

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 17 December 2009

Place: Committee Room 2, Civic Offices, High Street, Epping **Time:** 2.30 - 6.00 pm

Members Present: Mrs C Pond (Chairman), Mrs R Gadsby (Vice-Chairman), Mrs J Hedges, B Rolfe and Mrs J Sutcliffe

Other Councillors:

Apologies: J Wyatt

Officers Present: A Hall (Director of Housing) and G Lunnun (Assistant Director (Democratic Services))

33. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 15 October 2009 be taken as read and signed by the Chairman as a correct record.

34. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs J Hedges was substituting for Councillor J Wyatt.

35. DECLARATIONS OF INTEREST

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

36. 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.

Agenda Item No.	Subject	Exempt Information Paragraph No.
6	Application No 10/2009	1
7	Application No 11/2009	1

37. APPLICATION NO. 10/2009

The Panel considered a request for a review of a decision made by officers under delegated authority regarding the applicant's Homelessness Application. The applicant attended the meeting to present her case accompanied by her aunt. 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 details of the national and local housing policies relative to the application. The Chairman introduced members of the Panel and officers present to the applicant.

The Chairman outlined the procedure 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) copies of documents submitted by the applicant, namely:
 - (i) her application to the Housing Appeals and Review Panel dated 20 November 2009;
 - (ii) copy of a letter dated 30 November 2009 from the applicant's solicitors to the Housing Directorate;
 - (iv) copy of a letter dated 24 November 2009 from the applicant's solicitors to the Council;
 - (v) copies of records of caution for theft and criminal damage relating to the applicant's partner;
 - (vi) copy of a record of pre-interview briefing in relation to the applicant's partner;
 - (vii) copy of a Police caution relating to the applicant's partner;
 - (viii) copies of letters dated 1 December 2009 from the applicant's solicitors to the Council's Legal Services and Housing Directorate;
- (b) a summary of the case including the facts of the case and a outline of the Homelessness legislation;
- (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 letter dated 4 September 2009 from the applicant's partner's parents to the Council;
 - (ii) Housing Officer file note dated 30 September 2009 following a telephone call from the applicant's partner's mother;
 - (iii) Housing Officer file note dated 28 August 2009 following an interview with the applicant and her partner;

- (iv) Housing Officer file note dated 28 October 2009 following a further interview with the applicant and her partner;
- (v) copy of letter dated 6 November 2009 from the Assistant Housing Options Manager (Homelessness) to the applicant;
- (vi) copy of letter dated 24 November 2009 from the applicant's solicitors to the Council.

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

- (a) the applicant's partner had stolen from his parents when he had been accommodated at their property with the applicant; the applicant had known nothing about the theft until the day she had been asked by her partner's mother to leave the property;
- (b) only the applicant's partner had been arrested, and having admitted the offence, had been given a formal Police caution;
- (c) the facts of the case and the way in which it had been dealt with by the Police supported the applicant's assertion that she was innocent; there was no evidence to support any assertion by the applicant's partner's parents that the applicant had been involved in any way in the thefts;
- (d) it would be unreasonable and unfair to find that the applicant had made herself homeless intentionally based only on the suspicions of the applicant's partner's parents.

The applicant answered the following questions of the Assistant Housing Options Manager (Homelessness) and members of the Panel:-

- (a) When you were accommodated in your partner's parents' property what was your partner's annual income? We were receiving joint Job Seeker's Allowance and Child Benefit.
- (b) In the light of this restricted income how did you think your partner had paid for the birthday and Christmas presents which he bought? I do not know. I asked him and he said he had paid for them. I could do no more.
- (c) Did you know that the C.D. Player and C.D.'s had been taken? No, when I was at the property I spent most of the time in the bedroom.
- (d) During your interview with the Housing Officer on 28 August 2009 you admitted to taking some of your partner's parents' DVD's to the pawnshop without their permission so that you could get some money; is it not true therefore that you were a party to the theft? It was not me who said that, it was my partner.
- (e) Did you know that things had been taken from the property? No.
- (f) Until the Council received your solicitor's letter dated 24 November 2009 there had been no mention of you being unaware of the thefts; bearing in mind that gifts of approximately £500 had been bought why did you not question your partner on how he had paid for them? As I said previously, he paid for them and used a Capital One card.

(g) If you were unaware of the thefts until you were asked to leave the property by your partner's mother, why did you not mention this fact to the Housing Officer when you were interviewed? I did tell the Housing Officer.

(h) Why is there no mention in the interview notes of this fact? It was not written down.

(i) The officer's report to the Panel suggests that the facts of the case indicate that it was both yourself and your partner who were responsible for the thefts; are you saying the suggested facts are not correct? I did not admit to anything; it was my partner who admitted to the thefts.

(j) You were living in close proximity to your partner; who bought food and nappies for your child? I did, and my aunt helped me; if I ran out of money I asked my mother for money.

(k) Were you not aware of payments on the Capital One card? No, because it was not in my name.

(j) How much did you receive in Job Seeker's Allowance and Child Benefit Payments? £200 per fortnight and £20 per week which equals £120 a week.

(k) How much money did you receive? I got £100 per week and my partner gave me some money.

(l) Some of the Christmas presents were bought in October; did it not cross your mind where the money had come from to pay for them? No, I was only thinking of my son at the time.

(m) What is a Capital One card? It is a credit card.

(n) You were in a relationship with your partner; even if you were not using the credit card, were you not aware of the amounts which had to be paid back? No I was not aware and I was not concerned if my partner got into debt; I was only worried about my son.

(o) You have said that the Housing Officer omitted to include reference to you being unaware of the thefts in the notes following interviews; did you read through those notes before you signed them? Yes.

(p) Did it occur to you to request that the notes should have included a reference to the comments you alleged to have made? I sometimes don't understand things properly.

(At this point the applicant became distressed and left the meeting with her aunt. The applicant and her aunt returned to the meeting after a break of 5 minutes).

(q) I understand that you are no longer with your partner; do you have any intention to get back with him? No.

(r) When did you split-up with your partner? About a month ago when I had had enough of him.

(s) How long had you been with your partner? About two years before we had the baby.

(t) On your application form to the Panel you have included your partner; is he still part of your household? He came to the Homeless Hostel with me and is still at the Hostel as he is awaiting to hear from the YMCA; we are still living in the same room at the Hostel.

(u) When your partner was taken to the Police Station did you accompany him? I went to the Police Station but only waited in the waiting room for my partner.

(v) Were you interviewed by the Police? No.

(w) Can you clarify the Job Seeker's Allowance which you were in receipt of? It was a joint application for Job Seeker's Allowance; although, as it was in my partner's name, we received more because I was also included in the application; his money went into his account and he gave me some money for our son.

(y) Will your partner continue to visit your son when he leaves you? Yes.

(z) Do you think that your partner will stay with you in the future? No.

(aa) When you split with your partner what will happen to the Job Seeker's Allowance? I will have to apply in my own name.

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

(a) the applicant was seeking a review against the decision that she had made herself homeless intentionally when she had been evicted, together with her partner from her partner's parents' home;

(b) the applicant was 19 years of age and her household consisted of her partner aged 25 and their one year old son;

(c) the applicant had applied as homeless when she had been evicted together with her partner and their son from her partner's parents' property;

(d) the applicant had been eligible for assistance because she held a British passport, considered homeless because she had been excluded from the accommodation she had been occupying and in priority need as she had a dependant child; the homelessness legislation required the Council to consider whether the applicant had made herself intentionally homeless; pending the outcome of her homelessness application the applicant had been provided with interim accommodation by the Council in its Homeless Hostel;

(e) the applicant had lived with her partner at her partner's parents' property between November 2007 and August 2009;

(f) on 27 August 2009 the applicant, her partner and their son had been excluded from the property because they had stolen the applicant's partner's parents' credit card, compact disc player, compact discs and digital video discs; the applicant's partner's parents had contacted the Police which had led to the applicant's partner being arrested and receiving a formal Police caution;

(g) the applicant had claimed in an interview that they had taken belongings from her partner's parents and pawned them, using the resulting money to buy essential items such as food and nappies, and had then bought the items back and replaced them before her partner's parents had become aware; the applicant had also claimed

that they had intended to pay her partner's parents back the £500 spent on their credit card which had been stolen to buy birthday and Christmas presents;

(h) account had been taken of the applicant's partner's parents' letter to the Council explaining the circumstances surrounding the exclusion of their son and the applicant from their property;

(i) the notes of interviews with the applicant and her partner indicated that they had both been responsible for the offences; the original notes of those meetings had been signed by the applicant who had not sought to make any amendment to the notes before signing them (a typed version of the notes unsigned, had been submitted to the Panel for easier reading);

(j) it had been decided that the applicant had made herself intentionally homeless and had been served a Notice to Vacate the interim accommodation provided for her; the interim accommodation had continued to be available to the applicant pending the outcome of this review;

(k) following the issue of the homelessness decision, the applicant's solicitors had written to the Council asserting that it was the applicant's partner who had been solely responsible for the offences and that the applicant had known nothing about them until she had been asked to leave her partner's parents' property;

(l) account needed to be had to the Code of Guidance used by local authorities to assist with the interpretation of the homelessness legislation;

(m) it was considered that the applicant and her partner's theft of her parents' credit card and belongings were deliberate acts in consequence of which they had ceased to occupy the property; it was considered that the property would have continued to be available had the applicant and her partner not committed the offences; it was considered that the property would have been reasonable for the applicant to occupy as it was the family house of her partner and they had lived together there for over 18 months;

(n) the deliberate act which was considered to have led to the applicant becoming intentionally homeless was the applicant's and her partner's theft of belongings from the applicant's partner's parents' home; if they had not stolen from the applicant's partner's parents they would not have become homeless;

(o) although the applicant had asserted that she had been unaware of the theft, account needed to be taken of the fact that she was living closely with her partner, that they had limited income, that the applicant had been aware of presents being purchased by her partner despite their limited income and that it would have been apparent that items were missing from the property;

(p) it was contended that the applicant had been a party to the offences and/or had been aware of them; even if she had not actually been a party, she had acquiesced to the actions that had led to the homelessness.

Neither the applicant nor members of the Panel had any questions to ask of the Assistant Housing Options Manager (Homelessness).

The Chairman asked the applicant if she wished to raise any further issues in support of her application.

The applicant stated that she did not have any family home to which she could go and that if this had been an option she would have gone there rather than reside at the Council's Homeless Hostel. The applicant requested clarification of the length of time she would be allowed to remain at the Hostel in the event of the Panel upholding the decision of the officers. The Chairman of the Panel indicated that the timescale would be included within the decision letter if the Panel reached such a decision.

The Chairman asked the Assistant Housing Options Manager (Homelessness) if he wished to raise any further issues in support of his case. The Assistant Housing Options Manager (Homelessness) stated that he had nothing further to add.

The 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 aunt and the Assistant Housing Options Manger (Homelessness) then left the meeting.

In coming to its decision the Panel focussed on the evidence regarding the circumstances which had led to the applicant being excluded together with her partner from her partner's parents' property and on the principle of acquiescence. In relation to the latter the Panel sought advice from the Director of Housing.

The Director of Housing read to the Panel Paragraphs 6.9, 6.10, 6.11, 6.12, 6.17, 6.18 and 6.19 from the publication "Homelessness and Allocations" – Seventh Edition by Andrew Arden Q.C, Caroline Hunter and Lindsay Johnson. Members took account of the case law summarised in those paragraphs.

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 had become intentionally homeless be upheld for the following reasons:

(a) the applicant and her partner were accommodated in the applicant's partner's parents' property from November 2007 until August 2009; the appellants and her partner's son resided with them at the property between October 2008 and August 2009; the tenancy at the property was in the names of the applicant's partner's parents; the applicant, her partner and their son resided there with the permission of the applicant's partner's parents;

(b) items and a credit card belonging to the applicant's partner's parents was stolen from the house and the sum of £500 was spent on the credit card; following a report to the Police the applicant's partner admitted the offences and was given a formal Police caution; as a result the applicant, her partner and their son were asked by the applicant's partner's parents to leave the property;

(c) account has been taken of:

(i) the evidence provided by the applicant's partner's parents that both their son and the applicant had been stealing from them over a long period;

(ii) the contents of notes of interviews with the applicant and her partner which contained references to both the applicant and her partner being

responsible for, and knowing about, the thefts and the fact that these notes were signed by the applicant as a true record without her making any comment about not being involved in or aware of the thefts;

(iii) the fact that only the applicant's partner was arrested and given a formal Police caution about the offences;

(iv) the applicant's knowledge of the purchase of the birthday and Christmas presents by her partner;

(v) the absence of any supporting material which indicates non-acquiescence by the applicant (as required by case law relating to the issue of acquiescence);

on balance it is considered that the applicant may have been a party to the offences or, if not, that she acquiesced as she at no time questioned her partner about where the money came from to buy presents although she was fully aware of their limited income and it was reasonable to assume two people in a relationship should be aware of household issues;

(d) had it not been for the deliberate acts set out in (b) and (c) above, the property would have continued to be available and reasonable for the applicant, her partner and child to occupy as it was the family home of the applicant's partner, it was a 3-bedroom property shared with the applicant's partner's parents and the applicant's partner's brother; and it would have been affordable, since the applicant and her partner paid no rent;

(e) account has been taken of the difficult relationship between the applicant and her partner's mother and the differences of opinion they as parents had about the care of the applicant's child, but this is not considered to have been the main reason for the applicant, her partner and their child being asked to leave the property;

(f) no evidence has been submitted which indicates that the applicant is incapable of managing her affairs;

(2) That, based on the evidence submitted, no deficiency or irregularity has been identified in the original homelessness decision made by officers and the manner in which it was made;

(3) That the Council continues to provide interim accommodation for the applicant for a period of two months from the receipt of the decision letter, in order to allow her to secure alternative accommodation; and

(4) That with the agreement of the applicant, the officers refer the applicant to Children and Family Services to seek their assistance in helping the applicant find alternative accommodation.

(Councillors Mrs R Gadsby and B Rolfe left the meeting and did not participate in consideration of Application 11/2009 as they had to attend other engagements).

38. APPLICATION NO. 11/2009

The Panel considered a request for a review of a decision made by officers under delegated authority regarding the applicant's Homelessness Application. The applicant attended the meeting to present her case accompanied by her sister. Mr J Hunt, Assistant Housing Options Manager (Homelessness) attended the meeting to present his case assisted by Mr B Howland, Homeless Hostel Manager. Mr A Hall, Director of Housing, 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 members of the Panel and officers present to the applicant.

The Chairman outlined the procedure 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) copies of documents submitted by the applicant, namely:
 - (i) her application to the Housing Appeals and Review Panel dated 23 November 2009;
 - (ii) copy of letter dated 20 November 2009 from Women's Aid to the Assistant Housing Options Manager (Homelessness);
- (b) a summary of the case including the facts of the case and an outline of the Homelessness legislation;
- (c) the case of the Assistant Housing Options Manger (Homelessness);
- (d) copies of documents submitted by the Assistant Housing Options Manager (Homelessness) namely:
 - (i) copy of the applicant's licence to occupy accommodation at the Council's Homeless Hostel;
 - (ii) copy of letter dated 7 October 2009 from the Hostel Manager to the applicant;
 - (iii) Housing Officer file note dated 14 October 2009 following an interview with the applicant;
 - (iv) copy of letter dated 13 October 2009 from Loughton Community Mental Health Team to the Assistant Housing Options Manager (Homelessness);
 - (v) copy of letter dated 29 October 2009 from the Council's Medical Adviser to the Assistant Housing Options Manager (Homelessness);
 - (vi) copy of letter dated 11 November 2009 from the Assistant Housing Options Manager (Homelessness) to the applicant.

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

- (a) one of the warnings given to the applicant about an alleged breach of the conditions of her licence to occupy the Homeless Hostel had been withdrawn by the Hostel Manager following representations made by the applicant;

(b) the applicant admitted that there had been a breach of the licence conditions in August 2009 when a visitor of her daughter had been allowed to stay at the Homeless Hostel beyond 10.30 p.m.; in relation to the fourth and final warning given on 7 September 2009 the applicant's daughter had allowed a friend to stay at the Hostel beyond 10.30 p.m. without the knowledge of the applicant and the applicant's daughter had been punished by the applicant as a result;

(c) the youth who had instigated the incident which had led to the applicant being evicted from the Homeless Hostel had not been a friend of the applicant's daughter; he had not been admitted to the Hostel by the applicant or her daughter but had gained access by pressing various door buttons until someone had let him in; the youth had not visited the Hostel to see the applicant's daughter but to have a fight with another youth he believed to be at the Hostel; the applicant had not known that the youth in question had been present at the Hostel at the time of the incident;

(d) the applicant's daughter had played no part in the incident which had led to the applicant being evicted from the Homeless Hostel; the applicant's daughter had tried to stop the anti-social behaviour relating to the incident on three separate occasions but had been ignored by the youths responsible who had been led by the youth mentioned in (c) above;

(e) in relation to one of the previous warnings given to the applicant following a youth gesturing offensively to a CCTV camera, the youth had not been known to the applicant or her daughter and they had both been absent from the Hostel at the time, so it had been unfair to receive a warning in relation to that incident;

(f) the applicant had been verbally abused on two occasions by another resident at the Hostel and on one occasion it had been necessary for the other resident to be restrained by a third resident; the applicant had been concerned about her personal safety and very distressed about the incident as she had previously suffered as a victim of severe domestic abuse which had been the subject of a court case on 8 December 2009; the applicant had reported the incident to the Hostel Management but had been told that no action could be taken as there was no independent evidence via CCTV or another resident; the resident who had verbally abused the applicant had also assumed that the applicant had informed the Hostel Management about her partner allegedly taking drugs on the premises and this had resulted in the applicant fearing for her personal safety as the other resident's partner had been known to be violent;

(g) there was a serious drug problem at the Homeless Hostel which despite many complaints was not being addressed; no action was being taken about such a major issue and it was totally unfair for the applicant to be evicted in relation to minor incidents by comparison;

(h) the Council had offered to nominate the applicant a permanent property owned by a housing association but had subsequently withdrawn the offer; if the property had been available from the housing association when the offer had been made, the applicant would not have been resident at the Hostel at the time of the incident which had led to her eviction; the permanent property had not been available because it was believed to have still been occupied by the previous tenant;

(i) the initial interim accommodation provided for the applicant by the Council had been infested with bed bugs; the electrical equipment had not had the required safety tested stickers attached and it had taken the Council five weeks to react to complaints about these issues;

(ii) a Housing Officer had considered the applicant to be a bad mother and had referred her to Social Services (Essex Children and Family Services) who had found no cause for concern; the Housing Officer's action had been unjustified as the social worker involved had intimated that the Council had wasted her time by referring the matter;

(iii) the social worker who had assisted the applicant's daughter to give evidence at her stepfather's trial relating to an assault on the applicant had expressed concern about the condition of the initial interim accommodation provided by the Council for the applicant; she had referred to the lack of basic amenities and the added stress to the applicant and her daughter which the poor conditions had caused;

(iv) the applicant's daughter had been receiving counselling three times a week because of severe depression following the eviction from the Homeless Hostel; the applicant's daughter had blamed herself for the eviction and had been terrified of being taken from her mother and placed in care; as a result her school work had suffered severely;

(v) Following the eviction from the Homeless Hostel the applicant had felt suicidal and so depressed that she had been prescribed anti-depressants; she was having to see her psychiatrist frequently and had also been referred to an eating disorder specialist; as result of these problems the applicant had not been as strict with her daughter as perhaps she should have been;

(vi) the applicant had been concerned about her mother who had threatened to commit suicide so that the applicant could have her house and not be homeless;

(vii) the applicant's disabled sister's manic depression and bipolar disorder had been compounded due to concern about her mother, the applicant and the applicant's daughter;

(viii) the applicant had been made to feel like a criminal but had done nothing wrong; the incident which had led to the applicant's eviction from the Homeless Hostel, whilst not due to the applicant or her daughter, had been a comparatively minor case of disorder;

(viii) officers had not given sufficient consideration to the applicant's mental health; the applicant had been victimised.

The applicant answered the following questions of the Assistant Housing Options Manager (Homelessness) and members of the Panel:-

(a) Do you accept the need for residents at the Homeless Hostel to be subject to rules? Yes.

(b) Why did you not comply with the licence conditions? I was unaware of the last incident which led to our eviction as I had been in my room and had been unaware of what was happening in the common room; I thought that my daughter was talking to friends.

(c) Why did you not attend the meeting requested by the Hostel Management Team to discuss your alleged repeated breaches of the licence conditions and why did you not seek support from the Hostel Management Team? When I drew the attention of the Hostel Management Team to the abuse I had suffered from another resident I had simply been told to keep a note of any further incidents as no action

could be taken in the absence of any independent evidence; I did not realise that the request was to attend a formal meeting.

(d) Do you accept that as the licence holder it was your responsibility to ensure that your daughter complied with the conditions? Yes.

(e) When you received warning letters, why did you not ensure that there were no further breaches of the licence conditions? I cannot be held responsible for people outside of the Hostel and I was not aware of what was happening with the incident which led to my eviction.

(f) Your daughter is only 13 years of age, is that somewhat young to be having visitors past 10.30 p.m.? A lot of the time her friends turned up unannounced; I tried to ensure that they left by 10.30 p.m. but I was very weary and depressed, homeless and concerned about the forthcoming court case (relating to the alleged assault by her former partner); my daughter is not a bad girl but has been affected by seeing her mother beaten up by her stepfather; my daughter does not drink or smoke and was led astray by others; since we have been in the interim accommodation my daughter has not been in any trouble.

(g) You have indicated that on one occasion you found your daughter and a friend in the bathroom beyond 10.30 p.m. Can you clarify this incident? My daughter had a friend visit and I told her that he had to leave at 10.30 p.m. They left my room at that time and my daughter told me that she was going to have a bath after seeing her visitor off the premises; the bathroom is down the hall from my room; I fell asleep and when I woke up I noticed that my daughter was not present in the room; I went to the bathroom and found that my daughter was talking to her visitor in the bathroom; I had trusted my daughter to see him off the premises but she had not done so.

(h) Why did you not see the visitor off the premises? In hindsight I should have done so, but I did not think it was necessary at the time.

(i) Were all of the youths who came to the Homeless Hostel responsible for the anti-social behaviour local residents? Yes.

(j) With your various moves, has your daughter been able to continue at the same school? Yes, but her school work has suffered badly.

(k) Do you currently have a social worker? When the Council provided me with interim accommodation in Ilford I was advised by Essex County Council that I became the responsibility of the London Borough of Redbridge; however the London Borough of Redbridge informed me that Essex County Council were still responsible; I have tried to phone Social Services on many occasions but have not received satisfactory responses; Social Services made a number of errors in relation to the trial of my husband.

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

(a) the applicant was seeking a review of the decision that she had made herself homeless intentionally from temporary accommodation provided by the Council and that the duty on this Council to provide her with temporary accommodation had therefore been discharged;

(b) the applicant was aged 39 and the other members of her household included her daughter aged 13 and her son aged 8 months;

(c) the applicant had been living in a property owned by her mother but she had been asked to leave that property and had approached the Council as homeless; the property had been in a poor state of repair and the applicant had been assaulted by an ex-partner; the applicant had been accepted for the full housing duty in accordance with Section 193 of the Housing Act 1996 as amended; the duty on the Council was to ensure that temporary accommodation was made available to the applicant; the applicant moved into the Council's Homeless Hostel on 20 April 2009;

(d) the applicant signed a licence agreement and was considered to have broken Sections 4.3, 4.5 and 4.8;

(e) section 4.3 of the licence stated that no visitors were allowed to stay overnight and all guests must leave by 10.30 p.m.; visitors were not permitted to be on the Hostel premises between the hours 10.30 p.m. and 9.00 a.m.; Section 4.5 of the licence regarding nuisance stated that all residents and members of their household and visitors were expected to behave in a reasonable manner; were not to cause or allow members of the licensee's household or visitors to cause a nuisance or annoyance to neighbours or tenants of the Council and other residents, or other persons in the vicinity, or agent or employee or contractors of the Council; the Section also provided that the tenant was responsible for the behaviour of members of her household and for her visitors to the Hostel;

(f) section 4.8 of the licence requires licence holders to ensure that at all times they and members of their household or lodgers or visitors or guests act in a reasonable and responsible manner and do not by their conduct and behaviour cause any harassment, intimidation, annoyance or nuisance or inconvenience to the licensee or licensees of neighbouring premises or any other residents or Council employees or agents or contractors;

(g) the purpose of Section 4.3 of the licence agreement was to ensure that only the licence holder and members of their household were permitted to be in the building or on the grounds of the Hostel after 10.30 p.m.; this section of the agreement was intended for the safety and welfare of the residents and to avoid any nuisance to licence holders at night-time; with up to 46 households accommodated at the Homeless Hostel it was necessary to ensure that this section of the agreement was strictly observed;

(h) on 27 August 2009 the applicant had received a warning under Section 4.3 as she had allowed a visitor to stay beyond 10.30 p.m.; on 1 September 2009 the applicant had received a further warning for allowing a visitor to stay overnight; on 2 September 2009 the applicant had received a third warning for permitting visitors to smoke in the porch, make offensive gestures to the CCTV camera and make an intimidating remark to a member of staff; on 7 September 2009 the applicant had received her fourth and final warning for again allowing a visitor to be present beyond 10.30 p.m.;

(i) the applicant had been asked to attend a meeting with the Hostel Management Team to discuss her repeated breaches of the licence; she had failed to attend the meeting but the Hostel Manager had subsequently made her aware that any further breaches of the licence would result in eviction from the Hostel;

(j) on 7 October 2009 the applicant had received notice that her licence to occupy the Hostel would be terminated; notice had been served following an incident when the applicant's daughter had allowed a group of youths to enter the Hostel as a result of which children's play equipment and residents' food had been thrown

around the kitchen and dining room, the youths had spat on the floor and made abusive gestures to the CCTV cameras; this anti-social behaviour had resulted in other residents feeling intimidated, complaining to the Council's Out of Hours Service and the incident being reported to the Police;

(k) notice having already been served on the applicant, on 18 October 2009 the Council's Out of Hours Service had received a complaint from a resident with regard to a large group of youths congregating and smoking in the dining room; in addition to smoking in the dining room the youths had written graffiti on the sofas and play equipment; the applicant's daughter had accepted that the youths were her visitors and that they were verbally abusive to the Hostel Management Team when they had been asked to leave;

(l) the applicant had been required, as a result, to leave the Homeless Hostel; after leaving the Homeless Hostel, the Council had been required to decide whether the duty to accommodate the applicant should be discharged on the basis that she had become intentionally homeless; the applicant had been provided with bed and breakfast accommodation on leaving the Homeless Hostel whilst enquiries had been made with respect to the decision on whether the duty to accommodate her should be discharged; account had been taken of the applicant's medical history and the applicant had been interviewed by her Homelessness Case Officer; the decision had been made that the duty to accommodate the applicant had been discharged because she was considered to have made herself homeless intentionally;

(m) in making the homelessness decision regard had to be had to the Code of Guidance which was used by local authorities to assist with the interpretation of the homelessness legislation; the Code of Guidance stated that a person became homeless or threatened with homeless intentionally if they deliberately did or failed to do anything in consequence of which they ceased to occupy accommodation which was available for their occupation and which would have been reasonable for them to continue to occupy; the Code of Guidance also stated that under Section 193(2) the Housing Authority would cease to be subject to the duty to accommodate if the applicant became homeless intentionally from accommodation made available under Section 193 (temporary accommodation);

(n) it was considered that the breaches of the licence conditions were deliberate omissions by the applicant; the applicant had been responsible for the behaviour of members of her household and any visitors; visitors had been repeatedly permitted to stay beyond 10.30 pm by the applicant and there had been incidents of anti-social behaviour by her daughter's visitors; the applicant had failed to act in controlling the time her daughter's visitors left and had not controlled the behaviour of those visitors; in consequence of these breaches of her licence, the applicant had ceased to reside at the Homeless Hostel;

(o) the applicant's accommodation at the Homeless Hostel would have continued to be available for her occupation had she not repeatedly broken the terms of her licence; it was considered that it would have been reasonable for the applicant to occupy the accommodation as she had been provided with a double room, with an affordable licence fee and support had been available from the Hostel Management Team;

(p) the medical information regarding the applicant had been taken into account and advice sought from the Council's Medical Adviser; the applicant was believed to have been capable of managing her affairs and had been offered support from the Hostel Management Team which she had not taken up; the applicant had accepted that she was responsible for her daughter and any visitors;

(q) the Panel was invited to uphold the officers' decision and in that event to give the applicant reasonable notice to vacate her bed and breakfast accommodation and to refer her to Essex Children and Family Services in order that the provisions the Children Act 1989 could be applied.

In support of his case the Assistant Housing Options Manager (Homelessness) showed a sequence of CCTV images showing anti-social behaviour by youths in the Homeless Hostel.

The Assistant Housing Options Manager (Homelessness) answered the following questions of the applicant and members of the Panel:-

(a) The applicant has stated that one of the warnings given to her had been rescinded, is this correct? B Howland advised that one of the warnings had been revoked following representations from the applicant, because it had been assumed that the visitor in question had been a girl of the same age as the applicant's daughter. However, but after revocation, it later became clear that it had been a boyfriend of the applicant's daughter.

(b) How can the applicant have been considered to have failed to do something if she was unaware of what was happening? It is not the case of officers that the applicant had done things deliberately but that she had failed to do things; there had been a build-up of problems within a short space of time; visitors had been allowed to stay beyond 10.30 p.m.; there had been an incident with youths making gestures to the CCTV cameras and being rude to staff; the applicant should have taken steps to control her daughter so that matters did not escalate to a level where youths had run amok throughout the Hostel; it had been the applicant's responsibility to ensure that her daughter's friends left on time.

(c) The applicant had referred to other breaches taking place in the Hostel, why have these not been dealt with? In relation to the confrontation with another resident, the incident took place in an area not covered by CCTV and the third resident who had restrained the resident being abusive to the applicant had declined to make any statement about the incident; as a result there had been no independent evidence about the incident; in relation to the allegation of drug-taking, two inspections had been made based on the allegations, but no evidence had been found; letters had been sent to residents about the issue but it would be unreasonable to continually search residents' rooms without firm evidence.

(d) How can the Council's Medical Adviser speculate on the health of the applicant by simply reading a letter from the applicant's doctor? It would be impractical to expect the local authority to have a psychiatrist assessing every housing applicant with mental health problems; applicants provide medical evidence and the Council seeks written advice on that evidence from its independent Medical Adviser. If necessary, the independent Medical Adviser consults the applicant's doctor.

(e) Why does the Council not contact the applicant's doctor direct? The medical evidence provided is considered sufficient to enable the Council's Medical Adviser to comment on how an applicant's condition might have affected their decision making; the applicant has demonstrated being capable of understanding her licence conditions and knowing that she had to abide by rules; in other cases which come before the Council an applicant's conditions are so severe that they are unable to manage their affairs, but this is not considered to be the case in respect of the applicant.

(f) Do you accept that the applicant might have understood what was required but had been unable to carry out what was required? I accept this is a possibility.

(g) What steps were taken following the applicant's complaint about being abused by another resident at the Homeless Hostel? The other resident had been interviewed and had admitted having an argument with the applicant; there had been no evidence of any physical contact between the residents; there had been no CCTV cameras in the vicinity to capture the incident; the third resident who had restrained the resident abusing the applicant had said that she had not wanted to get involved in any further action.

(h) Do the Council provide any patrols or supervision of the entrances to the Hostel? There is an instruction to residents not to let in anyone other than their visitors; there is a front door entry system which can be activated by residents from their rooms; if somebody waits long enough it is possible that they can gain entrance by tailgating a resident or pressing buzzers until someone lets them in.

(i) Is it true that if incidents happen out of normal hours they are only drawn to attention as a result of complaints from residents? There is no-one on duty at the Hostel after 5 p.m. although officers are on-call; there is a reliance on other residents to report incidents and complaints were received in respect of the incidents which led to the eviction of the applicant.

(j) Can you comment on the applicant's representations about the poor condition of the initial interim accommodation in which she was placed? Complaints were received from the applicant and a request was made to the hotel to find another room for the applicant; it appears that the problem is still persisting and arrangements are being made to find the applicant other bed and breakfast premises later this week.

(k) Can you clarify why the applicant did not receive the permanent accommodation which was offered to her? The applicant was offered a property managed by a housing association but because of the condition of the property and the previous residents still being in occupation there was a delay in the property becoming available to the applicant; it was during that period that she was evicted from the Homeless Hostel and as a result the offer of the property was withdrawn.

The Chairman asked the applicant if she wished to raise any further issues in support of her application. The applicant stated that, in relation to the incident which had resulted in her being evicted, her daughter had let four youths into the Hostel but it had been one of those youths who had then admitted others, who had been mainly responsible for the anti-social behaviour. The applicant suggested that each room should be provided with a monitor so that residents could see who they were letting in, rather than simply relying on a telephone connection.

The Chairman asked the Assistant Housing Options Manger (Homelessness) if he wished to raise any further issues in support of his case. The Assistant Housing Options Manger (Homelessness) pointed out that one of the youths that had been admitted to the property by the applicant's daughter had been prominent in relation to the anti-social behaviour.

The 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 sister, the Assistant Housing Options Manager (Homelessness) and the Homeless Hostel Manager then left the meeting.

In coming to its decision the Panel focussed on the evidence regarding each of the alleged breaches of the applicant's licence in relation to occupation of temporary accommodation at the Council's Homeless Hostel which had led to her licence being terminated. The Panel also considered the extent to which the applicant could be held responsible for the actions of her daughter and her visitors, and any action the applicant took or did not take to mitigate their behaviour.

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 made herself homeless intentionally from temporary accommodation provided by the Council and that the duty on the Council to provide her with temporary accommodation had been discharged be not upheld for the following reasons:

(a) in relation to the incidents which led to the applicant receiving four warning letters for being in breach of the licence conditions relating to occupancy of accommodation at the Council's Homeless Hostel:

(i) it was established that the warning letter issued on 1 September 2009 relating to the applicant's daughter's guest failing to leave by 10.30 p.m. had subsequently been rescinded by the Hostel Management Team following representations by the applicant, albeit that the Management Team had made a wrong assumption that the guest was female; in relation to one other warning letter regarding a visitor smoking in the porch, making offensive gestures to the CCTV camera and making an intimidating remark to a member of staff, there was conflicting evidence about the extent to which these youths were visitors of the applicant's daughter and it has been decided to give the applicant the benefit of the doubt about these incidents and they are not therefore considered to represent a breach of the licence conditions;

(ii) the other two warnings related to the applicant's daughter's visitor staying in the Hostel later than 10.30 p.m. and these were proven and admitted by the applicant and constitute breaches of the licence conditions by the applicant, since the licence agreement clearly made her responsible for her family members and guests;

(b) in relation to the incident on 5 October 2009, following which the applicant received notice of termination of her licence to occupy the Homeless Hostel, the evidence from CCTV shows that the applicant's daughter allowed a group of four youths into the Hostel and that one or more of these youths were involved in anti-social behaviour in the Hostel; however account has been taken of the fact that one of the four, not the applicant's daughter, allowed other youths into the Hostel who were also a party to the anti-social behaviour activities; account has also been taken of the applicant's assertion that the applicant's daughter did not take part in the anti-social behaviour, tried to stop it and has not been charged by the Police in relation to the incident ; nevertheless it is considered that this was also a breach of the applicant's licence agreement;

(c) in relation to the anti-social behaviour in the Hostel in 18 October 2009 the applicant's daughter accepted that the youths responsible were her visitors; which constitutes a breach of the applicant's licence agreement;

(d) it is clear from (a), (b) and (c) above that due to the actions of the applicant's daughter, on occasions, the applicant breached the conditions of her licence relating to occupation and nuisance;

(e) account has been taken of the applicant's apparent lack of knowledge of the majority of incidents at the time they took place and steps which she took to stop her daughter from breaching the conditions of the licence;

(f) account has also been taken of the medical evidence provided and whilst it is considered the applicant was capable of managing her affairs despite her history of low mood and anxiety, low self-esteem and eating disorders, it is also considered that these conditions could have had an effect on the applicant's ability to carry out required actions and, in particular, to control her daughter;

(g) on balance, and in all the circumstances it is not considered that the proven breaches of the licence conditions were sufficient deliberate omissions on the part of the applicant to reach a conclusion that the applicant was intentionally homeless from temporary accommodation;

(h) accordingly, it is not considered that the applicant made herself homeless intentionally from the temporary accommodation provided by the Council; and it is therefore considered the Council has not discharged its duty to provide the applicant with temporary accommodation.

CHAIRMAN