

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint about
London Borough of Ealing
(reference number: 22 002 098)**

1 June 2023

The Ombudsman's role

For almost 50 years we have independently and impartially investigated complaints about councils and other organisations in our jurisdiction. If we decide to investigate, we look at whether organisations have made decisions the right way. Where we find fault has caused injustice, we can recommend actions to put things right, which are proportionate, appropriate and reasonable based on all the facts of the complaint. We can also identify service improvements so similar problems don't happen again. Our service is free.

We cannot force organisations to follow our recommendations, but they almost always do. Some of the things we might ask an organisation to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

We publish public interest reports to raise awareness of significant issues, encourage scrutiny of local services and hold organisations to account.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr and Mrs X

The complainants

Report summary

Housing – homelessness

Mr and Mrs X complained that the Council delayed in moving them and their children from unsuitable temporary accommodation. As a result, they lived in unsuitable accommodation for longer than necessary which Mr and Mrs X consider was detrimental to their health.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

To remedy the injustice to Mr and Mrs X the Council should:

- send a written apology and make a payment of £3,400 to Mr and Mrs X to acknowledge they lived in unsuitable accommodation with disrepair for 17 months due to the Council's delay in moving them to suitable temporary accommodation; and
- review its record keeping procedures to develop a simple and efficient way to briefly record the actions taken to find suitable temporary accommodation for individual applicants.

The Council has accepted our recommendations.

The complaint

1. Mr and Mrs X complained that the Council delayed in moving them and their children from unsuitable temporary accommodation. As a result, the family lived in unsuitable accommodation for longer than necessary which Mr and Mrs X consider has been detrimental to their health.

Legal and administrative background

The Ombudsman's role and powers

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we 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. We 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. Service failure can happen when an organisation fails to provide a service as it should have done because of circumstances outside its control. We do not need to show any blame, intent, flawed policy or process, or bad faith by an organisation to say service failure (fault) has occurred. (*Local Government Act 1974, sections 26(1), as amended*)
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

Relevant law and guidance

5. If a council is satisfied someone is eligible, homeless, in priority need and unintentionally homeless it owes them the main housing duty. A council generally carries out the duty by arranging temporary accommodation until it can make a suitable offer of social housing or private rented accommodation. (*Housing Act 1996, section 193*)
6. The law says councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and household members. (*Housing Act 1996, section 206 and (from 3 April 2018) Homelessness Code of Guidance 17.2*)
7. The duty to provide suitable accommodation is immediate, non-deferable, and unqualified. *Elkundi, R (On the Application Of) v Birmingham City Council [2022] EWCA Civ 601*
8. An applicant has the right to request a statutory review of certain decisions councils make about homelessness. The review decision carries a right of appeal to court on a point of law. Homeless applicants have the right to ask for a review of the suitability of temporary accommodation provided under the main housing duty. (*Housing Act 1996, s202*)
9. Homeless applicants must request a review within 21 days of the date of the decision. However, applicants can ask a council to reconsider the suitability of temporary accommodation at any time. This might be necessary, for example, if there is a change in the applicant's circumstances. The new decision carries a right of review, with a new 21 day timescale. *R(B) v Redbridge LBC [2019] EWHC 250 (Admin)*
10. Councils must complete the review within eight weeks of receiving the review request. This period can be extended but only if the applicant agrees in writing.

Applicants can also appeal if the council takes more than the prescribed time to complete the review. (*Housing Act 1996, sections 202 and 204*)

How we considered this report

11. We considered the complaint and the information provided by Mr and Mrs X's representative.
12. We made written enquiries of the Council and considered its response along with the relevant law and guidance.
13. We referred to our Guidance on remedies (which has recently been revised) which is also available on our website.
14. We gave Mr and Mrs X's representative and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What happened

15. In 2016 the Council decided it owed Mr and Mrs X the main housing duty and placed them in temporary accommodation. This was a two bedroom property on the 10th floor of a building.
16. In May 2021, Mrs X wrote to the Council stating the property was unsuitable due to disrepair which included leaks, damp, mould, faulty windows and exposed electrical cables. She considered the property was putting her family at risk of being hurt or killed. The Council placed Mr and Mrs X on its temporary accommodation transfer list in late May 2021. In response to our enquiries the Council said it considered the property to be unsuitable. The Council later said placing Mr and Mrs X on the transfer list was standard practice while it considered further works and further investigation. It did not consider the property to be uninhabitable.
17. An advice agency requested a review of the suitability of Mr and Mrs X's temporary accommodation in September 2021. In December 2021, the Council asked the advice agency if it wanted to proceed with the review as the Council had already placed Mr and Mrs X on its temporary accommodation transfer list. The advice agency confirmed it did. The Council issued its decision in mid-January 2022 and said the property was unsuitable due to disrepair.
18. In late October 2022, the Council moved Mr and Mrs X and their family to alternative temporary accommodation which is a three bedroom property. The Council has said the time taken to move Mr and Mrs X to suitable temporary accommodation was due to a shortage of three bedroom properties.
19. At the time of our enquiries, the Council said there were 31 other households on the temporary accommodation transfer list waiting for three bedroom accommodation. The average wait is 13 months.
20. The Council has outlined the actions it takes to address the low supply of temporary accommodation. This includes employing dedicated officers to procure private sector accommodation and using social housing options.

Conclusions

21. Mr and Mrs X have complained about matters since 2016. We have not exercised discretion to investigate matters from 2016. This is because it was open to Mr and Mrs X to complain to us before May 2022 and there are no good reasons

to investigate earlier events. We have therefore investigated matters from May 2021.

Suitability of the temporary accommodation

22. The Council has provided inconsistent responses to our enquiries about whether it considered the property to be unsuitable when it placed Mr and Mrs X on the temporary accommodation transfer list in May 2021. The Council has not provided evidence to show it notified Mrs X that it had carried out a statutory suitability review and decided the property was suitable in May 2021. There is also no evidence to show it notified her of her right to seek a review of this decision. The Council has not explained why it changed its position and found the property to be unsuitable in response to the advice agency's later request for a review of the suitability. We also find that it is implausible the Council would have added Mr and Mrs X to its temporary accommodation transfer list given the shortages of accommodation it describes unless it considered their accommodation to be unsuitable. So, on balance, we find the evidence shows the Council considered the property to be unsuitable in May 2021.
23. It is not sufficient for a council to simply place an applicant onto its temporary accommodation transfer list and wait for a property to become available. We expect councils to be able to evidence their efforts to secure suitable temporary accommodation at both a strategic and individual level. The Council has explained the action it is taking to increase the supply of properties at a strategic level. But it has not provided evidence to show the action taken to find suitable temporary accommodation for Mr and Mrs X.
24. The Council has said it is administratively unreasonable for officers to record the actions they take to find suitable temporary accommodation. This means the Council does not have an audit trail to show what it did to find suitable temporary accommodation for Mr and Mrs X. It therefore cannot demonstrate that it actively sought alternative temporary accommodation for them, and this is fault. It is also unlikely other officers could know what action has been taken for individuals if there are no records. The Council should be able to keep a brief record of the actions taken for individual applicants.
25. The Council moved Mr and Mrs X to suitable temporary accommodation in October 2022. It has said the delay in moving them was caused by a shortage of three bedroom accommodation. The Council has provided evidence to show there were only eight three bedroom, four person, properties available between May 2021 and October 2022. We are mindful of the difficulties in procuring housing in London and nationally. But the law says temporary accommodation must be suitable, the duty to provide suitable accommodation is immediate and cannot be deferred. Even if the Council could demonstrate the efforts made to find suitable temporary accommodation for Mr and Mrs X, the delay of 17 months in moving Mr and Mrs X to suitable temporary accommodation would be service failure and this is fault.
26. The delay in moving Mr and Mrs X and their children meant the family lived in unsuitable temporary accommodation for 17 months. Our Guidance on remedies (which has recently been revised) recommends a payment of £150 - £350 for each month spent in unsuitable temporary accommodation. Mr and Mrs X and their children lived with disrepair for 17 months which will have impacted on their day-to-day life. Mr and Mrs X raised a number of repairs with the Council, including repairs to the windows and electrics. They were particularly concerned about the safety of the windows as their property was on the 10th floor and about

the safety of the electrics. Mr and Mrs X have also provided evidence of damp and mould in the property. We therefore consider a payment of £200 a month is appropriate and proportionate.

Other households

27. The Council has said there are 31 households on its transfer list for temporary accommodation. The Council should consider remedying any complaints of injustice from households in unsuitable temporary accommodation in accordance with our Guidance on remedies (which has recently been revised).

Recommended action

28. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
29. In addition to the requirements above, the Council should:
- send a written apology and make a payment of £3,400 to Mr and Mrs X to acknowledge they lived in unsuitable accommodation with disrepair for 17 months due to the Council's delay in moving them to suitable temporary accommodation; and
 - review its record keeping procedures to develop a simple and efficient way to briefly record the actions taken to find suitable temporary accommodation for individual applicants.
30. The Council has accepted our recommendations.

Decision

31. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr and Mrs X. The Council should take the action identified at paragraph 29 to remedy that injustice.