

The Ombudsman's final decision

Summary: Mrs X says the Council is at fault in how it handled her request to lease a building it owned. The Ombudsman has found fault by the Council in this matter which resulted in Mrs X's expectations being raised and put her to avoidable expense, time and trouble in pursuing a lease. In recognition of the injustice caused to her he recommended the Council apologise and pays her £750. The Council agreed.

The complaint

1. The complainant, who I shall call Mrs X, complains about the Council's handling of her expression of interest (here after referred to as bid) to lease premises owned by the Council to run her domestic abuse and child contact centre project. She says the Council told her it would lease the premises to her but later retracted its offer. Mrs X says the Council's actions have caused her financial loss, raised her expectations, and put her to avoidable time and trouble in pursuing her bid.

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

4. I discussed the complaint with Mrs X and considered the information she provided. I made enquiries of the Council and considered its response and documents it provided. I set out my initial thoughts on the complaint in a draft decision and invited Mrs X and the Council to comment.

What I found

Background

5. Mrs X and her business partner, Mrs Y, set up a community project with a focus on providing a child contact centre and domestic violence support.
6. In June 2018 Mrs Y asked the Council if it had any premises that might be a suitable base for the project.
7. In August 2018 Mrs X emailed the Council expressing an interest in leasing a particular building which a local councillor had told her would soon be available. The email contained clarification of the services the community project would offer. She also sent the email sent to an organisation she was hoping to secure funding from.
8. In January 2019, the lease on the building was formally surrendered.
9. In February 2019 the Council placed an advert asking for expressions of interest in leasing the building. The expressions of interest would be not be binding and had to be received by 15 March. The Council did not provide any information, criteria or requirements for applicants.
10. The Council received four expressions of interest, including one from Mrs X and Mrs Y and one from a tenant already leasing part of the building. As part of their bid, Mrs X and Mrs Y provided details of the project and their business plan.
11. In April Mrs X asked for an update on her bid. The Council did not reply until June owing to confusion about who was liaising with her and Mrs Y.
12. Later that month Mrs X met with Officer P who was responsible for progressing bids for the building. An email between Mrs X and Officer P following the meeting show that it was constructive, and the Council was supportive of the project running from the building. The email reiterated the project's aims and that it would be supporting some of the borough's most vulnerable residents.
13. Following the meeting Mrs X emailed Officer P again asking for a letter confirming that her project would be able to use the building. She required this so she could secure funding for the project.
14. A letter was provided by Officer P in July. It stated that the Council wished to support Mrs X's project and would provide the shell of the building. The letter also said the costings for the works the Council needed to do to the building were being determined and would need to be signed off by Cabinet before the terms for the lease could be drafted.
15. In August funding for the works required to the building were secured.
16. On 3 September Mrs X emailed the Council asking about progress on arranging the lease for the building. She advised that she had registered the project for tax purposes and with Companies House. Mrs X also said she had engaged solicitors to assist with matters and needed confirmation of the lease to secure funding.
17. Officer P replied the next day advising that he could not give a completion date until he knew she had secured suitable funding.
18. Mrs X replied that the funding would not be released until she could demonstrate she had the use of the building.

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19. In response Officer P gave Mrs X another letter confirming the Council supported her bid to lease the building and that the annual rent for the property would be £4000. It said it expected the building to be available from 11 November.
 20. On 24 September Officer P told Mrs X the Council could not support her bid to lease the building because she did not have a robust business plan and funding. He said for these reasons it would be a “waste of time” to put the bid to Cabinet for approval. He also said her project would not benefit residents of the borough specifically and the Council wanted to lease the building to a project with a local focus.
 21. Mrs X submitted a formal complaint about the Council’s decision and handling of the bid the following day. She said the Council had not given her any criteria or information explaining how it would determine which bid was the most suitable. The Council had also not advised her the project should have a local focus only. Mrs X questioned why her bid had been allowed to progress if presenting it to Cabinet would be a waste of time.
 22. In its reply in December 2019, the Council:
 - acknowledged it did not provide Mrs X with any criteria or requirements for expressions of interest in the building. It did not have any policies or processes in place for assessing expressions of interests but it had now introduced a system for appraising bids;
 - said it did not consider the start-up loan secured by Mrs X would provide sufficient long term funding. Officers has used their professional judgment when assessing this matter and her business plan;
 - offered an apology for saying it would be a “waste of time” to forward her bid to Cabinet. It clarified the phrase meant it could not ask Cabinet to consider a bid which it did not think was financially viable. It also apologised for the late reply to her complaint;
 - said it considered the aims of Mrs X’s project to be worthwhile, it had helped her look for alternative sites in the borough and helped contact people who could help at the County Council; and
 - refuted Mrs X view that she had wasted her time pursuing a lease for the building. It said that her efforts would help her take project forward.
 23. Mrs X remains unhappy. She says she progressed her project on the basis that she would be successful in obtaining a lease for the building as stated in the letters the Council provided to her. She says she spent time and money registering the project, creating a website, working on the bid and purchasing furniture worth £800 which she is now paying to store. Mrs X would like an apology, reimbursement of her costs and for the Council to ensure it uses clear criteria when determining future expressions of interest in its buildings.
 24. In response to my enquiries, the Council acknowledged its handling of this matter had not been ideal. It recognised it had raised Mrs X’s expectations and caused her stress and it offered to pay her £500.

Analysis

25. The Council provided no criteria or requirements to applicants submitting bids to the lease the building. This is fault. Without such information an applicant would be unaware if the particulars of their situation were suitable for their bid to be successful.

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26. In its email of 24 September 2019 the Council told Mrs X that it could not progress her expression of interest because she had not secured suitable funding and her business plan was not robust enough. I consider it unlikely Mrs X would have progressed her interest in the building had she known the criteria the Council would be applying.
 27. Furthermore, the Council was aware of Mrs X's funding situation, having supplied her with two letters to help her satisfy the requirements of potential funders. It had also been in possession of her business plan before providing the letters. If criteria had been in place, I would have expected the Council to have raised its concerns at this point. This would have prevented Mrs X continuing to spend time and money pursuing a lease of the building
 28. I also consider it is unlikely the Council would have provided Mrs X with the letters she sought for her potential funders if criteria had been in place. Those letters said the Council supported Mrs X's leasing the building and provided a likely date for her to be able to occupy the premises. It was therefore reasonable for Mrs X to plan on the basis her bid would be successful and to buy furniture and make other plans for her project.
 29. The Council also belatedly said it could not progress Mrs X's bid because the project would not exclusively benefit residents of its borough. The Council was aware of the nature of Mrs X's project and its aims early in the process. I consider it would have told Mrs X this much earlier if it had applied clear criteria from the outset.
 30. The lack of criteria or policy also calls into question the transparency of how the Council decided which bid was successful. I note it has provided details of the appraisal system it has now been introduced and this retrospectively supports its decision not to give the lease for the building to Mrs X. However, these criteria were put in place after Mrs X's bid was considered and I do not consider the process was transparent in her case.

Agreed action

31. I have identified fault by the Council. This caused Mrs X injustice because it raised her expectations and caused her the expense, time and trouble of pursuing a lease for the building when she would likely not have done so if the fault had not occurred.
32. I accept some of the work and costs will benefit Mrs X's project in future, (such as registering the project with Companies House and HMRC, setting up a website and other planning tasks). However, the time she spent on the matters relating to the lease of the building and securing funding dependent on her acquiring the lease for the building will not. Further, Mrs X has incurred costs in storing furniture she bought after the Council told her she would likely be able to move into the building from the 11 November.
33. In recognition of the injustice caused to Mrs X, the Council has offered to pay her £500. While this offer is welcome, I do not think it suitably addresses the injustice detailed above. I therefore recommended the Council pays her £750. The Council agreed. Payment of the agreed amount should be made within four weeks of my decision.

Final decision

34. I have ended my investigation of this complaint as the Council has agreed to my recommendation which address the injustice caused to Mrs X by the fault I found.

Investigator's final decision on behalf of the Ombudsman