

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 21 September 2006

Place: Civic Offices, High Street, Epping **Time:** 4.00 - 7.01 pm

Members Present: Councillors Mrs P K Rush (Chairman), Mrs R Gadsby (Vice-Chairman), Mrs A Cooper, T Farr and J Wyatt

Other Councillors:

Apologies: Councillors Mrs P Richardson and Mrs P Smith

Officers Present: A Hall (Head of Housing Services) and G Lunnun (Democratic Services Manager)

6. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 22 June 2006 be taken as read and signed by the Chairman as a correct record.

7. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs A Cooper was substituting for Councillor Mrs P Smith and that Councillor T Farr was substituting for Councillor Mrs P Richardson.

8. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Member Conduct.

9. 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 paragraphs 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:

Agenda Item Number	Subject	Exempt Information Paragraph Number
6	Appeal No 6/2006	1 and 2
7	Appeal No 7/2006	1 and 2

10. APPEAL NO.6/2006

The Panel considered an application for a review of a decision of the Housing Needs Manager acting under delegated authority that the applicant had become intentionally homeless. The applicant attended the meeting to present his case accompanied by his mother. Mr R Wallace (Housing Needs Manager) attended the meeting to present his case. Mr J Hunt (Assistant Housing Needs Manager) was also in attendance. Mr A Hall (Head of Housing Services) attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the application. The Chairman introduced the members of the Panel and officers present to the applicant and outlined the procedures to be followed in order to ensure that proper consideration was given to the application for a review.

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

- (a) a summary of the application together with the facts of the case forming part of the agenda for the meeting;
- (b) a copy of a note of a telephone conversation between a Housing Officer and the applicant's mother dated 18 May 2006;
- (c) a copy of a letter dated 27 June 2006 from the Housing Needs Manager to the applicant;
- (d) a copy of a letter dated 12 June 2006 from the Housing Needs Manager to the applicant;
- (e) representations made by Shelter on behalf of the applicant dated 29 August 2006 including copies of three letters; and
- (f) a copy of the application to the Housing Appeals and Review Panel by the applicant dated 24 July 2006.

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

- (a) the Council had failed to make adequate enquiries into the applicant's situation; if the authority had made sufficient enquiries it would have established that the applicant had experienced a series of traumatic events in recent years; the applicant had suffered a great deal of emotional distress; consequently, the applicant had been unable to cope and the trauma had impacted severely on the applicant's behaviour;
- (b) the applicant was of a young age and should not be expected to cope with such events alone; the applicant had not received the support he needed to assist him in dealing with these traumatic events;
- (c) the applicant's mother had evicted him from the family home on 8 May 2006 due to his difficult behaviour; the applicant had stolen his mother's credit card, withdrawn some money and then lost the card; the credit card had then been used fraudulently by an unspecified person;
- (d) the applicant had made a homelessness application with the Council on 8 May 2006; the Council had placed the applicant in interim accommodation pending enquiries;

(e) the Council had issued an intentionally homeless decision on 27 June 2006; the applicant remained in the interim accommodation pending the outcome of the review;

(f) account should be had to the following parts of the Code of Guidance: paragraph 3.12, which placed an obligation on the housing authority to make sufficiently thorough enquiries and give applicants the opportunity to explain their circumstances fully; paragraph 7.12 of the Code which stated that, generally, it should not be considered a deliberate act or omission where the housing authority had reason to believe the applicant was incapable of managing his or her affairs; paragraph 7.9 of the Code of Guidance which placed onus on the housing authority to decide whether the loss of accommodation was the reasonable result of any deliberate act or omission; and paragraph 6.22 of the Code of Guidance which required the housing authority to make a judgement on the facts of each case, taking into account the circumstances of the applicant;

(g) account should also be had to the cases of *R v Swansea CC ex parte Hearn* (1990) 23HLR 372 (QBD) where it was held that an authority had to give adequate reasons for an adverse finding against an applicant; and to *R v Thurrock BC ex parte Williams* (1981) 1HLR 219 where the Court held that if the authority's enquiries led to doubt or uncertainty, the issue should be resolved in the applicant's favour;

(h) in order to lawfully reach a finding of intentionality it was necessary for the authority to satisfy itself that all of the elements of the definition applied to an applicant, namely: a deliberate act or failure to act/as a consequence of which/the applicant ceased to occupy accommodation/which was available for his occupation/and which was reasonable to continue to occupy;

(i) the Council's decision was based on the applicant's behaviour in the family home; the Council had relied on statements allegedly made by the applicant's mother; the applicant's mother had not been interviewed by Council officers and had not said that her son's behaviour had been unacceptable;

(j) there was no evidence on the applicant's homelessness file that the Council had carried out adequate enquiries to establish whether there were any overriding circumstances relevant to the case; there was only evidence of two brief enquiries – a short interview report dated 9 May 2006 and a note of a telephone conversation with the applicant's mother; the note of the telephone conversation had stated that the applicant's mother had been asked to confirm details of the conversation in writing but she had not done so and this had not been followed up;

(k) had the Council made further enquiries it would have been able to establish that the applicant had endured a series of traumatic events in the past few years which had disturbed his emotional state and impacted on his behaviour; attention was drawn to letters of support from a close family friend, a band leader and a member of a youth offending team; the events had left the applicant emotionally traumatised, unable to cope, and feeling isolated and unsupported; the applicant suffered from depression, had threatened suicide and carried out acts of self harm;

(l) in view of the applicant's circumstances, the Panel should question the assumption that a young person should be able to control his behaviour; the Panel should also question whether the acts that had led to the applicant's homelessness should be considered deliberate;

(m) the decision of intentionally homeless had been a further negative impact on the applicant; the applicant needed a long period of stability in his life in order to overcome his problems;

(n) the applicant wished to continue to live in the area where he was currently being housed (Ilford) as he had found a job nearby which had a steadying influence on him; the Council had relied on an alleged telephone conversation with the applicant's mother on 15 May 2006 (by leave of the Panel, the applicant's mother presented a telephone billing statement showing that she had not telephoned the Council on that day); the applicant's mother had spoken to a council officer on 17 May 2006 but only to discuss concerns about the applicant being in bed and breakfast accommodation and not having any money;

(o) the Council also relied on a letter dated 12 June 2006, which had requested the applicant to attend a further interview; the applicant said he had not received that letter and even if he had he would have been unable to attend the Civic Offices in Epping, as he had no transport or money.

The applicant and his mother answered the following questions of the Housing Needs Manager and the Panel:

(a) since being in the bed and breakfast accommodation provided by the Council, why have you made no payment towards the cost of that accommodation? - initially I could not afford to make any payment; I have not been told to make any payment and now I have just enough money to survive on; I thought that I might arrange a Standing Order but I did not do so and as nobody told me how to make payments I did not pursue the matter;

(b) is the bed and breakfast accommodation satisfactory for your needs? – when I first moved there I had no job and got very bored remaining in my room for long hours; I got a job approximately four weeks' ago and am now a lot happier as I am out of the room for long periods; I am settled in the area in which the bed and breakfast accommodation is situated and my self esteem has improved through the job;

(c) are you able to manage your affairs? – I am coping better now and am eating properly now;

(d) how many brothers and sisters do you have? – one of each;

(e) are you now able to manage your anger? – I used to get bored sitting at home and this affected my behaviour; I have now grown up and appreciate the things which were provided for me at home;

(f) when did you go to live with relations in Grimsby? – the first time I went was for a period of approximately six months; I then came back to the family home and then went to Grimsby again for approximately one year and I returned from that stay in December 2005;

(g) can you explain why you did not receive the letter dated 12 June 2006 from the Council? – no, I live in bed and breakfast accommodation and since being there I have moved rooms several times; it could be that my mail has got mixed up; I receive mail from Connexions on a regular basis but not from anyone else;

(h) is there a central point for collecting post? – yes;

(i) do you have any other means of communication? – I had a mobile phone but it was stolen; and

(j) the statement for the telephone in the applicant's family home shows that no call was made to the Council on 15 May 2006 – could a call have been made on another phone? The applicant's mother advised that she had a mobile phone but would have had no reason to use that phone to phone the Council on 15 May 2006 as it had been her day off and she had been at home; she only used her mobile phone for emergencies.

The Panel considered the following submissions in support of the case of the Housing Needs Manager:

(a) the applicant made a homeless application to the Council on 8 May 2006; the application was made in the sole name of the applicant; at the time of the application being made the full provisions of the Housing Act 1996, Part VII, as amended, were applied to the case;

(b) during the initial interview, the applicant stated that he had been told to leave the family home by his mother as he did not get on with her and he had stolen her bank cards;

(c) following the application, enquiries were pursued to decide on what duty was owed under homelessness legislation; on 18 May 2006 (not 15 May 2006 as stated in the facts of the case within the Housing Needs Manager's statement forming part of the agenda) the Council had received a telephone call from the applicant's mother who had confirmed the problems she was having with her son; a note of that telephone conversation was on file and there would have been no reason for the officer to make a file note to this effect had the call not been made;

(d) a decision was made to have a further interview with the applicant and a letter dated 12 June 2006 was sent to the applicant asking him to attend the Civic Offices on 16 June 2006 at 3.00 p.m. for the interview; the applicant failed to attend this interview without explanation;

(e) the applicant had been eligible for assistance as he was a British citizen; a priority need for accommodation existed as he was seventeen years of age; however, after considering all the facts of the case a decision of intentionality was made;

(f) the Code of Guidance assisting local authorities with the interpretation of the Housing Act 1996 stated that a person became homeless intentionally if they deliberately did anything in consequence of which they ceased to occupy accommodation which was available for their occupation and would be reasonable for them to continue to occupy;

(g) the applicant had confirmed at the initial interview the reasons why he had to leave the family home;

(h) the applicant had been given a further opportunity to discuss the facts gathered on his case but had failed to attend the interview;

(i) the applicant had been accommodated by the Council pending the outcome of this review; in the event of the officer decision being upheld, the applicant should be given reasonable notice to vacate his current accommodation; reference should

also be made to Social Care under the terms of the Children Act 1989 to seek their assistance;

(j) the applicant had made reference to paragraph 7.12 of the Code of Guidance (an applicant being incapable of managing his or her affairs); that situation related to applicants with extreme difficulties; the applicant was coherent and had said that he was in good health; Shelter were well versed in what evidence they should provide if there was any concern about an applicant's health; in this case the letters which had been supplied by Shelter had not been from medically qualified people;

(k) the applicant's submissions had also referred to the cases of R v Swansea CC ex parte Herne (1990) (requirement on an authority to give adequate reasons); given the facts, the Council had every reason to make its decision; the applicant had said that he was in good health and so there had been no need to pursue this aspect;

(l) the applicant's submissions had also referred to the case of R v Thurrock BC ex parte Williams (1981) (any doubt or uncertainty should be resolved in the applicant's favour); there had been no doubt in this case; the applicant had admitted anti social behaviour whilst in the family home; and

(m) the Council wished, if possible, to address the long-term housing needs of the applicant; it was possible that the applicant could be housed through NACRO Community Enterprises (SAFE Project) which provided housing for single homeless persons; irrespective of the Panel's decision, officers would assist the applicant in trying to secure such accommodation.

The Housing Needs Manager answered the following questions of the applicant, his mother and the Panel:

(a) did you receive any written confirmation from the applicant's mother about the telephone conversation alleged to have been made on 18 May 2006? – the officer who spoke to the applicant's mother did request confirmation of the conversation in writing but this did not materialise;

(b) are you required to exercise particular care when dealing with someone aged 16? – all applicants are dealt with strictly in accordance with the law; all officers are expected to make sure that their casework is to a good standard;

(c) in view of the escalation of the bed and breakfast accommodation arrears, does this not illustrate that the applicant is incapable of managing his affairs? - the representations made on behalf of the applicant by Shelter have focused on the Code of Guidance; paragraph 7.12 relates to applicants who have extreme difficulty in managing their affairs, e.g. those sectioned in hospital or in care; the applicant is coherent and he advised officers that he was in good health so this paragraph does not apply to him;

(d) can you indicate where it says in paragraph 7.12 of the Code that it applies to applicants with extreme difficulties? – the Code refers to those incapable of managing their affairs, for example by reason of old age, mental illness or handicap; this is not the situation which applies to the applicant;

(e) if the Panel upholds the officer decision, will this affect support from NACRO? – NACRO have confirmed that they will be willing to assist the applicant, if possible, irrespective of the outcome of this hearing;

(f) what was the age of the applicant at the time of his application? – 16;

(g) in view of the applicant's age at that time did you refer him to any other support agency? – as part of the applicant's submissions his mother indicated earlier that she had approached Social Care but they had been unable to offer any assistance; at the interview with the applicant he had stated that he was in good health so there was no reason to seek a medical opinion; the Council does offer applicants support by way of visits from the Housing Welfare Officer;

(h) what will the Council do if NACRO are unable to help the applicant? – the issue for the Panel is to review the decision that the applicant became intentionally homeless; however, I believe that NACRO will be able to assist;

(i) can you clarify the sequence of events in relation to the initial interview of the applicant, the time he was put into interim accommodation and the time of the alleged telephone conversation with the applicant's mother? – the applicant made a homeless application to the Council on 8 May 2006 and was placed in interim accommodation; enquiries were commenced to decide what duty was owed to the applicant under housing legislation but before approaching the applicant's mother, she telephoned the Council on 18 May 2006 and explained the reasons why it had been necessary for the applicant to leave the family home;

(j) when the applicant did not attend for the interview on 16 June 2006, why did you not correspond with his mother? - the Council had no authorisation from the applicant to correspond with his mother; without such authorisation the Council was unable to involve her;

(k) why was no attempt made to seek written confirmation from the applicant's mother of the information given in the telephone conversation alleged to have taken place on 18 May 2006? – it was not considered necessary as the applicant's and his mother's versions of the facts were consistent;

(l) do you think that a 16 year old is capable of fully understanding the Section 184 Notice sent to the applicant on 27 June 2006? – we have had other applications from 16 year olds who have understood the position; sometimes we deal with 16 year olds who are supported by a social worker and in those cases it is possible to involve the social worker but this was not the position in this case;

(m) when the applicant said he was in good health do you consider that he was aware this included mental health? – the applicant was given an opportunity to state whether he had any illnesses;

(m) if you had any doubts about the applicant being able to deal with his situation what action could you have taken? – a request could have been made to Social Care for their assistance, but it would have been for them to prioritise this case against other cases.

The Chairman asked the applicant and his mother if they wished to raise any further issues in support of the applicant's case.

The applicant's mother stated that the Council should have fully investigated the reasons why the applicant had been excluded from the family home and whether those reasons were as a result of a deliberate act by the applicant. The Council had undertaken only a short interview with the applicant which had been insufficient. The Council should have spoken to the applicant's mother to get her version of events. The Council had not asked the applicant if he had a social worker. The Council's Housing Welfare Officer had provided little support to the applicant.

The Chairman asked the Housing Needs Manager if he wished to raise any further issues in support of his case. He advised that the applicant's mother had decided to evict her son from the family home because of his behaviour. He submitted that Council officers had carried out sufficient enquiries and had met the requirements of the legislation and the Code of Guidance. He remained of the view that the applicant had become intentionally homeless but was keen to address the applicant's long-term housing needs, through NACRO's SAFE Project.

The Chairman indicated that the Panel would consider the application in the absence of both parties and that the applicant and the Housing Needs Manager would be advised in writing of the outcome. The applicant, his mother, the Housing Needs Manager and the Assistant Housing Needs Manager then left the meeting.

The Panel considered all of the evidence which had been placed before it. The Panel considered whether the applicant had done anything in consequence of which he had ceased to occupy accommodation which had been available for his occupation and which would have been reasonable for him to have continued to occupy.

The Panel considered the conflicting evidence regarding the alleged telephone conversation with the applicant's mother. The Panel, having regard to the existence of a file note of the telephone conversation and taking account of the confusion over the date of the conversation, concluded on balance that the telephone conversation had taken place. In relation to the Council's letter dated 12 June 2006, the Panel, having regard to the copy of that letter on file, concluded that it had been sent. However, the Panel decided that there was no evidence to suggest that the letter had been received by the applicant. Nevertheless the Panel concluded that even if this letter had been received it would not have changed the course of events.

The Panel considered the representations made on behalf of the applicant about his state of health, but noted that no evidence had been provided from medically qualified practitioners.

The Panel sought clarification of the role of the Council's Housing Welfare Officer. They were advised by the Head of Housing Services that the Welfare Officer was based at the Council's Homeless Hostel and that she provided support to residents of that Hostel and to people housed by the Council elsewhere in interim accommodation. He advised that the Welfare Officer provided a link between homeless applicants in bed and breakfast accommodation and stated that the amount of support varied from case to case. The Panel noted that in this case it appeared that the applicant had received only one visit from the Welfare Officer.

The Panel sought further clarification of the role of NACRO. The Head of Housing Services advised that NACRO provided accommodation to single homeless people, mainly those who the Council did not have a duty to accommodate. He advised that, in this case, if the Panel concluded that the applicant had become unintentionally homeless the Council would have a duty to provide permanent accommodation. In those circumstances, in the first instance, the Council would liaise with NACRO with a view to them providing accommodation. However, when an applicant's time with NACRO ceased, the Council would still have a responsibility to secure permanent accommodation. The Head of Housing Services further advised that if the Panel upheld the officer's decision of intentionally homeless it would still be possible for an approach to be made to NACRO but the Council would be under no obligation to provide accommodation at a later date.

Finally, the Panel considered paragraphs 7.12 and 7.19 of the Code of Guidance in relation to this case. The Panel concluded that the applicant had been capable of managing his affairs and that the loss of the applicant's home had been the reasonable result of a deliberate act by the applicant.

The Panel, having regard to the circumstances of this case, felt that it would be beneficial to receive a presentation at a future meeting on the Council's housing duties and policies in relation to young people under the age of 18.

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 Housing Needs Manager in writing and orally, the decision of the Housing Needs Manager that the applicant had become intentionally homeless, be upheld for the following reasons:

(a) the applicant failed to conduct himself in an acceptable manner in the family home and as a result he was told to leave the property by his mother;

(b) had it not been for the applicant's unacceptable behaviour in the family home, the property would have been available and reasonable for him to have continued to occupy;

(c) account was taken of the conflicting evidence regarding an alleged telephone conversation between a Housing Officer and the applicant's mother in relation to the applicant's behaviour in the family home; the Panel noted that there was a file note regarding the alleged telephone conversation; on the balance of probabilities the Panel concluded that the telephone conversation had taken place on 18 May 2006 (the date at the foot of the file note) and not 15 May 2006 as stated in the facts of the case; the Panel considered that the uncertainty about the date confused the applicant's mother and led her to relying on her telephone billing statement for 15 May 2006 instead of 18 May 2006; although the applicant's mother had not confirmed in writing the information alleged to have been given by her in the telephone conversation, the Panel felt there was no reason to doubt the Housing Officer's version of the conversation as set out in the file note;

(d) account was also taken of the conflicting evidence regarding the letter dated 27 June 2006 from the Housing Needs Manager addressed to the applicant at the bed and breakfast accommodation made available to the applicant by the Council; the Panel concluded that the letter had been sent, in view of the copy on the file, but could not conclude that the letter had been received by the applicant; however, the Panel do not consider that the possible lack of receipt of that letter by the applicant would have resulted in a different course of events;

(e) account was also taken of the comments about the applicant's mental health problems but the Panel noted the lack of any evidence by a qualified medical practitioner to support the applicant's case;

(f) in the circumstances, the Panel concluded that the Council officers had carried out adequate enquiries before making their decision;

(2) That no deficiency or irregularity has been identified in the original decision made by the Housing Needs Manager, or in the manner in which it was made;

(3) That, subject to the agreement of the applicant, the officers refer the applicant to Social Care to seek their assistance under the terms of the Children Act 1989 and to NACRO Community Enterprises (SAFE Project) to seek their assistance in housing the applicant; and

(4) That a presentation be made by officers at the next meeting of the Panel on the Council's housing duties and powers in relation to young people under the age of 18 and that all members of the Panel and substitutes be invited to attend the meeting for that item.

11. APPEAL NO.7/2006

The Panel gave consideration to an application for a review of a decision of the Housing Needs Manager acting under delegated authority that the Council had discharged its homelessness duty. The applicant attended the meeting to present her case accompanied by a friend. Mr R Wallace (Housing Needs Manager) attended the meeting to present his case. Mr J Hunt (Assistant Housing Needs Manager) was also in attendance. Mr A Hall (Head of Housing Services) attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the appeal. The Chairman introduced the members of the Panel and officers present. The Chairman stated that the Council had received a telephone call from the Citizens' Advice Bureau who had been approached by the applicant for assistance but had not received sufficient notice of this meeting to be able to attend. Accordingly, the Citizens' Advice Bureau had indicated that the applicant would be seeking deferment of the consideration of this case.

However, the applicant stated at the meeting that she wished to proceed with the review at this time without the assistance of the Citizens' Advice Bureau. Accordingly, the Chairman outlined the procedures to be followed in order to ensure that proper consideration was given to the application.

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

(a) a summary of the application together with the facts of the case forming part of the agenda for the meeting;

(b) a copy of a letter dated 18 May 2006 from the Housing Needs Manager to the applicant;

(c) a copy of a placement form signed by the applicant on 2 June 2006;

(d) a copy of a note dated 5 June 2006 and of a telephone conversation between a Housing Officer and the Council's Housing Welfare Officer;

(e) a copy of a letter dated 5 June 2006 from the Housing Needs Manager to the applicant;

(f) a copy of a file note dated 7 June 2006 of an interview of the applicant by a Housing Officer;

- (g) a copy of a letter dated 13 July 2006 from the North Essex Mental Health Partnership to the Council;
- (h) a copy of the application to the Panel by the applicant (undated) together with a copy of a form regarding Housing Benefit and Council Tax Benefit; and
- (i) further representations made on behalf of the applicant by her friend (tabled at the meeting).

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

- (a) the applicant had been homeless for at least 10 years; she had never had her own property nor a chance to build her own life; she was sleeping rough at present and was totally reliant on friends to provide food and shelter at night; this was both unreliable and stressful;
- (b) the applicant had a five-year old son who had been in foster care since birth; the son occasionally visited the applicant's mother at weekends; on those occasions, the applicant was allowed to see him unsupervised but did not see him at any other time;
- (c) the applicant had a long history of mental illness; this included alcohol abuse, mood swings, depression, breakdowns, self-harm and multiple suicide attempts; although the applicant was no longer on medication and was no longer drinking heavily she was still prone to mood swings and depression;
- (d) the applicant was unable to stay at her mother's house because her mother also had fragile mental health with a history of nervous breakdowns which had been worse in the past when the applicant had been a resident at her mother's property;
- (e) the stress of finding sleeping accommodation was becoming intolerable; the applicant needed a place where she could be alone; if the applicant had her own place her son could visit her there and possibly stay overnight; the applicant would like a chance to build her own life; the applicant had made huge progress and had reached a stage where, if she had a property, she could continue to take steps to become a responsible citizen;
- (f) the Council had accepted a duty of care towards the applicant as a homeless person and had offered her emergency accommodation at a bed and breakfast establishment to commence on 2 June 2006; the applicant had been told to telephone the Council Offices if, for any reason, she could not take up the accommodation on that night;
- (g) at that time the applicant had no welfare benefits or income at all; she had been totally reliant on friends for food and shelter and the bed and breakfast accommodation was approximately two hours walk from the locality frequented by the applicant;
- (h) the applicant had planned to walk to the bed and breakfast accommodation after an evening meal at a friend's house, taking her possessions with her, namely a rucksack and a few clothes; at approximately 7.00 p.m. on 2 June 2006 the applicant had been contacted by her mother who had informed her that her son would be coming to visit for the weekend; the applicant had wanted to see her son and knew that it would be difficult to walk backwards and forwards from the bed and breakfast accommodation;

- (i) it had not been possible for the applicant to telephone the Council after she had been informed of her son's visit as the offices had closed for the weekend;
- (j) the applicant had therefore telephoned the bed and breakfast accommodation and explained that she wished to delay moving in until Monday 5 June 2006; the hotel had confirmed that this would not be a problem;
- (k) the applicant had telephoned the bed and breakfast hotel again on 3 June 2006 to confirm that she would be taking up the accommodation on 5 June 2006; the hotel had again confirmed that this arrangement was acceptable and at no point did they suggest that the applicant should contact any other person or that by not attending until 5 June 2006 she might be forfeiting the accommodation;
- (l) the applicant had telephoned the bed and breakfast hotel again on the morning of 5 June 2006 to confirm that she would be arriving later in the day and at that time had been told that the accommodation had been cancelled and the case closed;
- (m) since that time the applicant had received an invoice from the Council for the accommodation that she did not take up that weekend; despite the apparent injustice, the applicant, now in receipt of Job Seeker's Allowance, had made arrangements to pay the invoice at a rate of £20.00 every two weeks and the first payment had been made; and
- (n) the Council had accepted that it had a duty of care towards the applicant; the applicant had a basic human right to see her son; the applicant had planned to move into the bed and breakfast hotel on the specified date; the applicant did everything that anyone could reasonably expect a person to do to inform the correct people about her change of circumstances; at no point prior to 5 June 2006 had the applicant been told that her case would be closed or that her accommodation would be cancelled; the applicant was still homeless and completely reliant on friends to provide shelter at night; since the Council's decision had been made, the applicant's mental health had deteriorated.

The applicant and her friend answered the following questions of the Housing Needs Manager and the Panel:

- (a) why did you wait six days before informing the Council about the reasons why you had been unable to move into the bed and breakfast hotel on 2 June 2006? - I saw little point in contacting the Council in view of what the hotel had told me; I was distressed when I heard that the accommodation had been cancelled and it took me some time to recover before deciding to contact the Council;
- (b) have the North Essex Mental Health Partnership attempted to find accommodation for you in the past? - I have been in rehabilitation units and psychiatric hospitals in the past and they were involved in the provision of that accommodation;
- (c) could you clarify the position with visits from your son? - if I can obtain my own accommodation it might be possible for him to stay overnight with me; he is currently in foster care in Basildon and I occasionally see him at my mother's property and take him out but I am not allowed to stay at my mother's property; it is difficult to walk to my mother's property from the bed and breakfast hotel; my friends are prepared to provide shelter for me but they are reluctant to give me money in view of my past history; and

(d) what was the date of your application to the Panel? - the Democratic Services Manager advised that the original form included a handwritten note of receipt on 21 July 2006.

The Panel considered the following submissions in support of the case of the Housing Needs Manager:

(a) the applicant had made a homeless application to the Council on 4 April 2006; the application had been made in the sole name of the applicant;

(b) as a result of the application, a homeless interview was conducted with the applicant and during this interview the applicant had stated that she had been of no fixed abode for the last five years;

(c) a homelessness enquiry was undertaken and a decision made to accept the homeless application; the duty on the Council was to ensure that accommodation was made available for the applicant's occupation;

(d) on 2 June 2006, the Council arranged to place the applicant into bed and breakfast accommodation;

(e) on 5 June 2006, the Council was advised by its Housing Welfare Officer for temporary accommodation that the applicant had not moved into the bed and breakfast accommodation; following the applicant's failure to move into the accommodation a decision was made to discharge the Council's homeless duty to her;

(f) following the issue of a discharge letter, the applicant attended the Civic Offices some days later and gave her reasons for not moving into the accommodation;

(g) the Code of Guidance assisting local authorities with the interpretation of the Housing Act 1996, as amended, stated that under Section 193, the housing authority would cease to be subject to the duty under this part of the Act if an applicant refused an offer of accommodation which the authority was satisfied was suitable;

(h) at the time of the placement being made, the applicant had been made aware of her responsibility to take up the accommodation on 2 June 2006; she agreed to this condition;

(i) it was not until six days after 2 June 2006 that the applicant made contact with the Council giving her reasons as to why she had not moved into the bed and breakfast accommodation;

(k) the Council incurs considerable expense when placing people into bed and breakfast accommodation; in this particular case the charge was £35.00 a night; recovering an amount was extremely difficult when someone failed to move into accommodation;

(l) following the decision to discharge the Council's duty, a letter of support had been received from the Community Drug and Alcohol Team; despite this letter of support for the applicant, it was felt that the decision to discharge the Council's duty had been correct; and

(m) in the event of the Panel agreeing with the officer decision, it was suggested that the Council's Homeless Prevention Service should assist the applicant in accessing alternative accommodation.

The Housing Needs Manager answered the following questions of the applicant, her friend and the Panel:

(a) can you clarify the role of the Council's Homeless Prevention Service? – the service assists people in avoiding the loss of accommodation and finding accommodation; in this case the Council was of the view that although it no longer had a duty to house the applicant it was willing to offer the assistance of its Homeless Prevention Service to help the applicant find accommodation;

(b) do you not agree that the applicant did everything she could between 2 June 2006 and 5 June 2006 to notify a responsible person of her change of circumstances? – the applicant made no contact with the Council until six days after the date of the proposed occupancy;

(c) what else would you have expected the applicant to do? – she could have contacted the Council on Monday 5 June 2006; she had signed her placement form from the Council agreeing to occupy the bed and breakfast accommodation from 2 June 2006;

(d) if the Council accepted a duty to provide permanent accommodation for the applicant, where would she be placed? – she would be placed in the most appropriate housing – possibly supported accommodation which is suitable for vulnerable single people;

(e) could the applicant be helped to find accommodation nearer to her mother's property? – at present the Council's duty has been discharged; the Homeless Prevention Service will do whatever they can to assist with appropriate accommodation;

(f) you have said that you regard the applicant as being competent, but the letter from the North Essex Mental Health Partnership refers to her long history of mental health and drug and alcohol problems – is this not a contradiction? – the Council accepted the applicant as a vulnerable person; officers were satisfied that when she signed the placement form she knew what she was doing; the letter from the North Essex Mental Health Partnership was received after the decision to discharge the Council's homeless duty had been taken;

(g) are Council officers qualified to make decisions in respect of an applicant suffering from mental illness? – Council officers engage with applicants and if it is felt that medical advice is necessary this will be sought from a qualified medical practitioner;

(h) what action was taken on receipt of the letter dated 13 July 2006 from the North Essex Mental Health Partnership? – the letter was considered, but it was not felt sufficient to override the decision which had been taken; and

(i) are there any other letters from the North Essex Mental Health Partnership on the applicant's file? – yes and as a result the Council accepted that the applicant was a vulnerable person.

The Chairman asked the applicant and her friend if they wished to raise any further issues in support of the applicant's case.

The applicant's friend advised that she was not a lawyer but suggested that the case revolved around the issue of reasonableness. She submitted that the applicant had done everything, which could be expected of a reasonable person to notify of her change in circumstances, and this was remarkable bearing in mind the applicant's mental health problems. She emphasised that the applicant had telephoned the bed and breakfast hotel on three occasions between 2 June 2006 and 5 June 2006. The applicant stated that she was unable to see her son very often and that she had not realised the importance of moving into the bed and breakfast accommodation on 2 June 2006. If she had been aware that her actions would have resulted in her losing that accommodation she would have decided not to see her son that weekend.

The Chairman asked the Housing Needs Manager if he wished to raise any further issues in support of his case. He advised that the Council had accepted that it had a duty to the applicant, had secured interim accommodation for her which had not been taken up at the appropriate time. In addition, the applicant failed to notify the Council of her reasons for being unable to move into the bed and breakfast accommodation on 2 June 2006 until six days after that date.

The Chairman indicated that the Panel would consider the appeal in the absence of both parties and that the applicant and the Housing Needs Manager would be advised in writing of the outcome. The applicant, her friend, the Housing Needs Manager and the Assistant Housing Needs Manager then left the meeting.

The Panel considered all of the evidence which had been placed before it. The Panel focused on the applicant's personal circumstances and her actions during the period 2 June 2006 – 5 June 2006

RESOLVED:

That, having regard to the provisions of the Housing Act 1996, as amended and the Code of Guidance on Homeless and having taken into consideration the information presented by and on behalf of the applicant and by the Housing Needs Manager, in writing and orally, the decision of the Housing Needs Manager that the Council had discharged its homelessness duty to the applicant, under Section 193 of the Act by virtue of sub-section (5) be not upheld for the following reasons:

- (a) the applicant is homeless, eligible for assistance, in priority need and not intentionally homeless and the Council had a duty to secure temporary accommodation for her occupation;
- (b) the applicant did not refuse an offer of temporary accommodation which the Council was satisfied was suitable for her, having regard to the following circumstances:
 - (i) the applicant signed a placement form agreeing to occupy a room in bed and breakfast accommodation commencing Friday 2 June 2006;
 - (ii) when the applicant's personal circumstances on 2 June 2006 prevented her from attending the bed and breakfast accommodation on that day, she had been unable to contact the Council because the offices had closed for the weekend; however, the applicant had taken reasonable steps to notify of her change in circumstances by telephoning the bed and breakfast accommodation on two occasions and advising them that she would be delaying the take-up of the accommodation until Monday 5 June 2006;

(iii) when telephoning the bed and breakfast hotel again on 5 June 2006 the applicant had been advised by the hotel that her accommodation had been cancelled and the case closed; accordingly, the applicant had decided that there was little point in making immediate contact with the Council.

CHAIRMAN
