High Street, Epping      **Time:** 2.30 - 6.30 pm

**Members Present:** Councillors A Mitchell MBE (Chairman), B Rolfe (Vice-Chairman), Mrs R Gadsby, Mrs J H Whitehouse and L Leonard

**Other Councillors:**

**Apologies:** Councillor Ms J Hart

**Officers Present:** A Hall (Director of Housing), G Lunnun (Assistant Director (Democratic Services)), J Hunt (Assistant Housing Options Manager (Homelessness)) and D Barrett (Area Housing Manager (South))

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### 17. SUBSTITUTE MEMBERS

It was noted that Councillor L Leonard was substituting for Councillor Ms J Hart.

### 18. DECLARATIONS OF INTEREST

There were no declarations of interest by members of the Panel under this item.

### 19. EXCLUSION OF PUBLIC AND PRESS

#### RESOLVED:

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the items of business set out below as they would involve the likely disclosure of exempt information as defined in the paragraph of Part 1 of Schedule 12A of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information.

<b>Agenda Item No</b>	<b>Subject</b>	<b>Exempt Information Paragraph Number</b>
5	Application No 4/2012	1
6	Application No 3/2012	1

**20. APPLICATION NO. 4/2012****Introduction**

The Panel considered a request for a review of a decision made by officers under delegated authority that the applicant was homeless intentionally as a result of being evicted from her last settled accommodation due to rent arrears. The applicant attended the meeting to present her case. Mr J Hunt, Assistant Housing Options Manager (Homelessness), attended the meeting to present his case supported by Mr D Barrett, Area Housing Manager (South). Mr A Hall, Director of Housing, attended the meeting to advise the Panel as required on relevant legislation and national and local housing policies relative to the application.

At the request of the Chairman, the Vice-Chairman introduced the members of the Panel and officers present to the applicant.

The Panel had before them the following documents which were taken into consideration:

- (a) copies of documents submitted by the applicant, namely:
  - (i) her application to the Housing Appeals and Reviews Panel dated 14 August 2012;
  - (ii) a copy of a letter dated 10 August 2012 from Essex County Council's Schools, Children and Families Directorate addressed to "To Whom It May Concern";
- (b) a summary of the case including the facts of the case;
- (c) the case of the Assistant Housing Options Manager (Homelessness);
- (d) copies of documents submitted by the Assistant Housing Options Manager (Homelessness), namely:
  - (i) applicant's rent transaction history from 21 April 2005 until 29 June 2012;
  - (ii) copy of letter dated 10 June 2010 from a Housing Officer (Management) to the applicant;
  - (iii) copy of letter dated 5 August 2010 from a Housing Officer (Management) to the applicant;
  - (iv) copy of letter dated 3 September 2010 from a Housing Officer (Management) to the applicant;
  - (v) copy of a memorandum dated 24 September 2010 from the Directorate of Corporate Support Services to the Director of Housing;
  - (vi) a typed copy of notes of an interview of the applicant by a Housing Officer dated 4 July 2012;
  - (vii) a schedule showing the addresses at which the applicant had lived since 1993 (tabled).

**Presentation of the Applicant's Case**

The Panel considered the following submissions in support of the applicant's case:

- (a) although the applicant's tenancy agreement for the Epping Forest District Council property she had occupied between 2005 and 2010 had been in her sole name, her partner had lived with her at the property from October 2005; after an initial period when they had a good relationship, the applicant's partner had started to control the applicant mentally;
- (b) the applicant had received Child Tax Credit and Child Benefit into her bank account together with her partner's wages; one of the ways the applicant's partner had controlled the applicant had been by keeping her bank card and giving her a weekly allowance of £100 to pay for food shopping, and the gas and electricity supplies on the understanding that he would pay the rent and the TV licence fee; the applicant's partner had stated that he required more money for the bills he was paying although the applicant became aware that he actually needed this money to buy drugs;
- (c) by 2008 the applicant had become very depressed about her life because of the control exercised over her by her partner and the debts which had arisen as a result of her partner not paying bills;
- (d) the applicant admitted getting into arrears with the rent of her Council rented property but submitted it was not solely her fault;
- (e) in September 2009 the applicant had confronted her partner and told him to leave the property; the applicant's partner had left the property taking their elder son without the applicant's consent; the applicant's partner had subsequently tricked the applicant into signing over benefits for their son so that her partner could obtain housing from the Council; the applicant had taken this action because she had not wanted her elder son to continue living at her partner's mother's property because it had been untidy and dirty; she had also agreed to take this action on the understanding that her partner would return their elder son to her when he had obtained a property; however, after obtaining a property the applicant's partner had refused to return their elder son to the applicant;
- (f) the applicant had become more depressed as a result of losing her house, son and car;
- (g) the applicant was now attempting to get her life back on track; she was still suffering from depression and was receiving counselling;
- (h) the applicant's younger son who had remained with her had been badly affected by his brother leaving; the younger son was being supported by Social Care on a Child Protection Plan and a Senior Support Worker was working with him and the applicant by providing strategies to address the concerns faced by the family;
- (i) if the applicant was made homeless again she would lose her younger son because if she had no accommodation, Social Care would take her younger son into care;
- (j) the applicant's circumstances had not been entirely due to her actions; her partner had used her and lied to her;

- (k) the applicant now had overnight contact with her elder son over the weekends; it was not in the children's interests to be separated from their mother.

**Questions from the Assistant Housing Options Manager (Homelessness) to the Applicant**

The applicant gave the following answers to questions from the Assistant Housing Options Manager (Homelessness):

- (a) she had returned to her mother's property in November 2010 because she had nowhere else to go; her mother had not wanted her to return but after a Council officer had spoken to her mother and explained the possibility of the applicant's younger child being taken into care, her mother had agreed to accommodate them;
- (b) she did not know why her partner could not open-up his own bank account; she had given him her bank card and her pin number because she had thought they had an open relationship;
- (c) her partner had been given the rent card in order to pay the rent;
- (d) she now acknowledged that her partner had been controlling her for some time but had not accepted it until he had taken their elder son; she had allowed her partner to take her elder son as she had understood this would only be for the period until her partner obtained his own property by using their elder son as a dependant; the applicant now regretted the actions which she had taken which had resulted in her losing her elder son.

**Adjournment of the Meeting**

The Chairman became unwell and the meeting was adjourned to enable her to leave the meeting room. The Vice-Chairman took over as Chairman of the meeting and the proceedings resumed without the Chairman.

**Questions from Members of the Panel to the Applicant**

The applicant gave the following answers to questions from members of the Panel:

- (a) she had not suffered physical violence from her partner but he had controlled her mentally;
- (b) she had been confident that when allowing her elder son to go with her partner he would not come to any harm; she had thought that it was in her elder son's best interests at the time;
- (c) she had worked as a community care worker caring for the elderly but it had been necessary to give up her employment when she had separated from her partner in order to look after her child; she would like to return to this employment in the future;
- (d) she had been tricked by her partner into signing over her elder son's benefits; her partner had been on his own and had been working and without a dependant child he would have been unlikely to have obtained his own Council property;

- (e) she currently had overnight contact with her elder son over the weekends; she also saw her elder son briefly at times when she dropped off her younger son;
- (f) when her elder son stayed with her at her mother's property he slept with her and her younger son had his own bed;
- (g) it had been her intention when returning to her mother in November 2010 that this would be a temporary arrangement; she had argued with her mother in February 2012 and had been told to leave the property;
- (h) since being with her mother she had been looking for her own property via the internet, papers and agencies;
- (i) the drugs which her partner had bought had been cannabis; she had also taken cannabis but had given it up for the sake of her children when her partner had left her;
- (k) when her partner had taken her elder son he had been drunk but she had not called the Police because she had not wanted them to chase him as this could have resulted in an accident; she had called her partner's mother when he had arrived there;
- (l) after her partner had left she had regained control of her bank card;
- (m) she was of the view that when her partner had taken her elder son he was still using cannabis but she had no proof of this;
- (n) it had been unusual for her partner to get drunk.

**Presentation of the Case of the Assistant Housing Options Manager (Homelessness)**

The Panel considered the following submissions in support of the case of the Assistant Housing Options Manager (Homelessness):

- (a) the applicant had been eligible for assistance because she had a British passport, homeless because she had been evicted from her parental home and in priority need because she had a dependant child;
- (b) the homelessness legislation had required the Council to be satisfied that the applicant had not made herself intentionally homeless;
- (c) the applicant had lived with her mother between 18 November 2010 and 20 February 2012; the applicant had moved to stay with her mother after she had been evicted from her Epping Forest District Council rented property;
- (d) the applicant's Council rented property had been a two-bedroom property held in her sole name between April 2005 and November 2010; the applicant had owed £4,015.39 in unpaid rent when the Council had applied for possession of the property; at the beginning of the tenancy, the applicant had claimed Income Support and she had received full Housing Benefit towards her rent; rent arrears had started to accumulate from February 2007; the County Court had suspended a warrant of eviction in June 2010 on the basis that the applicant paid the current rent plus £3.30 per week; the applicant had

broken this Order and the Court had granted a warrant to evict her from the property;

- (e) the Council's Homelessness Assessment Officer had interviewed the applicant to give her the opportunity to comment on the information which officers had obtained; the applicant had claimed that the arrears were due to her partner moving in and, because he had been working, the Housing Benefit had been stopped; the applicant had explained that she had married her partner and that he had not given her enough money to pay the rent; the applicant had disclosed that she and her husband had used some of their money to buy cannabis and that this had left her unable to pay the rent; the applicant had separated from her husband and after he had left she had returned to work but had continued to claim benefits which had led to an overpayment in Housing Benefit; the applicant's weekly Housing Benefit had then been reduced as a consequence of this overpayment;
- (f) Council Officers had decided that the applicant was intentionally homeless; the Code of Guidance on Homelessness (Paragraph 11.7) stated that a person became homeless, or threatened with homelessness intentionally if he or she deliberately did or failed to do anything in consequence of which he or she ceased to occupy accommodation, the accommodation was available for his or her occupation, and it would have been reasonable for him or her to continue to occupy the accommodation;
- (g) it was considered that the applicant's last settled accommodation had been the property she had rented from the Council between 2005 and 2010; after being evicted from that property on 18 November 2010 the applicant had moved in with her mother and had lived with her mother until February 2012 when she had become homeless and had been accommodated at the Council's Homeless Hostel; although the applicant had resided at her mother's property for some 15 months this was considered to have been a precarious arrangement as her mother had already made the applicant homeless from that property once before in March 2004 which had resulted in the applicant being housed by the Council; the applicant had little security of tenure at her mother's property as the property had been in her mother's name; the applicant had disclosed that her relationship with her mother had been difficult and it was clear that her stay at that property was transient;
- (h) the applicant had been given a number of opportunities to make small, regular contributions towards her rent arrears which would have enabled her to continue living at the property she had rented from the District Council; the last arrangement had been a suspended court order of current rent (the majority of which had been met by Housing Benefit, other than a small deduction caused by the Housing Benefit overpayment) plus £3.30 per week making a total of £13.20 per week; the applicant had breached the suspended order and had been evicted;
- (i) the arrears had originally been due to a period when the applicant had lived with her partner and she had not paid the rent when her household income had enabled her to do so; the applicant had disclosed that she and her partner had used the money to buy drugs instead of paying the rent; the applicant had been the sole tenant of the property she had rented from the Council and contractually had been liable to pay the rent even though her partner had been working and receiving an income on behalf of the household;

- (k) the applicant's wilful and persistent refusal to pay her rent had been a deliberate omission; as a consequence of this the applicant had been evicted from her Council rented property; that property was considered reasonable for the applicant to have occupied because it had been a two bedroom social housing property with an affordable rent; that property would have continued to be available for the applicant's occupation if she had paid the rent;
- (l) if the Panel upheld the officers' decision the applicant should be given reasonable notice to vacate the Council's Homeless Hostel and, with the applicant's consent, referral should be made to Schools, Children and Families Directorate of Essex County Council on account of the applicant's younger child being at risk of harm through homelessness.

**Questions from the Applicant on the Case of the Assistant Housing Options Manager (Homelessness)**

The applicant stated that she had no questions to ask.

**Questions from Members of the Panel on the Case of the Assistant Housing Options Manager (Homelessness)**

The Assistant Housing Options Manager (Homelessness) gave the following answers to questions from members of the Panel:

- (a) the sum of £81.42 shown on the schedule of the applicant's rent transaction history related to the full rent of the property and had been due at times when the applicant had not been entitled to Housing Benefit;
- (b) the applicant had separated from her husband in 2009;
- (c) the applicant's rent transaction history included payments which had been made by the applicant since her partner had left the property;
- (d) the applicant still owed the Council over £4,000 and was currently making payments of £10 a month (the applicant stated that she was also paying off Council Tax arrears);
- (e) when the applicant's partner had sought a Council property stating that he had a dependant child the officers had not known that he had been in collusion with the applicant in order to secure a property.

**Further Questions from Members of the Panel on the Case of the Applicant**

The applicant gave the following answers to further questions from members of the Panel:

- (a) she had known that she should not have been claiming Housing Benefit when working but had aimed to obtain as much income as possible for the benefit of her family; she had only ever intended this to be for a short period and on considering her circumstances Council Officers had decided not to prosecute her; and
- (b) she was currently paying £10.00 per month towards her rent arrears, £5.00 towards her Council Tax arrears, rent at the Homeless Hostel and an amount towards a Court fine and all of those sums were being met from the benefits she was receiving.

### Summing-Up

The applicant stated that she needed help in order to get her life back on track. She accepted that she had made mistakes in the past and was now attempting to rectify those mistakes.

The Assistant Housing Options Manager (Homelessness) stated that he had nothing to add to his case.

### Deliberations

The Vice-Chairman indicated that the Panel would consider the matter in the absence of both parties and that the applicant and the Assistant Housing Options Manager (Homelessness) would be advised in writing of the outcome.

The applicant, the Assistant Housing Options Manager (Homelessness) and the Area Housing Manager (South) then left the meeting.

In coming to its decision, the Panel focussed on whether (a) the property the applicant rented from the Council or (b) her mother's home had been her last settled accommodation and then having reached a decision on that aspect, the circumstances of the applicant becoming homeless from that settled accommodation.

### RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Code of Guidance on Homelessness, and having taken into consideration the information presented by and on behalf of the applicant and by the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant was homeless intentionally from her Council rented property be upheld for the following reasons:

(a) the applicant when applying as homeless in February 2012 had been eligible for assistance being British, homeless because she had been evicted from her parental home and in priority need because she had a dependant child;

(b) the applicant had held the secure tenancy of a Council property in her sole name from April 2005 until November 2010;

(c) between November 2010 and February 2012 the applicant had stayed with her mother after being evicted from her Council property;

(d) it is considered that the applicant's Council property was her last settled accommodation for the following reasons:

(i) the applicant had little security of tenure between November 2010 and February 2012 as the property had been in her mother's home;

(ii) the applicant's relationship with her mother had been difficult; the applicant had previously lived at the parental home between May 1998 and March 2004 and had been told to leave the property by her mother resulting in the applicant being homeless in 2004;



- (iii) the applicant advised the Panel that in November 2010 her mother had been reluctant to allow the applicant to move back to the parental home and had only done so in the interests of the applicant's younger child and in view of the applicant's desperate situation; the applicant also advised the Panel that she had regarded the move back to the parental home as temporary;
  - (iv) the applicant advised the Panel that she had argued with her mother in February 2012 and had been told to leave the parental home;
  - (v) having regard to (i) to (iv) above the applicant's occupation of the parental home although some 15 months between November 2010 and February 2012 had been precarious and had not been her last settled accommodation;
- (e) the applicant had owed £4015.39 in unpaid rent when the Council had applied for possession of the property rented to the applicant;
- (f) at the beginning of the tenancy of the Council property the applicant had claimed Income Support and had received full Housing Benefit towards her rent;
- (g) arrears had started to accumulate from February 2007 when the applicant's partner had moved in with her and benefits had been stopped because he had been working; the applicant had married her partner in July 2007; in the opinion of the Panel the household income at those times had been sufficient to pay the rent; the applicant admitted that she and her partner/husband had used money to buy drugs rather than put it towards the rent;
- (h) as sole tenant of the property it had remained the applicant's responsibility to pay the rent even though her partner/husband had been working and receiving an income on behalf of the household;
- (i) the applicant had separated from her husband in 2009 when the arrears had been over £3000; the applicant had received benefits again but had commenced employment and had not informed the Council, as a result there had been an overpayment that she had been required to pay back and her arrears had increased;
- (j) on 10 June 2010 the Edmonton County Court had suspended a warrant of eviction due to rent arrears on terms that the applicant would pay rent plus £3.30 per week (ie £13.20 per week); the applicant broke this Order and the court granted a warrant to evict her;
- (k) in coming to its conclusions the Panel took account of the fact that the applicant stated she had been controlled mentally by her partner/husband; that she had given him details of her bank account including her pin number and bank card into which benefits had been paid and that he had told her that he would pay the rent but had not done so;
- (l) account has also been taken of the fact that the applicant allowed her husband when they separated to take with him their elder son so that he could obtain a property on the understanding that the son would be returned to the applicant when her husband had obtained a property; however, after obtaining a property her husband had refused to return the elder son to the

applicant and she had become depressed and was currently receiving counselling;

(m) had it not been for the deliberate act of refusing to pay the rent of the Council property including the opportunity to make small, regular contributions towards her arrears it is the Panel's view that the property would have continued to be available and reasonable for the applicant and her family to occupy bearing in mind that it had been a two bedroom property with an affordable rent;

(2) That no deficiency or irregularity has been identified in the original decision made by the Council Officers or the manner in which it was made;

(3) That provided the applicant complies with the terms of her licence at Norway House, the Council's Homeless Persons Hostel, the Council will continue to provide her and her family with interim accommodation for a period of eight weeks (until 11.00am on Monday 3 December 2012 ) in order to allow her reasonable opportunity to secure alternative accommodation: and

(4) That the officers, with the applicant's consent, refer the applicant to Children and Families Services to seek their assistance in helping her find alternative accommodation.

## **21. APPLICATION NO. 3/2012**

### **Introduction**

The Chairman having recovered returned to the meeting for the consideration of this review but did not feel able to chair the meeting. The Vice-Chairman remained as Chairman of the meeting for this review.

The Panel considered a request for a review of a decision made by officers under delegated authority that the applicant was homeless intentionally as a result of her receiving notice requiring her to leave a privately rented property due to her failure to keep the property and its items in a good and clean condition and not to cause any damage to the property/items. The applicant attended the meeting to present her case accompanied by a friend who was a solicitor and Councillor D Stallan, one of her ward councillors.

Councillor Stallan thanked the Panel for deferring consideration of this review at its meeting on 6 September 2012 when he had been unable to attend as a result of being unavoidably delayed at work. Mr J Hunt, Assistant Housing Options Manager (Homelessness), attended the meeting to present his case. Mr A Hall, Director of Housing, attended the meeting to advise the Panel as required on relevant legislation and national and local housing policies relative to the application.

The Vice-Chairman introduced the members of the Panel and officers present to the applicant. The applicant requested that the order of presentation at the meeting be changed with the Housing Officer presenting his case first followed by the presentation of her case. The Panel agreed to this request.

The Panel had before them the following documents which were taken into consideration:

- (a) copies of documents submitted by the applicant, namely:
  - (i) her application to the Housing Appeals and Review Panel dated 26 July 2012;
  - (ii) copy of letter dated 13 July 2012 from the Epping Forest District Citizen's Advice Bureau to the Director of Housing;
  - (iii) letter dated 2 July 2012 from the University College London Hospitals to the applicant's general practitioner;
  - (iv) letter dated 17 July 2012 from solicitors acting on behalf of the applicant to a Housing Officer;
  - (v) letter dated 4 September 2012 from University College London Hospitals to the applicant; and
  - (vi) 12 photographs taken by the applicant of the privately rented property which she had occupied;
- (b) a summary of the case including the facts of the case;
- (c) the case of the Assistant Housing Options Manager (Homelessness);
- (d) copies of documents submitted by the Assistant Housing Options Manager (Homelessness), namely:
  - (i) copy of the applicant's tenancy agreement for her privately rented property;
  - (ii) copy of a notice dated 5 January 2012 requiring the applicant to leave the privately rented property;
  - (iii) letter dated 26 May 2012 from the applicant's former landlord addressed to "To Whom It May Concern";
  - (iv) a typed copy of notes of an interview of the applicant by a Housing Officer dated 7 June 2012;
  - (v) copy of letter dated 26 June 2012 from the Assistant Housing Options Manager (Homelessness) to the applicant;
  - (vi) copy of Homeless Case Notes relating to the applicant summarising telephone conversations between the Assistant Housing Options Manager (Homelessness), the Council's Private Housing Manager and the applicant's former landlord;
  - (vii) 35 photographs showing the interior and garden area of the privately rented property sent to the Council by the applicant's former landlord.

**Presentation of the Case of the Assistant Housing Options Manager (Homelessness)**

The Panel considered the following submissions in support of the case of the Assistant Housing Options Manager (Homelessness):

- (a) the applicant had been eligible for assistance because she had a British passport, homeless because she had received notice to vacate a privately rented property and in priority need because she had a dependant child;
- (b) the Homelessness legislation had required the Council to be satisfied that the applicant had not made herself intentionally homeless;
- (c) the applicant had occupied a privately rented property between 11 September 2007 and 5 March 2012; that property had been a four bedroom privately rented property held in the applicant's sole name; the applicant had been served with notice on 5 January 2012 which had required her to leave the property on 5 March 2012;
- (d) in response to a request for information from officers, the applicant's former landlord had written to the Council to explain that he had served the applicant with notice because she had damaged the property and had been keeping it in an unsatisfactory condition; the landlord had submitted photographs showing the condition of the property;
- (e) the Council's Homelessness Assessment Officer had interviewed the applicant to give her the opportunity to comment on the information the Council had received from her former landlord; the applicant had claimed that she had offered to get a skip to dispose of rubbish, that she had not had the time or money to get a van to remove all of her belongings, that some of the items such as beds had been the landlord's, the property had suffered from dampness and mould and that a damaged wall had been painted by the time she had left the property;
- (f) Council Officers had decided that the applicant was intentionally homeless; the Code of Guidance on Homelessness (Paragraph 11.7) stated that a person became homeless, or threatened with homelessness, intentionally if he or she deliberately did or failed to do anything in consequence of which he or she ceased to occupy occupation, the accommodation was available for his or her occupation, and it would have been reasonable for him or her to continue to occupy the accommodation;
- (g) the Private Sector Housing Team of the Council had been asked if the applicant had informed them of any problems with the condition of the privately rented property; an Environmental Health Officer in the Private Sector Housing Team had confirmed that no complaint had been received from the applicant regarding the privately rented property;
- (h) the applicant's former landlord had been asked if the applicant had complained about mould or damp, whether she had reported repairs regularly and if he had informed her that he had given her notice because he wanted to move back into the property; the landlord had advised that the applicant had said there was damp in one room at the start of the tenancy and he had painted that room; he had also advised that the applicant had not reported repairs regularly and that he had not told her that he had given her notice because he was moving back into the property; he had further stated that neither he nor his family had moved back into the property and that the property had been rented out again to another tenant;
- (i) the applicant's failure to keep the privately rented property in a reasonable condition had been a deliberate omission, in consequence of which she had received a notice requiring possession which had led to her ceasing to

occupy the property; the property would have been available for her to occupy had she had complied with the terms of her tenancy and kept the property clean and tidy; the property would have been reasonable for her to occupy as it had been a large family sized property and suitable for her needs;

- (k) the applicant had been contractually obliged to keep the property and its items in a good and clean condition and not to cause any damage; the former landlord had made it clear that notice was served because the applicant had broken the terms of her tenancy by keeping the property in an unsatisfactory condition; the photographs supplied by the applicant's former landlord clearly demonstrated the poor condition the property had been kept in, including the cooker encrusted with food and piles of rubbish in the house and garden; the applicant acknowledged in the interview that she had taken up carpets, that a wall had been damaged and rubbish had been piled in the garden; the applicant claimed that the property had been in a poor condition due to disrepair associated with damp and mould and that these problems were the landlord's responsibility, not hers;
- (l) the Panel was invited to uphold the officers' decision; in that event the applicant should be given reasonable notice to vacate the Council's Homeless Hostel and, with the applicant's consent, a referral should be made to the Schools, Children and Family Services Directorate of Essex County Council on account of her having a dependant child at risk of homelessness;
- (m) whilst it was acknowledged that the applicant had vacated the privately rented property as a result of a Section 21 Notice, which meant that the Court had to grant a Possession Order without the need for her former landlord to allege any wrongdoing by the applicant, it was open to the Council to look at the reason why the landlord had sought possession; this had been held in the case of *Bratton v Croydon LBC* (2002) EWCA CW1494;
- (n) the applicant had stated that the condition of the property had been due to mould and damp problems; this did not explain the damage and the unclean conditions shown in the photographs supplied by the applicant's former landlord;
- (o) the lack of an inventory for the property made it more difficult to decide who was responsible for repairs; however, it was submitted that no reasonable person would have taken on the property if it had been in the condition shown in the photographs supplied by the applicant's former landlord; it was reasonable to conclude therefore that the damage to the property and unclean conditions had been caused during the applicant's occupation;
- (p) it was also recognised that the applicant's deposit had not been placed in a protected scheme; the applicant had not sought the return of the deposit at the end of her tenancy thus accepting responsibility for some of the damage caused to the property; it was not known why the landlord had not placed the deposit in a protected scheme; it was a fact that some landlords claimed not to be aware of the relevant legislation; on the balance of probabilities it was reasonable to conclude that the applicant had been responsible for damage and unclean conditions in the property and had thereby breached the terms of her tenancy and as a result had become homeless intentionally.

**Questions from the Applicant on the Case of the Assistant Housing Options Manager (Homelessness)**

The Assistant Housing Options Manager (Homelessness) gave the following answers to questions from the applicant and her supporters.

- (a) neither the photographs submitted by the applicant's former landlord nor those submitted by the applicant had been dated; the applicant's landlord had been asked for a date when he had taken his photographs but he had been unable to do so;
- (b) no check had been made on the status of the new occupants of the privately rented property following the vacation of the property by the applicant; her former landlord's statements that neither he nor his family had moved into the property and that it had been rented out to another tenant had been accepted;
- (c) the applicant's former landlord had not stated why he had not placed the applicant's deposit in a protected scheme, and he had not been asked to do so; it was a fact that some landlords, particularly those granting tenancies in 2007 (the year when the scheme commenced), had not been aware of the new requirements at that time;
- (d) the applicant had been referred to her former landlord by Council officers through the Homelessness Prevention Service; it was possible that no check would have been made on whether the landlord placed deposits in a protected scheme; the role of Council officers was to match prospective tenants with private landlords; landlords were not recommended by the Council and the prospective tenants were expected to make their own enquiries and decisions; officers did try to take steps to remind private landlords of their obligations; prospective tenants were not advised of the role of the Council's Private Sector Housing Team as a matter of routine;
- (e) the requirements to place a deposit in a protected scheme had commenced in April 2007 and the applicant's tenancy of her privately rented property had commenced in September 2007;

**Presentation of the Applicant's Case**

The Panel considered the following submissions in support of the applicant's case:

- (a) the applicant's eviction was not a result of a deliberate act or omission on her part, given that the property was vacated as a result of a Section 21 Notice;
- (b) the applicant's former landlord had stated that he had wanted to move back into the property with his family and had therefore served the Section 21 Notice;
- (c) the deterioration of the property was a result of the applicant's former landlord's failure to address the problems of dampness and mould despite the fact the applicant had on numerous occasions asked him to rectify these problems; the property had not had any ventilation system which had been the root cause of the dampness and mould; despite repeated requests from the applicant, her former landlord had taken no steps to install ventilation systems at the property but had simply asked the applicant to paint the walls herself so as to cover up dampness; before the applicant had vacated the property she had painted the walls and carried out some minor repairs; the

issue of damage to the internal walls was totally irrelevant because it was not the reason for the loss of the accommodation;

- (d) the applicant suffered from cancer and from depression;
- (e) account should be taken of the interests of the applicant's 13 year old daughter;
- (f) the applicant had given her former landlord a deposit of £700 when she had moved into the property which he had not secured in a deposit protection scheme;
- (g) the applicant had lived in the property from September 2007 for nearly five years and had only seen her landlord once a year when he had renewed the tenancy, no electricity or gas safety checks had been carried out by the landlord; when the applicant had moved into the property the furniture present had been old and damaged; the applicant had placed some of it in the garden shed and replaced it with her own;
- (h) when the applicant had wished to undertake any work to the property, she had always contacted her landlord despite the fact that he had been difficult to get hold of as he had often been abroad;
- (i) after giving the applicant notice, her former landlord had harassed and intimidated her by turning up at the property with members of his family without having made an appointment;
- (j) three weeks before the applicant had been due to leave the property her landlord had installed vent covers in the property but these had not been fitted correctly;
- (k) the applicant had been unable to use the two front bedrooms due to dampness; as a result the applicant and her daughter had slept downstairs; within three weeks of the applicant moving out of the property it had been let again which would not have been possible had it been in such a condition as the landlord had stated;
- (l) the property had really been a three bedroom property but the landlord had made it into a four bedroom property;
- (m) the applicant had left a pile of rubbish in the garden when she had left but had offered to pay for a skip for its removal; the landlord had advised her that he would arrange for the rubbish to be removed;
- (n) the applicant had no family members who could help her and no guarantor in order to be able to secure another privately rented property;
- (o) the Council had referred the applicant to a landlord who had not produced an inventory for the property and had not placed the applicant's deposit in a protected scheme;
- (p) the applicant's three sons also lived with her and had been bidding for their own properties without success for over four years;
- (q) reliance should not be placed on the applicant's former landlord's photographs as they were not dated; some of the items shown in the

photographs were not recognised by the applicant and the photograph of a mattress on a bed had not been taken during the applicant's occupation of the property; the room shown without a carpet had not been in that condition when the applicant had left the property; the applicant had cleaned the whole of the property before vacating it; whilst the applicant had left some rubbish in the garden area it had not been as much as that shown in the photographs; a damaged wall had been repaired by the applicant before she had left the property; the door shown with a hole in it had been replaced by the applicant before she had left the property; the hole in the bath panel had been caused by the applicant and was one reason why the applicant had not sought to reclaim her deposit;

- (u) the applicant's photographs had been taken on her mobile phone and had not been reproduced clearly for the Panel (the original photographs were produced and circulated at the meeting); there was no photographic evidence to compare the condition of the property when the applicant had moved in with the condition shown in the photographs; the applicant had not used the loft of the property and some of the items shown in the photographs may have been left by a previous tenant;
- (v) if the applicant's former landlord had placed the applicant's deposit in a protected scheme there would have been no need for this review; in accordance with such a scheme decisions would have been taken elsewhere about the responsibility for repairs and the use or return of the deposit;
- (w) the photographs produced by the applicant's landlord were a snapshot and did not show how the applicant had kept the property over the four and a half years of her occupation; the pile of rubbish simply indicated a person moving out of a property; photographs were not conclusive of what had led to the service of a Section 21 Notice;
- (x) the Panel would need to determine who to believe, the applicant or her former landlord; the applicant could have denied everything but had admitted to leaving rubbish at the property and to certain damage which she had repaired before leaving the property; the landlord had not provided an inventory and had not placed the applicant's deposit in a protected scheme; accordingly, greater weight should be given to the evidence of the applicant;
- (y) the applicant denied that her former landlord had ever expressed concern about the condition in which she had kept the property prior to him serving the Section 21 Notice;
- (z) the Panel should consider the motive behind the service of the Section 21 Notice; in October 2010 the applicant's Housing Benefit had been reduced in recognition of her youngest son reaching the age of 18; it was submitted that this had been one of the reasons for her former landlord serving a Section 21 Notice as he did not want to receive less rent.

#### **Questions from the Assistant Housing Options Manager (Homelessness) to the Applicant**

The applicant and her supporters gave the following answers to questions from the Assistant Housing Options Manager (Homelessness):

- (a) the applicant's sons living with her were aged 25, 23 and 19; the applicant's daughter living with her was aged 13;



- (b) it was not known whether the amount of the reduction in Housing Benefit as a result of the applicant's youngest son reaching the age of 18 would have been significant;
- (c) some of the photographs before the Panel had been taken before the applicant had moved out of the property and others after she had left the property; she had been present when her landlord had taken some photographs before she had left the property but she could not say when the photographs had been taken;
- (d) she had not contacted the Council's Private Sector Housing Team about the condition of the property as she had thought any representations in relation to a privately rented property should be made to the landlord;
- (e) she had not sought to reclaim any of her deposit as she had simply wished to sever all connections with her former landlord.

#### **Questions from Members of the Panel to the Applicant**

The applicant and her supporters gave the following answers to questions from members of the Panel:

- (a) the applicant's three sons were all looking for work and regularly submitted their CV's in support of employment but had not yet found any employment;
- (b) the three sons could have contributed to the difference between Housing Benefit and the rent had the applicant remained at the property;
- (c) the applicant's sons helped to pay for gas and electricity at a rate of approximately £25 per fortnight;
- (d) the applicant did not recognise the statement in the interview notes that the landlord should have replaced beds once a year or at least once every four years;
- (e) the applicant had taken up flooring in the kitchen and bathroom after there had been leaks to the toilet and washing machine; her landlord had replaced the washing machine;
- (f) the applicant's sons spent their time visiting the library, looking for work and attending Job Centre courses; one of her sons helped her with work in the house when necessary;
- (g) the applicant's former landlord had caused damage to the property and had photographed the damage in order to enhance his case;
- (h) the applicant's photographs had been taken on her mobile phone and had been developed by a friend; it was not known where the photographs had been developed;
- (i) the applicant had not made any checks on the status of the occupants of the property after she had vacated it;

### Summing-Up

The Assistant Housing Options Manager (Homelessness) acknowledged that this was not a straight forward case. He advised that the applicant's former landlord had not been proactive in providing statements and photographs to the Council but had done so in response to requests from Council officers. Officers had concluded on the balance of probabilities that the applicant had caused damage to the property and had not kept it in a clean condition.

The applicant and her supporters advised that they had nothing to add to their case.

The Vice-Chairman indicated that the Panel would consider the matter in the absence of both parties and that the applicant and the Assistant Housing Options Manager (Homelessness) would be advised in writing of the outcome. The applicant, her friend, Councillor Stallan and the Assistant Housing Options Manager (Homelessness) then left the meeting.

In coming to its decision, the Panel focussed on the conflicting evidence and presentations made about the condition and damage to the property and items during the applicant's occupation, and whether the actions and/or inactions of the applicant had led to the loss of her privately rented accommodation.

### RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Code of Guidance on Homelessness, and having taken into consideration the information presented by and on behalf of the applicant and by the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant was homeless intentionally from her privately rented property be upheld for the following reasons:

(a) the applicant occupied a privately rented property between 11 September 2007 and 5 March 2012; the applicant held the tenancy in her sole name;

(b) the applicant was served with a notice on 5 January 2012 under section 21 of the Housing Act 1996 requiring her to leave the privately rented property on 5 March 2012;

(c) the Council was advised by the applicant's former landlord that he had served the applicant with notice to leave the property because she had damaged the walls and furniture in the property and had been keeping it in an unsatisfactory condition; he stated that on many occasions he had asked the applicant to keep the property clean and tidy; in support of his assertions he provided the Council with photographs of the interior of the property and the garden;

(d) representations made by and on behalf of the applicant stated that it was her former landlord's failure to make good disrepairs at the property which had contributed to the poor state of the property; those representations submitted that the property was damp and plaster had come off the ceilings and walls due to mould; the applicant stated that she had drawn the attention of her former landlord to disrepairs at the property; the applicant accepted that she had left rubbish at the property because she had been rushed into leaving by the landlord and had been unable to get a van in time in which to

remove items and as a result had left behind items which she had intended to keep; the applicant stated that she had cleaned the property before she left it and that the photographs sent to the Council by her former landlord had been taken before that cleaning; the applicant admitted that she had removed carpets from the property due to wear and tear and lino which had suffered from the toilet and washing machine leaking; the applicant submitted photographs of the interior of the property in support of her assertions;

(e) the Panel weighed the conflicting evidence and representations about the condition of and damage to the applicant's privately rented property and whether the applicant or her former landlord was responsible for undertaking works to remedy defects; taking account of the evidence and representations and the responsibilities of both parties under the terms and conditions of the tenancy agreement the Panel has concluded for the following reasons that on balance the applicant damaged the property and failed to keep the interior of the property and the items within it in a good and clean state and condition:

(i) in the opinion of the Panel a reasonable person would not have entered into a tenancy agreement had the property been in the condition shown in the submitted photographs at the commencement of the applicant's tenancy; it considers therefore that the condition of the property and the items within it deteriorated during the period of the applicant's occupation;

(ii) the applicant was aware that failing to keep the property in a good and clean state and condition and/or damaging the property or items in it could lead to her landlord receiving possession of the property;

(iii) whilst both the photographs supplied by the applicant and her former landlord were undated, the applicant stated that her former landlord's photographs of the kitchen had been taken before she left the property as the kitchen had been clean when she had left the property; the applicant also stated that she had odd days when she did not clean; in the view of the Panel the condition of the gas hob and the oven as shown in the applicant's former landlord's photographs could not have materialised in the short term and reflected neglect by the applicant over a length of time during her occupation of the property;

(iv) similarly the applicant stated that the area under the sink had been clean when she had left the property; in the view of the Panel the photograph of the applicant's former landlord showing the condition of that area shows neglect by the applicant over a length of time;

(v) the applicant admitted to causing damage to a wall, an interior door and a bath panel;

(vi) the Panel is of the view that the applicant, in not seeking the return of any of her deposit of £700, accepted that she had been responsible for damage/unclean conditions in addition to that which she admitted and had repaired before leaving the property; the Panel noted that solicitors making submissions on behalf of the applicant had stated that their client had instructed them that she had offered to make good damage to the property and that her deposit had been kept for this purpose;

(vii) the Panel is not convinced by the suggestion made by the applicant that after she left the property, the landlord had caused damage to the property and items and had placed damaged items in the property in order to take photographs to support his assertion that the applicant had been responsible for the damage/unclean conditions;

(viii) the applicant stated that her former landlord had served a notice requiring her to leave because he wanted to live at the property himself or move in his relations; the applicant's former landlord denied this was the case and stated that neither he nor his family had moved into the property and that it had subsequently been let to another tenant; the applicant provided no evidence to support her view and the Panel has given greater weight to the landlord's statement on this issue;

(ix) the landlord received regular monthly rental payments of £950 from the applicant and the Panel is of the opinion that he would not have given up the receipt of this substantial sum unless there was a good reason to end the tenancy; it was suggested on behalf of the applicant that a reduction in her Housing Benefit due to a non-dependant reduction in October 2010 had been a reason for the landlord seeking possession as he would have received less rent; in the view of the Panel this submission is inaccurate since the landlord would still have been entitled to the same rent with the applicant meeting the difference between the amount of Housing Benefit and the rent and no representations were made by or on behalf of the applicant that she could not afford to meet the difference which is unlikely to have been significant;

(x) the Panel noted that throughout the applicant's tenancy she did not report any problems regarding the condition of the property to the Council's Private Sector Housing Team; the applicant's former landlord stated that the applicant did not generally report repairs to him but had drawn his attention to damp in one room at the start of the tenancy following which he had painted that room; whilst the applicant stated that she drew her former landlord's attention to disrepairs, in the view of the Panel if damage caused as a result of damp and mould had been as bad as suggested by the applicant resulting in certain rooms being unused she would have been expected to make strong representations but no evidence was submitted of such representations;

(xi) account has been taken of the representations made on behalf of the applicant that the tenancy of the privately rented property was an Assured Shorthold Tenancy under the Housing Act 1988 and that she had vacated the property as result of a section 21 notice which meant that the Court had to grant a Possession Order without the need for the landlord to allege any wrongdoing by the applicant; and that accordingly, the applicant had not deliberately done or failed to do anything in consequence of which she had ceased to occupy the property; however, the Panel's attention was drawn to the case of *Bratton v Croydon LBC* (2002) EWCA CW 1494 which held that it is open to a Council to look at the reason why a landlord sought possession, and that where the assured shorthold tenant's deliberate failure to do something was the reason why the landlord served a

section 21 notice and obtained a possession order, a finding of intentionally homeless could be upheld;

(xii) the Panel can see no reason why the applicant's former landlord should not tell the truth; his comments were made in response to an approach made to him in a standard letter sent by Council officers after the applicant had vacated the property; his comments were not proactive and were made at a time when he could not receive any benefit from making such comments;

(xiii) in coming to its conclusions the Panel took account of the facts that there was no inventory of items in the property in accordance with the terms of the tenancy agreement and the landlord did not place the applicant's deposit in a protected scheme;

(f) whilst representations were made and evidence submitted about the applicant's medical condition, this did not influence the decision of the Panel in relation to the matter before it, namely, whether the applicant was intentionally homeless;

(g) whilst the Panel sympathises with the representations made about the effect of an intentionally homeless decision on the applicant's thirteen year old daughter, it does not consider this to be a determining factor since the decision it has to make is dictated by Homelessness legislation and the Code of Guidance on Homelessness; the status of the applicant's daughter was relevant and had been taken into account in the determination previously made by officers that the applicant was in priority need because she had a dependant child;

(h) had it not been for the deliberate act of failing to keep the interior of the privately rented property and items within it in a good and clean state and condition as required under the terms and conditions of her Tenancy Agreement, it is the Panel's view that the property would have continued to be available and reasonable for the applicant and her family to occupy, bearing in mind that it had been a four bedroom property; and

(2) That no deficiency or irregularity has been identified in the original decision made by the Council Officers or the manner in which it was made.

**CHAIRMAN**