

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to: AUDIT COMMITTEE

Report of: Director of the City Housing Directorate

Date of Meeting:

Subject: Ombudsman Public Interest Report concerning a complaint about Temporary Accommodation (Homelessness).

Wards Affected: All

1. Purpose of Report

- a) In December 2006, the Audit Committee endorsed a framework for informing and involving Members of the Council when the Local Government and Social Care Ombudsman issues a report.
- b) The aim of this report is to inform members about the Ombudsman's report, issued on 24 November 2022, regarding a Temporary Accommodation (Homelessness) Complaint.
- c) As the Ombudsman has found fault causing injustice and have made recommendations to remedy the injustice caused, it should be considered by this Committee on behalf of the City Council.

2. Recommendations

That the Audit Committee notes the Director of City Housing's response to the Local Government and Social Care Ombudsman's recommendations.

3. Background Information

3.1 A copy of the Local Government and Social Care Ombudsman's report dated 13 October 2022 is appended to this report. All Ombudsman reports are anonymous, so, whilst the events described are real, the names of those involved are not included.

3.2 The essence of the complaint:

Mr X complained that he and his family have been in unsuitable temporary accommodation since 2008. He says the Council has failed to move the family to suitable accommodation despite:

- knowing since 2008 the accommodation was unsuitable; and
- accepting the accommodation was unsuitable in September 2021.

Mr X has a disability which affects his mobility, and the property does not meet his needs. He cannot access his home safely and with dignity.

3.3 Mr X complained about matters since 2008. The LGSCO have not exercised discretion to consider matters this far back. This is because the significant passage of time means records are not complete enough to make sound findings.

3.4 The LGSCO have exercised discretion to consider matters since 2014. Mr X was complaining regularly to the Council about his temporary accommodation from this time and the Council failed to treat these as review requests. The injustice Mr X complains about is ongoing. Given his circumstances, the LGSCO are satisfied Mr X could not have complained to them sooner. The passage of time has not affected the LGSCO's ability to conduct a sound investigation because the Council's records are complete enough to make findings on its actions since 2014.

4. The Key Events

4.1 The Council accepted that Mr X and his family were homeless in 2008. The Council provided temporary accommodation. Mr X and his family have lived in the same temporary accommodation since 2008.

4.2 The property has a step up to the front door. It has a bath and no shower. It has not been adapted to make it more accessible to disabled people.

4.3 Mr X has a physical health condition which affects his mobility. In July 2014, the Council's records show that Mr X was by then a "full time wheelchair user". It awarded him extra points on its housing register to reflect this and "the fact [the] property [is] unsuitable".

4.4 In a letter to Mr X the Council said it would make "one more attempt to find alternative accommodation". Since 2014 the Council has not made an offer of alternative temporary accommodation.

- 4.5 The Council's records from 2016 include a form from its consideration of Mr X's case at a 'Senior Officer Panel'. This form says that Mr X "has been living in TA for 8 years. He requires a property which has a number of adaptations. His current TA is unsuitable for his needs".
- 4.6 In 2017, the Council put Mr X on its "Planned Move List" for households who need alternative temporary accommodation.
- 4.7 Mr X asked the Council to review the suitability of his accommodation under s202 in October 2020. The Council responded in September 2021. It said that it accepted the accommodation was unsuitable.

5.The Ombudsman's Findings; *Report issued – Upheld: Maladministration and injustice under Section 31(2) of the Local Government Act 1974.*

Temporary accommodation

- 5.1 Mr X's condition worsened over time. By July 2014, the records show that Mr X was a full-time wheelchair user.
- 5.2 The evidence shows the Council accepted Mr X's temporary accommodation was unsuitable in 2014. It agreed to make him a further offer of temporary accommodation. It did not do so. The law is clear that accommodation provided to discharge the main homelessness duty must be suitable. The Council's failure to provide suitable alternative accommodation at any point since 2014 was fault.
- 5.3 As a result, Mr X has lived in accommodation which does not meet his needs for eight years. He has described the impact on him and his family of not being able to safely enter the property. Mr X says he has fallen often and that his wife must drag him inside, including when she was pregnant. In addition to the physical harm this causes, it also denies Mr X the dignity of being able to access his home safely. This is a significant injustice to Mr X.
- 5.4 The bathroom in the property is not adapted for a wheelchair user. There are grab rails and a bath seat in place to help Mr X bathe. However, Mr X relies on his wife to help him transfer from his wheelchair to the bath seat. This puts both Mr X and his wife at risk of harm and denies Mr X the ability to maintain his personal hygiene independently. This is an injustice to Mr X.
- 5.5 The Council says Mr X has refused offers of accommodation that would be more suitable for him. However, the Council agreed in 2014 to make Mr X a further offer of suitable temporary accommodation and it has not done so. Since 2014 the Council has made four offers of permanent accommodation to Mr X. The records show the Council accepted none of these were suitable for him and withdrew the offers. We do not, therefore, find that Mr X has failed to accept suitable offers which would have ended the injustice sooner.

Review requests

- 5.6 Despite appearing to accept in 2014 and 2016 that the accommodation was unsuitable, the Council failed to treat Mr X's complaints as statutory review requests. This was fault.
- 5.7 When the Council did accept a review request in October 2020, it took the Council 11 months to reach a decision. This is a delay of nine months and was fault.
- 5.8 In response to the LGSCO enquiries, the Council said it has 392 outstanding requests for a review of a homelessness decision. It takes the Council on average 109 days to deal with a review. This is almost twice the statutory timescale of 56 days.
- 5.9 In response to a previous complaint to the Ombudsman, the Council said it was trying to address this backlog by:
- providing training to enable more officers to carry out reviews;
 - seeking to temporarily appoint more staff.
- 5.10 Despite this commitment, the Council is still taking too long to decide on statutory reviews. This is fault and may have caused injustice to others who have not complained.

6. The Ombudsman's Recommendations

- 6.1 Where fault by the Council has caused injustice the LGSCO may recommend a remedy. The LGSCO Guidance on Remedies suggests a payment of between £150 and £350 a month for time spent in unsuitable accommodation, depending on the injustice caused.
- 6.2 Mr X has a health condition which means he has needed to use a wheelchair almost full-time since 2014. The minimum he should expect from suitable accommodation is to be able to safely enter the property. That he cannot do so has put him at risk of physical harm. It has also affected other members of his family, who have to help pull him into the property and help him to return to his wheelchair. Mr X cannot safely access the bathing facilities in his home without physical support. This has increased Mr X's reliance on support from his immediate family and his support network and avoidably limited his independence. For these reasons, the LGSO consider the injustice to Mr X warrants a payment at the higher end of the scale.
- 6.3 Therefore, to remedy the injustice to Mr X the Council has agreed to:
- apologise to Mr X in writing;
 - pay Mr X £300 for each month he spent in unsuitable temporary accommodation from July 2014 until the Council ended its duty in October 2022. This is 99 months and £29,700;
 - pay Mr X a further £300 a month until the Council either makes an offer of suitable alternative accommodation or otherwise ends its duty to Mr X,

should the ongoing suitability review find the current offer to be unsuitable.

6.4 The Council should liaise with Mr X and his representative to attempt to agree a method of payment which does not impact on entitlement to any welfare benefits or otherwise disadvantage the family.

6.5 The Council will also take the following action to improve its services:

- remind relevant staff that a complaint claiming temporary accommodation is unsuitable should result in a decision which sets out the attendant statutory review rights;
- remind relevant staff that any extension to the deadline for responding to statutory reviews should be agreed in writing and any delay communicated quickly;
- ensure communication at the start of the review process makes it clear the applicant can appeal to the county court on a point of law if the Council fails to meet the statutory deadline. Amend any template letters or emails as needed.

7. The Council's View

7.1 The Council accepted the Ombudsman's recommendations at the draft report stage.

7.2 The Council has subsequently carried out the following actions:

- The Council wrote to Mr X on the 21 December 2022 providing a written apology for the failings described in the public interest report of the 22 October 2022.
- The Council contacted Mr X with regards to the award payment recommended in the public interest report. Mr X responded to advise he is still consulting with his solicitor to explore how to receive the compensation award without having an impact on his welfare benefits. The Council are yet to make the payment and are still awaiting further instructions from Mr X and his solicitor on the arrangement for the compensation award release.
- Mr X has been offered accommodation at Oscott Gardens. The first offer at Oscott Gardens was made on the 22 July 2022. This offer was withdrawn further to a statutory review which concluded in October 2022 that this the offer was not suitable. A second offer of accommodation was made at Oscott Gardens on the 3 October 2022. This offer was not accepted; and a court appeal was registered on the 19 December 2022 against the Council's decision.

- The Council's complaint process has been updated to reflect the recommendations of the public interest report. A communication to staff on the provision of information to complainants' on statutory review rights was circulated to staff teams that deal with initial complaints under the Council's stage 1 and stage 2 complaints process. This staff communication states that in responding to a complaint on the unsuitability of temporary accommodation, response information to the complainant is to include information on statutory review rights.
- The Council's review process has also been updated to reflect the recommendations of the public interest report. The Service's internal Review Procedure Guidance document providing procedural guidance to Review Officers describes the process on obtaining a review extension and includes guidance detailing that any extension to the deadline for responding to statutory review should be agreed in writing and any delay to the review process should be communicated to the applicant swiftly.

8. Legal and Resource Implications

The agreed payments will be made from an appropriate budget.

9. Risk Management & Equality Impact Assessment Issues

- 9.1 The main risk to the Council would be further representations from the Ombudsman and Legal representatives on behalf of households in unsuitable accommodation. This could result in both a financial and reputational cost to the Authority.

In order to address and respond to similar future complaints, The Housing Solutions and Support Service have taken the following actions:

- i. A comprehensive review is underway into all households in temporary accommodation, particularly those who have been there for a long period of time or where internal or statutory reviews have identified that the accommodation is either statutory unsuitable or where the household would benefit from moving to accommodation of a different type, in a different area, with specific facilities to meet individual needs of the household etc.
- ii. The Complex Case team are actively working with "long-stayers" in temporary accommodation in order to identify blockages that prevent them from moving on from their temporary accommodation such as an inability to join the housing register, inactivity in bidding for suitable properties, or assistance with medical or mobility needs which the Council may be able to address within the current accommodation rather than moving the household to another unit of temporary accommodation (installation of aids/adaptations, provision of additional unit(s) to accommodate medical equipment).

- iii. The temporary accommodation team has recruited a number of support/move-on officers to work with households in temporary accommodation irrespective of the length of stay, to ensure that these households are registered with Birmingham Choice in order to place bids for suitable properties and, where applicants have been unable to register due to their circumstances rendering them unable to join the housing register (historical tenancy-related debt, language issues, inability to engage with the process), to ensure that these households are provided with support and assistance to enable them to successfully apply to the housing register and to commence bidding for suitable permanent accommodation. For those households where a successful application has been made but there are no bids being placed, these officers will engage with households to ensure that they are either bidding realistically and regularly for properties or are assisted with bidding where they are unable to do so themselves.
- iv. Where due to the household's circumstances (family size, need to be accommodated in a particular area) cannot realistically be met via an offer of Council accommodation, households are being referred to the Accommodation Finding Team for assistance in obtaining accommodation in the private rented sector, where larger properties in higher-demand areas of the city are more readily available. For these households, assistance is provided in terms of rent in advance etc to ensure that they are able to transition into permanent accommodation.
- v. The temporary accommodation team is not working closely with the Allocations Team to identify households with particular housing needs and to offer direct matches where appropriate to up-coming void properties which meet their needs, rather than relying on applicants to actively bid for these properties when advertised.
- vi. The service will shortly be implementing a revised Temporary Accommodation Placement Policy which will prioritise households in temporary accommodation in terms of their need to move and ensure that those where the need is most urgent are prioritised for alternative properties as soon as they become available. This policy is currently awaiting final legal sign-off.
- vii. The service is currently revising internal procedures to ensure that when a complaint is received in future, this is visible to all relevant teams and potential financial and reputational risks are highlighted from the outset in order that households needing alternative accommodation can be fast-tracked either to a permanent offer via the housing register if achievable or alternatively for a move to more suitable temporary accommodation.

- viii. The service has reviewed its internal procedure for addressing complaints from legal representatives before LGO involvement to ensure that we are able to offer swift and comparable financial recompense where necessary, in line with the LGO's published remedies, to acknowledge time spent in unsuitable accommodation and any hardship caused. These households will then be case-managed through the appropriate processes detailed above to ensure that their housing needs are met in their current accommodation (if possible) or a move to alternative temporary or permanent accommodation is expedited.
- ix. The current case management systems are being revised to ensure that in future cases are not dealt with in isolation. When similar complaints are received in future, they will be separately logged in order that they can be managed and monitored by all relevant teams across the service, ensuring that all housing options are being explored at the earliest opportunity to resolve the complaint.

10. Compliance Issues

10.1 The Council has taken the following steps with regards to the recommendations made by the Ombudsman:

- i. The service has agreed to pay the recommended compensation to recognise the errors made in this case.
- ii. The service will continue to pay the recommended monthly amount until suitable accommodation is found.
- iii. A review has been undertaken of all relevant decision letters to ensure that customers are aware of their statutory review rights in relation to temporary accommodation provided to them both when the accommodation transitions from accommodation provided under s188 of the Housing Act 1996 to accommodation provided under s193 (HA 1996) where the statutory right is triggered. Also, when offers are made where the s193 (HA 1996) duty is already in place to confirm that the temporary accommodation is statutorily reviewable from the date of offer for a period of 21 days as per the relevant legislation. As part of the recent service redesign a suite of letters was commissioned from an external provider and the provider has made the necessary changes to comply with the recommendations. The service will also consider non-statutory review requests where the accommodation is not provided under s193 or where a review is received outside of the legislative timescale.
- iv. The review procedures have been updated. As part of the service redesign, the review function was moved from a small team to a service-wide model, ensuring that numerous officers across the service are able to carry out reviews, having had the necessary legislative, procedural and process training. The number of officers

able to carry out reviews has, as a result, risen from 2 to over 60. This will ensure that reviews can be dealt with in accordance with the legislative timescales where possible, although 100% compliance cannot be guaranteed due to the nature and complexity of some reviews. At the same time as this change, the way in which reviews are reported on and monitored has been changed to a live Power BI system, enabling managers and staff to have greater oversight of the progress of current reviews, and highlighting those reviews where the statutory timescale has been breached. This will ensure that management have real-time information on the status of reviews and are able to monitor performance and compliance accordingly.

- v. Review template acknowledgement letters have been updated as required to confirm that applicants have the right to appeal to the county court in default if a decision on their review is not reached within the statutory timescale, which is also confirmed for customers' reference in the letter. The letter further explains that if the Council cannot comply with this deadline for reasons beyond their control, an extension will be mutually agreed with the customer and their representatives before the expiry date, in line with the Code of Guidance.

11. Recommendations

That the Audit Committee notes the actions being taken in response to the Local Government and Social Care Ombudsman's report.

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