



The Panel agreed to adjourn the meeting to enable the officers to attempt to contact the appellant.

After the adjournment, the Panel was advised that the appellant had been contacted on her mobile phone and had advised that she was in hospital having given birth. She had confirmed that she still wished to appear before the Panel and had asked for consideration of her appeal to be deferred.

**RESOLVED:**

- (1) That consideration of Appeal No 22/2005 be deferred until 4 pm on 13 December 2005; and
- (2) That the handwritten details of the appeal included on the appellant's application to the Panel be typed and circulated to members prior to the meeting on 13 December 2005.

**46. APPEAL NO. 21/2005**

The Panel gave consideration to an appeal against a decision of the Assistant Housing Needs Manager (Homelessness) acting under delegated authority regarding a homeless application. The appellant was not in attendance at the meeting and had elected for the appeal to be determined on the basis of written representations.

The Head of Housing Services confirmed to the Panel that he had not previously been involved in this case and would be able to advise members on housing policy and legislation relevant to the appeal. He confirmed that, in addition to the submitted written statements, the relevant housing file was available if required by the Panel. He emphasised that the decision of the Panel had to be based on the representations before it.

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

- (a) a summary of the appeal together with the facts of the case forming part of the agenda for the meeting;
- (b) a copy of the appellant's licence to occupy a room at the Council's homeless hostel;
- (c) a copy of a letter dated 14 July 2005 from the Hostel Management Team to the appellant;
- (d) a copy of a letter dated 29 September 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (e) a report of the Hostel Management Team dated 3 November 2005;
- (f) a copy of a report of an interview between a Housing Officer and the appellant dated 6 October 2005;
- (g) a copy of a letter dated 10 October 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (h) a copy of the application to the Housing Appeals Panel by the appellant dated 24 October 2005;

- (i) a copy of a letter dated 24 November 2005 from the Epping Citizens Advice Bureau to the Council's Democratic Services Manager together with submissions made on behalf of the appellant;
- (j) a copy of a letter dated 23 November 2005 from the North Essex Mental Health Partnership to the Council's Housing Department; and
- (k) a copy of an undated letter from the North Essex Mental Health Partnership to the Epping Citizens Advice Bureau.

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

- (a) the appellant was seeking a review of the Council's decision of 10 October 2005 that he was homeless intentionally;
- (b) the appellant had applied to the Council as homeless in January 2005 after being asked to leave a residential drug rehabilitation project; the Council had provided him with interim accommodation;
- (c) the appellant had been accepted as a vulnerable person and the Council had accepted a full duty to house him on 21 March 2005; the appellant had been provided with temporary accommodation at the Council's homeless hostel;
- (d) on 14 July 2005, following an incident on 11 July 2005, the appellant had been given a final written warning concerning his licence at the homeless hostel; on 29 September 2005 there had been a further incident involving the appellant during which the police had been called which had led to the Council's decision to terminate his licence and end its duty to house him;
- (e) on 24 October 2005, the appellant requested a review of the decision and he was currently being accommodated at a bed and breakfast establishment pending the outcome of the review;
- (f) the appellant accepted that his behaviour at the homeless hostel had not been acceptable; however, he felt that he had been treated unfairly over the final incident leading to the termination of his licence; the appellant stated that he had eight or nine guests at his room and they had arrived at about 6 pm and all but one had left by 10.30 pm; some alcohol had been consumed but not to any great extent; there had been no excessive noise up to this point; the last guest had refused to leave and according to the appellant this was the cause of the ensuing incident; the appellant said that the remaining guest had hit him and he had had to defend himself; she had then kicked his door and it was the appellant himself who had called the police, resulting in both parties being given warnings but no charges being made; the appellant considered that he had acted responsibly in calling the police and that he had not caused the incident;
- (g) the appellant was a 25 year old man with a history of depression, psychotic episodes and solvent abuse; in the past he had taken overdoses; he was currently under the Mental Health Team and was also under the care of CDAT, the Drug and Alcohol Team for West Essex; during his homeless assessment the Council's Medical Officer had noted "There is evidence of a longstanding depression and personality disorder with substance abuse and unreliability. I do think that this would impair his ability to manage his affairs and to seek/keep accommodation";

(h) in May 2005, the appellant had been referred to the Cygnet Supporting Housing Scheme by the Council; it was unclear from the housing file what the outcome of this referral had been, but the Citizens Advice Bureau (who had assisted the appellant with his appeal) had been led to believe that the appellant had been refused due to an arson incident at a previous accommodation; the appellant stated that this had been a minor incident in 1995 when he accidentally set fire to a wastepaper bin at his flat due to not extinguishing his cigarette fully; he said that the Fire Brigade were not needed and there was no other damage to the property;

(i) the appellant had two children, a five year old who had been adopted and a four year old in the care of his parents who lived locally; if the appellant could not obtain secure accommodation locally it would impair his chances of maintaining a relationship with this child;

(j) the appellant was an extremely vulnerable young man who was easily influenced by those around him; the Panel was asked to find the appellant homeless unintentionally, accept a full duty towards him and give him a further opportunity to acquire accommodation with a supported housing scheme.

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

(a) the appellant first made a homeless application to the Council on 17 November 2004; the application had been made in his sole name; at that time it had been decided that he was not homeless and he had been given accommodation at a residential drug rehabilitation centre;

(b) in January 2005, the appellant had been asked to leave the centre, due to disagreements with his support worker, and once again had sought homelessness assistance from the Council and had been accommodated on an interim basis;

(c) the appellant had a history of depression and after considering the medical facts of his case the Council had accepted that he was a vulnerable person; after the completion of homeless enquiries, the Council had been satisfied that a full duty was owed and issued notification to the appellant; the duty at that stage was to continue to ensure that temporary accommodation was made available to the appellant; in the terms of its ongoing duty under Section 193 of the Housing Act 1996 Part VII, the Council arranged to transfer the appellant from the accommodation he was occupying to the Council's homeless hostel;

(d) the appellant had been provided with a licence to occupy a room at the homeless hostel and this clearly set out the licensee's obligations and the Council's obligations;

(e) after moving in, the hostel management team became concerned that the appellant was abusing solvents again; when this became apparent the appellant had been issued with a final warning as this was a clear breach of his licence to occupy;

(f) the appellant has failed to continue to comply with the terms of his licence to occupy the room at the homeless hostel and on 29 September 2005 he had become involved in a fight with another resident which required intervention from the police; the staff at the homeless hostel had been left with no option but to terminate the appellant's licence to occupy; the Hostel Management Team's report detailed how the appellant had conducted his stay at the homeless hostel; on account of his eviction, the appellant was re-interviewed on 6 October 2005; after full consideration of all the facts of the case a decision was made to discharge the Council's duty to

accommodate; the appellant was currently being accommodated at a bed and breakfast establishment pending the outcome of this review;

(g) Section 202 of the Housing Act 1996 Part VII as amended by the Homelessness Act 2002 gives a homeless applicant the right to request a review of decisions made under the provisions of the Act; in this case it was the decision that the appellant was intentionally homeless from temporary accommodation provided for his continued occupation that had resulted in the request for the review;

(h) the Council was expected to comply with the Code of Guidance which assisted with the interpretation of the Housing Act 1996 Part VII as amended; the Code of Guidance states that the housing authority would cease to be subject to the duty under Section 193 where the applicant became homeless intentionally from accommodation made available to him;

(i) in making the decision, full regard had been paid to the appellant's conduct; despite the fact that he had received a written warning on 14 July 2005 about his behaviour he had failed to pay regard to the seriousness of the situation; he had engaged in a physical fight with another resident at the homeless hostel and this fully justified his eviction;

(j) the Authority was well aware of the appellant's medical condition, however, the appellant had been fully aware of his obligations under the terms of his licence to occupy and he had confirmed this fact in the homeless interview on 6 October 2005;

(k) the Panel was invited to dismiss the appeal and to give the appellant reasonable notice in order to attempt to find alternative accommodation.

At the request of the Panel, the Head of Housing Services provided information from the housing file about the appellant's occupation of Cygnet properties. The Panel noted that the appellant had admitted to indulging in drug abuse whilst at the Council's homeless hostel. He had received a written warning advising him that any further breach of his licence could result in it being terminated and he had stated that he fully understood the terms and conditions of his licence agreement and was aware of the implication of the warning given. Despite this he had invited guests to his room and had been involved in a fight which had required intervention by the police, albeit called by the appellant. At that event he had admitted to drinks and cannabis being available. The Panel took account of the appellant's version of the event but noted that under the terms of his licence he was responsible for the behaviour of his visitors. The Panel took account of the representations made in relation to the appellant's history of depression.

**RESOLVED:**

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Homelessness Code of Guidance and having taken into consideration the information presented by and on behalf of the appellant and by the Assistant Housing Needs Manager (Homelessness) in writing, the appeal be dismissed and the decision of the Assistant Housing Needs Manager (Homelessness) that the Council has discharged its duty under the Act be upheld for the following reasons:

(a) the appellant was accepted as a vulnerable person and owed a full duty;

(b) the appellant lost the temporary accommodation made available for his occupation as a result of incidents at the property; on 11 July 2005, staff found a carrier bag containing 12 cans of butane gas in the appellant's room and, as a result, the appellant admitted to indulging in drug misuse; the appellant received a final written warning for being in breach of his licence agreement; on 29 September 2005, the appellant had invited some friends to his room and had been involved in a fight with a female resident which had required intervention from the police; the appellant admitted that drinks and cannabis had been taken at the event;

(c) it is accepted that in relation to the incident on 29 September 2005, the female resident may have been more at fault than the appellant and the appellant himself called the police, but in accordance with the terms of his licence agreement, the appellant was responsible for the behaviour of his visitors;

(d) the appellant has acknowledged that his behaviour at the temporary accommodation was not acceptable;

(e) account has been taken of the representations in relation to the appellant's history of depression and psychotic episodes and the fact that he is a vulnerable person easily influenced by others; however, it is clear that the appellant was fully aware of his obligations under the terms of his licence to occupy and, despite receiving a final written warning, he failed to accept the seriousness of the situation; account has also been taken of the fact that the appellant had been responsible for anti social behaviour in the past;

(2) That the Council continues to provide interim accommodation until 27 January 2006 in order to allow the appellant reasonable opportunity to secure alternative accommodation; and

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

#### **47. APPEAL NO 19/2005**

The Panel was advised that consideration of this appeal had been deferred at the meeting held on 24 November 2005 pending the receipt of additional information.

The Panel received and took into consideration:

(a) a letter dated November 2005 from the appellant explaining why he had not appealed to the Employment Tribunal Service against his dismissal;

(b) a copy of the full letter dated 14 July 2005 from the appellant's former employer; and

(c) a copy of a record of a meeting held on 4 July 2005 between the management and employees, including the appellant, of the appellant's former employers.

The Panel noted that the letter confirming the appellant's dismissal for gross misconduct referred to a complaint from a member of the public about the driving of one of the appellant's former employer's vehicles on the Dartford Bridge. The letter did not state that this had been the appellant. Similarly, the reference to a complaint

about an employee leaving a job early did not state that the complaint related to the appellant. In relation to the appellant's time-keeping for the week ending 8 July 2005, different versions had been provided by the appellant's former employer and the appellant. The appellant's former employer had referred to a disciplinary hearing on 12 July 2005, but it appeared that the Pay Section of the appellant's former employer had not received on 20 July 2005, details of the hours that the appellant had worked during the week ending 8 July 2005. In relation to the alleged loss of an item of equipment, the Panel noted the appellant's explanations.

The Panel concluded that based on the evidence before it, the actions of the appellant should not have justified his dismissal and as a result he should not have lost his tied accommodation.

The Panel noted that the appellant had not taken tribunal action against his former employers as the Department of Trade and Industry had advised him this was not possible as he had not been employed by the company for more than 12 months.

**RESOLVED:**

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Homelessness Code of Guidance and, having taken into consideration the information presented by the appellant and the Assistant Housing Needs Manager (Homelessness) in writing, the appeal be allowed and the decision of the Assistant Housing Needs Manager (Homelessness) be not upheld for the following reasons:

(a) based on the information presented to the Panel, it is considered that the actions of the appellant should not have led to dismissal from his employment, and that it was reasonable for the appellant to believe that his actions would not have resulted in dismissal;

(b) in relation to the appellant's time-keeping, it is noted that the investigation into the complaint from a member of the public about the driving of a company vehicle on the Dartford Bridge does not identify the appellant as the driver of that vehicle; similarly, the reference to an employee leaving a job early does not relate specifically to the appellant; in relation to the appellant's time-keeping for the week ending 8 July 2005, the employer refers to incorrect hours being recorded, but the appellant states that time-sheets were normally submitted a week after the week in question and that as he was dismissed on 12 July 2005, he did not have an opportunity to submit a time-sheet for the week ending 8 July 2005; on balance, therefore, the evidence does not show that the appellant's time-keeping should have led to his dismissal;

(c) in relation to the lack of care over company equipment, it is noted that the employer refers to a valuable piece of company equipment being left on the highway and not reported as lost; the appellant states that the equipment was left on the highway with full signing and guarding, was recovered intact after a few hours, and was designed to be left on the highway for long periods; on balance, therefore, the Panel felt that the appellant's actions should not have led to his dismissal;

(d) as the actions of the appellant, as presented to the Panel, are not considered to have been sufficient to justify dismissal from his employment, the loss of his rented accommodation was not as a result of any intentional act or omission of the appellant.

**48. APPEAL NO 20/2005**

The Panel was reminded of the decision which it had taken in relation to this appeal at its meeting on 24 November 2005.

The Panel was informed that, following the meeting on 24 November 2005, officers had raised concern about some of the advice given to members at the meeting and as a result, Counsel's views had been sought. Counsel had drawn attention to the fact that the appellant had been in interim accommodation, not temporary accommodation, and it had been wrong in law, therefore, to say that the Council had discharged its duty. In the light of this advice, the Panel was invited to review its previous decision.

**RESOLVED:**

- (1) That Resolution (2) of the decision reached on 24 November 2005 be revoked;
- (2) That the appellant be offered temporary accommodation by the Council in accordance with the provisions of the Housing Act 1996, for occupation pending the offer of permanent accommodation; and
- (3) That, having regard to the appellant's history of anti social behaviour, she be advised that any such behaviour in the temporary accommodation provided would be likely to result in eviction from that accommodation.

**CHAIRMAN**