

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

**Investigation into a complaint against
Birmingham City Council
(reference number: 20 007 658)**

6 October 2021

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

Mrs X the complainant

Report summary

Housing Allocations

Mrs X complained the Council took too long to process her application to join the Housing Register. She also complained the Council didn't properly consider her circumstances before deciding which priority band to award her.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice to Mrs X the Council should:

- apologise to Mrs X. Mrs X's first language is not English. The Council should write to Mrs X in her spoken language or apologise verbally through an interpreter; and
- backdate Mrs X's priority band date to the date she applied in March 2020.

When we find fault causing injustice, we can also make recommendations to the Council to improve its services.

The Council recognises there is a significant backlog of housing applications and has already acted to address it. This includes:

- appointing seven extra officers in May 2020; and
- evaluating IT system enhancements.

These changes are welcome. However, the Council should also take action to reduce injustice to future applicants.

This fault affects thousands of current and previous applicants. However, we are conscious that amending these applications would be a big task and the Council is already overwhelmed. Furthermore, any attempt to remedy the injustice to current or future applicants will disadvantage those already on the register by comparison. Considering this, our recommendations seek to address the cause of the injustice by reducing the delay. To this end, the Council should within three months of the date of this report:

- produce an action plan setting out how it will get processing of applications down to four to six weeks, with target dates. The action plan should include the dates of regular reports on progress to the relevant Council committee.
- review its Housing Allocations Policy to ensure any delay by the Council does not impact on an applicant's priority band date.

The Council should address complaints it receives from other applicants about the impact of this delay in line with our recommendations in this report.

The Council has accepted our recommendations.

The complaint

1. Mrs X complained the Council took too long to process her application to join the Housing Register. She also complained the Council didn't properly consider her circumstances before deciding which priority band to award her.
2. As a result, Mrs X says her application is in Band 2 but should be in Band 1 and she has missed six months of time on the register. Mrs X says this means her family continues to live in unsuitable accommodation.

Legal and administrative background

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 question whether a council's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)

Housing allocations

6. Every local housing authority must publish an allocations scheme that sets out how it prioritises applicants, and its procedures for allocating housing. All allocations must be made in strict accordance with the published scheme. (*Housing Act 1996, section 166A(1) & (14)*)
7. An allocations scheme must give reasonable preference to applicants in the following categories:
 - homeless people;
 - people in insanitary, overcrowded or unsatisfactory housing;
 - people who need to move on medical or welfare grounds;
 - people who need to move to avoid hardship to themselves or others.(*Housing Act 1996, section 166A(3)*)
8. We normally will not find fault with a council's assessment of a housing applicant's priority if it has carried this out in line with its published allocations scheme.
9. We recognise that the demand for social housing far outstrips the supply of properties in many areas. We normally will not find fault with a council for failing to re-house someone, if it has prioritised applicants and allocated properties according to its published lettings scheme policy.

The Council's allocations scheme

10. **Bidding:** The Council operates a choice-based lettings scheme. This means housing applicants can apply for available properties. This is called bidding. The Council advertises new properties on a weekly cycle.

-
11. **Priority band:** The Council places applicants who qualify to join the housing register in a priority band from Band 1 (highest priority) to Band 4 (lowest priority). This priority is the first factor the Council uses to allocate a property.
 12. **Registration date:** This is the date on which the Council first placed an application into a priority band.
 13. **Priority band date:** This is the date on which the Council placed the application into the priority band. This can be different from the registration date if an applicant's circumstances change, and they attract a higher priority band after registration. This date is important because the Council uses it to decide priority within a band. For example, if there are three bids for a property from applicants with Band 1 priority, the applicant with the oldest priority band date will be highest on the list.
 14. **Band 1:** So far as is relevant to this complaint, the Council awards Band 1 where:
 - a medical condition or disability is made substantially worse by current housing. This includes people whose life is at risk or who are completely housebound because of their housing conditions or type of accommodation;
 - there is serious threat to a child and children's services have determined that there is no other way to protect the child.
 15. **Band 2:** So far as is relevant to this complaint, the Council awards Band 2 where:
 - the applicant household is lacking two bedrooms in their current accommodation;
 - the applicant's medical or disability needs mean their housing is unsuitable. This includes applicants who are not housebound or whose life is not at risk, but whose current housing is directly impacting their health;
 - an applicant needs to move to give or receive ongoing care and support.

How we considered this complaint

16. We produced this report after examining relevant documents and discussing the complaint with Mrs X.
17. 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.

What we found

What happened

18. Mrs X applied to the housing register in March 2020. She and her children live in a 2 bedroom flat.
19. Mrs X's husband is Mr Y. Mrs X was a carer for Mr Y. Mr Y has a severe and enduring mental illness. His health meant that although he had his own tenancy, Mr Y needed to live with Mrs X. He also needed his own bedroom.
20. As a result, the children occupied one bedroom, Mr Y the other, and Mrs X slept in the living room.
21. The Council processed the application in September 2020. It awarded Band 3.

-
22. Mrs X asked the Council to look again at its decision about her priority band. She provided some more information from their family support worker about Mr Y's health and its impact on both him and the children.
 23. The Council reviewed its decision in October 2020. The Council accepted the evidence that Mr Y needed his own bedroom and so assessed the family as needing four bedrooms. It decided that Mrs X's application should be in Band 2. It awarded that band from the date of its decision.

Findings

Priority Band

24. The Council's review found that Mrs X should have been in Band 2. The Council did not backdate this priority. In response to our enquiries, the Council accepted that it should have backdated Mrs X's priority band to September 2020, when it processed her application.
25. The Council has already amended Mrs X's application to remedy this fault.
26. Mrs X says her application should be in Band 1. The Council says it took all the evidence into account and awarded Band 2 in line with its allocations policy.
27. We cannot question a council's decision just because someone disagrees with it. We must consider whether the Council made the decision properly, considering all the relevant information, law, and guidance.
28. At first, the Council got Mrs X's priority band wrong. Its own review identified this and changed the band. The Council considered Mr Y's health and the needs of the children. The Council's decision is in line with its allocations policy, which says Band 2 is for applicants who are lacking two bedrooms or whose health is directly affected by their current accommodation.
29. Therefore, we do not find fault with how the Council decided to put Mrs X's application in Band 2.

Delay

30. Mrs X applied to the housing register in March 2020. The Council did not process her application until September. This is a period of six months.
31. The law and guidance do not set out a timescale for processing applications. Nor does the Council's allocations policy. However, we expect councils to deal with applications in a timely manner. Four to six weeks is what we consider an appropriate time to process applications.
32. The Council delayed Mrs X's application by at least five months. This is fault.
33. The Council says it has a significant backlog of applications to the housing register. It receives an average of 500 new applications a week.
34. The Council did not backdate Mrs X's registration date to reflect the delay. This means Mrs X's priority date on the register is later than it would be had the Council dealt with her application more quickly.
35. The Council has provided evidence to show that Mrs X would not have successfully bid for a property between March and September 2020. We therefore do not find that the Council's delay prevented Mrs X and her family from moving to a more suitable home.
36. However, the Council uses priority band dates to separate applications in the same band. This means an applicant with a priority band date of March 2020

would be higher on the list than an applicant with a priority band date of September.

37. Mrs X is not disadvantaged compared to those whose applications were also subject to the delay. She is, however, at a disadvantage compared to those who joined the housing register before the backlog developed, or when it was less significant. This is an injustice to Mrs X.
38. The law says we can investigate matters which come to our attention in an investigation which may cause injustice to someone who has not complained.
39. In this case, the number of people affected by the Council's delay dealing with applications to the register is significant. Of the on average 500 applications the Council receives each week, 45% will be eligible to join the Housing Register. This means the number of people affected by the Council's fault is increasing by an average of 225 a week.
40. Although Mrs X did not miss out on a property, it is likely other applicants have. The delay will particularly affect applicants who would attract a Band 1 priority. This is about 8% of applicants. For applicants who need a one-bedroom property, which comprised 42% of the Council's lettings last year, most in Band 1 receive an offer within five months.
41. Band 1 applicants are most likely to be those with significant disabilities or who need to move in an emergency such as fleeing violence or leaving hospital. These applicants are likely to be the most vulnerable. The delay caused by the backlog is an injustice to these applicants.

Conclusions

42. We do not find fault with how the Council assessed Mrs X's priority band.
43. It was fault for the Council not to backdate Mrs X's priority band date after the review. The Council has already remedied this.
44. The Council's delay in processing Mrs X's application is fault. As a result, her priority band date is six months later than it would be, were it not for the fault. This is an injustice to Mrs X.
45. The delay is not isolated to Mrs X's case. The Council's average time to process an application is, at time of writing, 22 weeks. This service failure is causing injustice to others who have not complained.

Recommendations

46. 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*)
47. In addition to this requirement, to remedy the injustice to Mrs X the Council should:
 - apologise to Mrs X. Mrs X's first language is not English. The Council should write to Mrs X in her spoken language or apologise verbally through an interpreter; and
 - backdate Mrs X's priority band date to the date she applied in March 2020.

-
48. When we find fault causing injustice, we can also make recommendations to the Council to improve its services.
49. The Council recognises there is a significant backlog of housing applications and has already acted to address it. This includes:
- appointing seven extra officers in May 2020; and
 - evaluating IT system enhancements.
50. These changes are welcome. However, the Council should also take action to reduce injustice to future applicants.
51. This fault affects thousands of current and previous applicants. However, we are conscious that amending these applications would be a big task and the Council is already overwhelmed. Furthermore, any attempt to remedy the injustice to current or future applicants will disadvantage those already on the register by comparison. Considering this, our recommendations seek to address the cause of the injustice by reducing the delay. To this end, the Council should within three months of the date of this report:
- produce an action plan setting out how it will get processing of applications down to four to six weeks, with target dates. The action plan should include the dates of regular reports on progress to the relevant Council committee; and
 - review its Housing Allocations Policy to ensure any delay by the Council does not impact on an applicant's priority band date.
52. The Council should address complaints it receives from other applicants about the impact of this delay in line with our recommendations in this report.
53. The Council has accepted our recommendations.

Decision

54. We have completed our investigation. The Council's delay dealing with Mrs X's application to the housing register was fault. This delay caused her an injustice and is causing injustice to others who have not complained.