

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

**Investigation into a complaint against
London Borough of Enfield
(reference number: 19 006 598)**

17 August 2020

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 B	The complainant
Mr B	The complainant's husband

Report summary

Housing – allocations

Mrs B complains the Council has not moved her family into suitable temporary accommodation.

Finding

The Council is at fault for not providing the family with suitable accommodation. This fault has caused the family significant injustice.

Recommendations

To remedy the injustice caused, we recommend the Council:

- apologise to the family for the faults identified;
- completes a Care Act assessment;
- ensures all repairs are completed on the property;.
- ensures equipment provided to the family following the occupational therapy assessments is fit for purpose;
- provides guidance for the complaints team about what constitutes a new complaint;
- pays Mr and Mrs B £250 for each month they have spent in unsuitable accommodation from the date of our previous decision, July 2018, to the month they are suitably housed; and
- writes a procurement policy for securing accessible properties.

The Council has accepted our recommendations.

The complaint

1. Mrs B, with the support of a representative, complains the Council has not moved her family into suitable accommodation.
2. Mrs B says this has negatively affected her husband's health and their family life. It has made it difficult for Mrs B to care for Mr B and their children.

What we have investigated

3. In July 2018, we found the Council at fault for its delay in reviewing the suitability of the family's temporary accommodation. This investigation will focus on Mrs B's complaint that the Council delayed finding suitable accommodation for the family.

Legal and administrative background

The Ombudsman's role and powers

4. 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*)
5. We investigate complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7), as amended*)
6. 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

7. If a council is satisfied someone is eligible, in priority need and unintentionally homeless it will owe them the main homelessness duty. Generally, a council carries out the duty by arranging temporary accommodation until it makes a suitable offer of social housing or private rented accommodation. (*Housing Act 1996, section 193*)
8. Councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of his or her household. This duty applies to interim accommodation and accommodation provided under the main homelessness duty. (*Housing Act 1996, section 206*)
9. In 2015 the Supreme Court said councils should have up-to-date policies for procuring sufficient temporary accommodation to meet expected demand during the coming year. It said councils should also have a policy that explains how accommodation is allocated if there is a shortfall. The Court said these policies should be publicly available. (*Nzolamesco v Westminster City Council [2015] UKSC 22*)

Adult Social Care

10. The Care Act 2014 sets out councils' responsibilities to assess the needs of adults in their area. An assessment identifies an individual's needs, how they impact on their wellbeing and the outcomes the person wants to achieve in day to day life.

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11. Councils assess any adult with an appearance of need for care and support, regardless of whether the council thinks the individual has eligible needs or of their financial situation. Councils must consider all the adult's care and support needs, regardless of any support being provided by a carer.
 12. Councils must involve the adult, their carer if they have one, and anyone else the adult asks to be involved or who has an interest in their welfare. The Care and Support (Eligibility Criteria) Regulations 2014 set the minimum threshold at which needs must be met by a council.
 13. An adult's needs are eligible when they arise from physical or mental impairment or illness; the adult cannot achieve two or more specified outcomes because of those needs; and there is likely to be a significant impact on the adult's wellbeing.
 14. The specified outcomes include:
 - managing and maintaining nutrition;
 - maintaining personal hygiene;
 - managing toilet needs;
 - being appropriately clothed;
 - being able to make use of the home safely;
 - maintaining a habitable home environment.

How we considered this complaint

15. We considered:
 - Mrs B's complaint;
 - the information her representative provided;
 - documents the Council supplied;
 - relevant legislation and guidelines; and
 - the Council's policies and procedures.
16. Mrs B, her representative and the Council had the opportunity to comment on a draft report and all comments were considered before this report was finalised.

What we found

What happened

17. This complaint is linked to a [previous complaint](#) brought to us by the family. The chronology includes key events from the previous case to provide context. It does not cover everything that happened.
18. Mr B has limited mobility and uses a wheelchair or crutches. Mrs B is his carer. They have three young children.

Background

19. In June 2017, Mrs B and her family became homeless. The Council decided it owed them a housing duty under section 193 of the Housing Act 1996. It placed the family in temporary accommodation. However, the family said the accommodation was unsuitable and asked the Council to carry out a review.
20. The Council carried out an occupational therapy assessment in September 2017. The assessment identified that Mr B had needs in addition to those created by

unsuitable housing, for example managing personal hygiene and toileting. The occupational therapist arranged for a ramp, wheelchair and bath lift to be provided to enable wheelchair access through the kitchen to the bathroom.

21. The Council completed the housing review in February 2018 and found the property was unsuitable. An occupational therapy report undertaken as part of the review said Mr B had difficulty accessing the house in his wheelchair. It also found Mr B had needs above those created by unsuitable housing, for example, managing personal hygiene and toileting. The assessment noted the ramp given to Mr B following the assessment in September 2017 did not fit securely and moved when a wheelchair was pushed over it.
22. The assessment found the property could not be adapted to provide wide enough door openings for the wheelchair and level access throughout the ground floor. The assessment recommended Mr B should be rehoused because he needed a property suited to his needs.
23. The Council said it would offer the family alternative accommodation.
24. We investigated a complaint brought by Mrs B that the Council took too long to review the suitability of the family's accommodation. In July 2018, we found the Council was at fault for delay. The review should have been completed within eight weeks of the review request, by August 2017; it took the Council eight months.

Investigation

25. In March 2018, the Council offered Mr B and his family alternative temporary accommodation in a neighbouring Council borough. Mr B refused the offer because the property was not in Enfield. He did not want to move his children to new schools and register with new health care providers. The Council withdrew the offer and said it would make a further offer of suitable accommodation.
26. The Council said it considered Mrs B and her family for properties in February, March, June (two), August and October (two) 2019. The Council claim six of these properties were unsuitable and one was unaffordable. The Council could not provide minutes for the meetings where these decisions were made.
27. Mrs B's representative wrote to the Council in April 2019 because the family were still living in the property. Their representative asked the Council what steps it had taken to secure alternative accommodation.
28. The Council said the Ombudsman had addressed the matters raised by the family's representative and it could not consider the complaint further. It said it was continuing to explore private housing options for the family and explained there was a short supply of properties adapted for wheelchair use. It advised that its procurement team was aware of the need for wheelchair accessible accommodation.
29. In August 2019, Mrs B's representative raised more concerns about the family's accommodation. She told the Council the property had severe mould and mice. She explained the family's landlord was slow to do repairs and these were often substandard and incomplete. She said this worsened the family's existing medical conditions and put their health at further risk.
30. Because of a break in, the kitchen window and front door handle were broken. In October 2019, Mrs B asked her management company to arrange for these to be repaired. She told it because of these problems her home was not secure, and

her family did not feel safe. Mrs B also told the company her toilet was leaking. As of the end of November 2019, the repairs had not been completed.

31. The Council told us it has a shortage of wheelchair adapted houses and there are lengthy waiting times for these. It says the procurement team is aware of the need to procure wheelchair accessible homes. However, the Council has not had a procurement policy since February 2018.

Analysis

32. The Care Act 2014 says the Council must assess any adult with an appearance of need for care and support, regardless of whether the Council thinks the individual has eligible needs or of their financial situation. The occupational therapy reports in September 2017 and February 2018 identified Mr B needed support with outcomes listed in paragraph 14. In these circumstances, the Council had a duty to complete a Care Act assessment and not doing so was fault. The Council says, "a Care Act assessment was not completed as support was given through an OT [occupational therapy] report assisting the housing application". An occupational therapy assessment is not a replacement for a Care Act assessment.
33. Under the Housing Act 1996 the Council has a duty to provide suitable temporary accommodation to those it owes a housing duty. The law does not allow the Council to leave people in unsuitable housing because it cannot find anything suitable. The Council should have enough suitable housing.
34. The Council decided it owed Mr and Mrs B and their family a housing duty in June 2017. The family has been living in unsuitable temporary accommodation since then; the Council confirmed its unsuitability in February 2018. The Council has therefore failed in its duty under the Housing Act 1996 to provide suitable temporary accommodation; this is fault.
35. The Council did not consider the family for any properties that came available between April 2018 and January 2019. The Council says it considered the family for properties in February, March, June (two), August and October (two) 2019 but they were unsuitable. It believes it has made every effort to rehouse the family by looking at all available options such as temporary accommodation, permanent housing and private rented. The Council also says its procurement team is aware of the need to procure wheelchair accessible temporary accommodation. However, the Council has not provided any evidence of its attempts to secure alternative accommodation for the family.
36. Councils should have up-to-date policies for procuring sufficient temporary accommodation. The Council has not had a procurement policy since February 2018, and this is fault.
37. The ramp given to Mr B following the occupational therapy assessment in September 2017 was not fit for purpose. The Council should have addressed this issue when it was noted in the assessment completed in February 2018; not doing so was fault.
38. The Council leased the property from a private landlord via a management agency to meet its duty under the Housing Act 1996 to provide suitable temporary accommodation. Therefore, the Council is ultimately responsible for the landlord's/management company's actions and inactions. Mrs B and her family's accommodation was not secure for at least a month because repairs were not completed. In these circumstances, we would expect repairs to be carried out to secure the property immediately; not doing so was fault.

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39. The Council should have accepted the complaint made by the family's representative in April 2019 because this was a new complaint. The family's first complaint, and our first investigation, was about the Council's delay in assessing the suitability of the family's temporary accommodation. In April 2019, the family's representative was complaining about a new issue; the delay in the Council finding suitable accommodation for the family. Not accepting the second complaint was fault.

Injustice

40. The Council has not provided Mr and Mrs B and their family accommodation that meets their needs. Because of this, the family have lived in unsuitable accommodation for two and a half years.
41. Mr B sleeps on the ground floor on an airbed because he cannot get up the stairs to the bedroom safely. He uses a commode because there is no space to fit frames round the toilet to help him transfer from his wheelchair. Their representative says Mr B finds this degrading and is becoming depressed by the situation. Mr B wants to be able to carry out basic care tasks for himself, such as washing and using the toilet.
42. Being housed in unsuitable accommodation has also negatively impacted on their family life. Mr B cannot access their children's bedrooms so he cannot help to put them to bed or attend to them when they wake. Mrs B has to divide her time between caring for her children and caring for Mr B which is made more difficult by their living conditions.
43. In addition, failure to fix the family's kitchen window and front door has left them worried about security and being broken into again.

Recommendations

44. 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*)
45. In addition to the requirements set out above, we welcome that the Council has agreed to:
- apologise to the family for the faults identified;
 - complete a Care Act assessment;
 - ensure all repairs are completed on the property;
 - ensure equipment provided to the family following the occupational therapy assessments is fit for purpose;
 - provide guidance for the complaints team about what constitutes a new complaint;
 - pay Mr and Mrs B £250 for each month they have spent in unsuitable accommodation from the date of our previous decision, July 2018, to the month they are suitably housed; and
 - write a procurement policy for securing accessible properties.
46. In making these recommendations, we considered our [guidance on remedies](#).

Final decision

47. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr B and Mrs B and their family. The Council should take the action identified in paragraphs 44 and 45 to remedy that injustice.