

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

**Investigation into a complaint about
Birmingham City Council
(reference number: 21 015 013)**

13 October 2022

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

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

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 X The complainant

Report summary

Housing - homelessness

Mr X complained that he and his family have been in unsuitable temporary accommodation since 2008.

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 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.

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.

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.

The complaint

1. 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.
2. 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.

Legal and administrative background

The Ombudsman's role

3. 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**)
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**)

Temporary accommodation

5. Temporary accommodation (TA) is accommodation provided to homeless applicants as part of a council's main homelessness duty.
6. The law says councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of their household. (**Housing Act 1996, section 206 and 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. Councils must assess whether accommodation is suitable for each household individually. Whether accommodation is suitable will depend on the relevant needs and circumstances of the homeless person and their household. (**Homelessness Code of Guidance 17.4 & 17.9**)
9. Certain decisions councils make about homelessness carry a statutory right of review. The review decision then carries a right of appeal to court on a point of law. Homeless applicants have a right to review the suitability of temporary accommodation provided under the main homelessness duty. (**Housing Act 1996, s202**)
10. Homeless applicants must seek a review within 21 days of the decision. However, applicants can ask a council to reconsider its decision about the suitability of temporary accommodation at any time. This might be necessary, for example, if there is a change in the applicant's circumstances. This new decision is open to review under s202, with a new 21 day timescale. **R(B) v Redbridge LBC [2019] EWHC 250 (Admin)**

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11. 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. (*Housing Act 1996, sections 202 and 204*)

How we considered this report

12. We considered the complaint and the information Mr X's representative provided.
13. We made written enquiries of the Council and considered its response along with relevant law and guidance.
14. We referred to the Ombudsman's Guidance on Remedies, also available on our website.
15. We gave the complainant 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.

Findings

What happened

16. 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.
17. 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.
18. 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".
19. 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.
20. 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".
21. In 2017, the Council put Mr X on its "Planned Move List" for households who need alternative temporary accommodation.
22. 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.

Analysis

23. Mr X complained about matters since 2008. We 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.
24. We 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, we are satisfied Mr X could not have complained to us sooner. The passage of time has not affected

our ability to conduct a sound investigation because the Council's records are complete enough to make findings on its actions since 2014.

Temporary accommodation

25. Mr X's condition worsened over time. By July 2014, the records show that Mr X was a full-time wheelchair user.
26. 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.
27. 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.
28. 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.
29. 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

30. 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.
31. 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.
32. In response to our 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.
33. 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.
34. 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.

Conclusions

35. We find fault with the Council for:
- failing to provide Mr X and his family with suitable temporary accommodation since July 2014;
 - failing to review the suitability of Mr X's accommodation despite his complaints;
 - delay completing a suitability review in 2020;
 - delay issuing decisions on statutory homelessness reviews.
36. These faults caused Mr X injustice and may have caused injustice to others who have not complained.

Recommendations

37. Where fault by the Council has caused injustice we may recommend a remedy. Our Guidance on Remedies suggests a payment of between £150 and £350 a month for time spent in unsuitable accommodation, depending on the injustice caused.
38. 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, we consider the injustice to Mr X warrants a payment at the higher end of the scale.
39. 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.
- 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.
40. 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;

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- 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.
41. 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*)

Decision

42. We have completed our investigation. There is fault by the Council. The action we have recommended is a suitable remedy for the injustice caused.