ENFIELD Connected

ENFIELD Council

DB
Email: DB@yahoo.com

Please reply to: Lilian Moki
E:lilian.moki@enfield.gov.uk
T: 0208 132 1584
Date: 25-01-2023

Our ref: 743****

Dear DB

S184(3) DECISION RESULT
(Housing Act 1996 as amended)

I write regarding your homeless application made on the 20TH December 2022

Considering all the information available to me I am satisfied that:

- You are homeless
- You are eligible for assistance and that
- You do not have a priority need

Relief Duty Ongoing

Although you have been issued with a not in priority need decision, we will continue with trying to relieve your homelessness as part of the ongoing relief duty which has yet to come to an end. However, following the ending of the relief duty we will not owe you any duty under Section 190 or Section 193.

We will also provide you with advice and assistance, which is our duty to those found not in priority need.

In reaching this decision I have taken into account all the information held on your housing file and in particular the following:

- Now Medical assessment dated 24th January 2023
- Royal Free appointment letter dated 12 January 2023
- Plastic Surgery Team appointment letter dated 02 December 2022
- Hospital discharge papers dated 27 November 2022
- Medical Notes dated 4 March 2022
- Vulnerability questionnaire dated 21 December 2022
- The Code of Guidance 2018 as amended and in particular Chapter 8
- The judgment made by the Court of Appeal in the cases of Panayiotou v Waltham Forest
  - Smith v Haringey EWCA Civ 1624 2017, Guiste v Lambeth LBC (2019) EWCA Civ 1758, McMahon v Watford BC; Kiefer v Hertsmere BC [2020] EWCA Civ 497
- The judgment made by the Supreme Court in the case of Hotak & Ors v London Borough of Southwark [2015] UKSC 30
- S149 of the Equalities Act 2010

Sarah Cary
Executive Director Place
Enfield Council
Civic Centre, Silver Street
Enfield EN1 3XY

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By priority need we mean that you do not fall into one of the following categories.

- You are not pregnant and neither is a member of your household is pregnant.

- You do not have a child, below the age of 16 or aged 16-18 and in full time education, who is dependent on you and either normally resident with you or expected to reside with you.

- You are not 16 or 17 years old and who is not a 'relevant child' or a child in need to whom a local authority owes a duty under section 20 of the Children' Act 1989.

- You are not a person who is aged 18 to 20 and was formerly looked after, accommodated or fostered between the ages of 16 and 18

- You are not homeless because of an emergency such as fire, flood, or a similar disaster.

- You are not homeless because of domestic abuse.

- You are not vulnerable *(see definition of 'vulnerable' below)* <u>as the result of</u>:
  - Old age.
  - Mental illness, learning or physical disability.
  - Being a person aged 21 or over and were formerly looked after, accommodated or fostered.
  - Serving in this country's armed forces.
  - Serving time in prison or having been committed for contempt of court or any other kindred offence or remanded in custody.
  - Having left your home because of violence or threats of violence that was likely to be carried out.
  - Another special reason that puts you puts you at a greater risk of suffering more harm than an ordinary person if made homeless.

Therefore, I conclude that you are not in priority need under S189 of the Housing Act 1996"

<u>Context of your application for housing</u>

I think it is important to set out the background to your application and give an overview of the context in which your application was made before I consider your medical problems and circumstances. As I understand the position, you were living at 7 Tennyson Close, Enfield, EN3 4SN and you have an assured tenancy with registered provider L&Q. You approached the London Borough of Enfield for homeless assistance as you were victim of an attack at a nearby pub and now do not feel safe at your current property.

<u>Test of Vulnerability</u>

The test employed to assess whether or not you are deemed to be vulnerable in accordance with section 189(1)(c) of the Housing Act 1996 is laid down by the Supreme Court in the cases of *Hotak v London Borough of Southwark; Kanu v London Borough of Southwark; Johnson v Solihull Metropolitan Borough Council* [2015] UKSC 30; [2015] 2 WLR 1341. In deciding whether a person is vulnerable in accordance with Section 189(1)(c) of the above Act the Council must ask itself whether the applicant, as a result of being rendered homeless, is

'significantly more vulnerable than ordinarily vulnerable'.

Paragraphs 1 to 53 the Supreme Courts set out the history and background in relation to vulnerability and the defining paragraph, which sets out what the definition of vulnerable is in paragraph 53. In this paragraph Lord Neuberger states

"*Accordingly, I consider that the approach consistently adopted by the Court of Appeal that "vulnerable" in section 189(1)(c) connotes "significantly more vulnerable than ordinarily vulnerable" as a result of being rendered homeless, is correct*".

Before I go on to deal with your medical problems and circumstances I would like to deal with what 'significantly more vulnerable' means. In paragraph 52 of their judgement Lord Neuberger stated, "*Virtually everyone who is homeless suffers "harm" by undergoing the experience, and therefore one is thrown back on the notion of a homeless person who suffers more harm than many others in the same position*". He immediately then gave his concluding definition of what vulnerability means and I have detailed this above. This clearly shows that a person is not vulnerable simply because they will suffer from harm. They are vulnerable if, when homeless and without any accommodation, they will suffer more harm that an ordinary person if made homeless. This was confirmed by the Court of Appeal in their judgement in the cases of Panayiotou v Waltham Forest & Smith v Haringey EWCA Civ 1624 2017 who also stated that a person is vulnerable if they are at risk of more harm in a significant way.

<u>My Assessment</u>

The Supreme Court highlighted when assessing whether or not an applicant is vulnerable, an authority must pay close attention to the particular circumstances of the applicant. The English Homelessness Code of Guidance 2018 advises that I should take into consideration the nature and extent of your conditions along with the relationship between the conditions, your housing difficulties and any other factors that may be relevant. As set out in my list of information considered I have reviewed the information on file and others that have encountered you.

In the cases of *McMahon v Watford BC; Kiefer v Hertsmere BC [2020] EWCA Civ 497* the Court of Appeal stated that I am obliged to consider carefully whether your problems (whether or not these are disabilities as defined by the Equality Act 2010) impact on your ability to carry out normal day-to-day activities. This requires both an individual and cumulative assessment and, in turn, an assessment as to whether they make you "vulnerable" for the purposes of section 189(1)(c).

The assessment, therefore, is not a clinical assessment, but it should be a practical assessment of your situation and what has occurred or would occur when you are compared to an ordinary person, if rendered homeless, taking into close consideration your medical or any other relevant factors.

Looking at your own situation it is without doubt that you will suffer harm by being homeless and being without accommodation. However, considering your circumstances singularly and/or as a whole I am not satisfied that this is to the extent that you will suffer more harm than an ordinary person if made homeless. Indeed, I am not satisfied that you are susceptible to such harm. For this reason, I do not consider that you are "vulnerable" within the meaning of Section 189(1)(c) Housing Act 1996. I will give my reasons for this conclusion below in detail.

<u>Medical Problems and Circumstances</u>
According to the information available it has been stated that you are vulnerable as a result of fleeing violence, medical issues sustained from your attack and depression, anxiety and PTSD.

However, taking into account your medical problems and circumstances singularly and/or as a whole I am not satisfied that these are such that you are vulnerable as defined.

This is because I am satisfied that despite your medical problems and circumstances you will be able to do all the things that I will expect an ordinary person if made homeless to do, e.g. try and find alternative accommodation, buy food, keep warm and dry, maintain hygiene, stay safe, engage with homeless services and take any prescribed medication and get treatment when required, maintain communication. This is turn leads me to conclude that you have sufficient capabilities/resources to limit the harm that you will suffer in the event that you are homeless and without any accommodation so that you did not suffer more harm than an ordinary person if made homeless. I will give my reasons for this conclusion below.

Mental illness, learning or physical disability

I will seek to explain your medical issues in two separate categories, first concentrating on your conditions you were previously managing such as depression and asthma and subsequently I will evaluate vulnerability as it relates to your hand injuries and ongoing rehabilitation issues.

Depression and Insomnia

You have been diagnosed with depression since January 2008 and have recurring insomnia which affects your sleep since December 2007. Both these long-standing issues have been managed via your GP through medication and via counselling. You take 100mg Sertraline daily for your depression, which is a standard anti-depressant and you are not receiving any enhanced care plans as part of your ongoing recovery, nor has your ability to think rationally or cognitive processing been affected by your depression or insomnia. You also take promethazine hydrochloride to assist with normal sleep function, which is over the counter medication and can be purchased without a prescription. Further to this you have no unstable psychotic tendencies and while I note that notes from your GP indicate you have engaged in bouts of self-harm in the past, you are not actively suicidal or receiving inpatient or outpatient care to manage the symptoms of your illness.

Asthma

You have been diagnosed with Asthma since birth and use standard inhaler medication to combat the symptoms of your illness. It should be noted that you do not require profound degrees of ventilatory support to maintain standard functioning, nor do you have a history of urgent respiratory interventions. There is no evidence to suggest that your asthma would impact your day to day functioning or render you significantly more vulnerable than an ordinary person if made homeless.

Hand Injury

You sustained a hand injury to your right hand in November 2022 after an attack at a local pub. You were admitted to hospital on the 27th November and discharged the same day after surgical intervention. You were prescribed Amoxicillin to combat any potential infection and co-codamol, which is a standard issue painkiller to combat any prolonged pain as a result of your injury. You are not in receipt of any specialist day to day care as a result of this injury and I can conclude that you do not have a significant inability to function as a result of a mobility disorder.

I note that you are receiving physiotherapy as part of your ongoing recovery programme, which is standard procedure for the recipient of a lacerated tendon and the function of this therapy is

to increase mobility in your right hand over time, which you have advised me has reduced functioning. You also have a meeting with a psychologist to discuss any ongoing mental health issues suffered as a result of your injury. Although this consultation has not yet occurred, and I can therefore not comment on any undiagnosed mental health issues you have suffered due to your hand injury.

Despite the above ailments, I am satisfied that you can do most, if not all, of the things an ordinary person can do if made homeless. You have demonstrated that you have managed to source interim accommodation for yourself when homeless, access your finances, use your very close support network to manage your day to day affairs including budgeting, finances, accessing food, advocacy, representation, consistently attending your medical appointments, taking your medication and chasing your homeless application with the local authority to expedite any support that can be offered. You have also demonstrated that you have been liaising with your landlord in order to progress a managed move to another L&Q property and have been complying with the police in order to further progress your ongoing investigation. I do not deny that you have various medical issues, but I am satisfied that you have demonstrated and continue to show that you are not at risk of harm if homeless and you are not significantly more vulnerable than an ordinary person if made homeless.

Having left your home because of violence or threats of violence that was likely to be carried out

On 27th November 2022 you sustained a hand injury due to a stabbing at the Goat Pub, which is in close proximity to your accommodation. As a result of this injury, you were admitted to hospital and discharged the same day, however you have not gone back to your property through fear of further violence from the perpetrators of the attack. It has been established that the perpetrators live in proximity to your property and you believe that returning to the property will entice a further attack as you feel you will inevitably come into contact with these people.

From information provided by the Met Police and yourself, this attack was perpetrated by individuals who you previously did not know and this was not a planned or premeditated assault. There were no previous threats of violence from the perpetrators, nor has there been any further instances of violence, either actual or threatened, since this attack. The altercation at the Goat Pub has been deemed, both by yourself and the police, as a spontaneous dispute that quickly escalated.

As a result of this attack, you received an injury to your hand which was treated and you are receiving ongoing outpatient treatment as part of your continued recovery. This information has been detailed previously in this decision letter.

Despite you leaving your accommodation through risk of violence, I am satisfied that you can do most, if not all of the things an ordinary person can do if made homeless.

As stated in a vulnerability questionnaire undertaken with you on the 21st December and in subsequent conversations with your caseworker, you admittedly have a close support network who which consists of your mother, your partner and friend Jonathan, the latter of which has been assisting you with accommodation in the interim, which was confirmed in a phone call undertaken by your housing coordinator Lilian Moki. You receive holistic support from your family which includes support with accessing benefits, representation on your behalf, advocacy on your behalf, assisting you with maintaining accommodation, budgeting, food, resources and cleaning. It is an undisputed fact that your support network assist you with many aspects of your activities of daily living and have been continuing to do so since you have been

experiencing homelessness. I would therefore conclude that because of this support offered to you, you can do all of the things and ordinary person would do if made homeless and you would not suffer more harm as a result of leaving your accommodation through threats of violence. You have managed to source interim accommodation via your support network, accessed financial assistance, have continued to be compliant with your medication, food and medical treatments while experiencing homelessness, which has demonstrated that you are not significantly more vulnerable than an ordinary person if made homeless. I am therefore satisfied that leaving your home because of violence has not stopped you from undertaken all the necessary action that I would expect an ordinary person to do if made homeless.

You have also been proactive when liaising with the local authority and your elected member of parliament to further progress your homeless case, which leads me to conclude that you have sufficient understanding of the homeless system to expedite your affairs and move forward any assistance that can be offered to you.

Other Special Reason

The legislation envisages that vulnerability can arise because of factors that are not expressly provided for in statute. You do not appear to have any other issues that would come under this category. I am, therefore, not satisfied that you are vulnerable as a result of factors not expressly provided for by statute.

Under the category of special reason I must consider whether your medical problems and circumstances taken as a whole make you vulnerable as defined. It is important that I do this because whilst no one single medical problem or circumstance may make you vulnerable taken together they might. I have, therefore, looked into all your medical problems and circumstances together as a whole. Having done so, I am satisfied that there is nothing that noticeably differentiates you from ordinary people who are homeless in terms of the harm, injury or detriment you will suffer for the reasons given above. It does appear to me that your capabilities are not noticeably compromised and you are quite capable of managing independently. Whilst I appreciate that it would be stressful being homeless nevertheless I am satisfied that you have sufficient capabilities/resources to ensure that you did not suffer more harm than an ordinary person if made homeless. Therefore, I am not satisfied that you are vulnerable as defined as a result of any special reason.

Given the above, I am not satisfied that you are vulnerable as defined. I have considered your circumstances both singularly and as a whole and do not consider that you are vulnerable for the reasons given above. In reaching this decision I have, as indicated above, had the public sector equality duty well in mind.

I appreciate that if the Council do not give you accommodation that this will have an impact on your mental and physical health and that you may suffer harm and deterioration. However, it is evident to me that you are resourceful enough to prevent yourself from suffering more harm than an ordinary person if made homeless. Indeed, you have been in need of accommodation for some time now and the evidence in front of me does not lead me to conclude that you have suffered more harm than an ordinary person if made homeless.

I do not doubt that you would benefit from being rehoused. It is evident from the information provided that being accommodated will help you deal with your mental health and/or physical health issues better. However, this is not the same as saying that you are vulnerable as defined, especially as the Supreme Court acknowledged that every person is better off being housed.

I appreciate that an ordinary person may not have your pre-existing mental and/or physical health problems. However, the test is not whether you do but whether you are vulnerable as defined and this is linked to the harm you may suffer as a result of being homeless. I am not satisfied that this will be to the extent that you will suffer more harm than an ordinary person if made homeless. For me you have done everything that I would expect of an ordinary person if made homeless, e.g. engage with support services, approach the local authority etc.

Given the above, I am not satisfied that you are vulnerable as defined.

Therefore, I conclude that you are not in priority need under S189 of the Housing Act 1996.

Advice and Assistance

The local authority will continue to assist you for the remainder of your S189b(2) Relief Duty and will be liaising with your landlord to gain safe access back to your accommodation.

If you disagree with this decision

You can request a review of this decision under Section 202 of the Housing Act 1996 as amended within 21 days of being notified of the authority's decision. Please note that review requests made outside of the time limited may not be considered.

Yours sincerely,

Lilian Moki

Specialist Resettlement Coordinator.