

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

**Investigation into a complaint against
London Borough of Haringey
(reference number: 16 014 926)**

31 January 2018

The Ombudsman's role

For 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

Ms X	The complainant
Officer A	A manager in the Move on and Temporary Accommodation team
Officer B	A Reviews Officer
Officer C	A manager in the Move On team

Report summary

Subject

Ms X and her family were homeless. She complains the Council placed her in unsuitable temporary accommodation which had no cold water supply in the kitchen and other defects.

Finding

Fault causing injustice and recommendations made.

Recommendations

The Council has agreed to take the following action within three months of the date of this report:

- send Ms X a letter of apology (from the Council's Head of Service);
- pay Ms X £300 a month for 10 months from October 2016 to August 2017;
- pay an additional £20 a week to reimburse her for the bottled water she bought from 19 October 2016 until 31 August 2017;
- pay an additional £15 a week for the extra expense of using laundry facilities outside the flat for the same period;
- tell us what steps it has taken to ensure that any other homeless families placed in the block do not experience similar problems to Ms X;
- put robust systems in place to log and track the progress of review requests to ensure compliance with the eight-week timescale;
- remind officers of the requirement to issue a written decision on every review request.

The complaint

1. Ms X complains the Council placed her in unsuitable temporary accommodation that had no cold water supply in the kitchen and other defects. It then failed to respond to her request for a review of the suitability of the accommodation. It also failed to investigate her complaint at the second stage of its complaints procedure.

Relevant law and guidance

The Ombudsman's role

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*)

Duties to the homeless and suitability of temporary accommodation

3. If a council is satisfied someone is eligible, homeless, in priority need and unintentionally homeless then it owes them the main housing duty. Generally, the Council carries out this duty by arranging temporary accommodation until it makes a suitable offer of social housing or private rented accommodation. (*Housing Act 1996, section 193*)
4. The law says councils must ensure all accommodation it arranges for homeless applicants is suitable for the needs of the applicant and members of his or her household. This duty applies equally to interim accommodation and accommodation provided under the main housing duty. (*Housing Act 1996, section 206*)
5. Accommodation is not suitable if it falls below certain minimum standards. The Council must have regard to the standards set in the Housing Act 2004. The Homelessness Code of Guidance recommends that any accommodation should, as a minimum, be free of Category One hazards assessed under the Housing Health and Safety Rating system. An adequate supply of drinking water is a relevant factor in the hazard assessment and scoring system. The Council should explicitly consider the condition of the building and the risk to the health and safety of the occupiers.
6. The Court of Appeal held that what is suitable is a matter for the Council; It can only be challenged where it is clearly inadequate; '*Suitability [is] to a Wednesbury minimum level of suitability in the nature, location and standard of condition of the accommodation, having regard to the circumstances of the applicant and his or her resident family, including the duration of the likely occupation of it*'. (*Codona v Mid-Bedfordshire District Council [2004] EWCA Civ 925 [2005] HLR 1, CA*)
7. A judgment issued by the Supreme Court has confirmed councils have a legal duty under section 11 Children Act 2004 to consider the need to safeguard and promote the welfare of a child when they decide whether accommodation is suitable. (*Nzolameso v City of Westminster [2015] UKSC 22*)

Review rights

8. Homeless applicants may request a review within 21 days of being notified of the decision on their homelessness application. They also have the right to request a review of the suitability of temporary accommodation provided after the Council has accepted the main housing duty. (*Housing Act 1996, section 202*)
9. 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. Councils must notify the applicant in writing of the review decision. (*section 202(3) Housing Act 1996*)

How we considered this complaint

10. We produced this report after considering documents and photographs provided by Ms X and the Council. The investigator has spoken to Ms X.
11. 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

Background

12. The Council owes Ms X the main housing duty as a homeless person in priority need. The Council accepted the duty after Ms X made a homelessness application in 2015.
13. Ms X and her family were placed in temporary accommodation by the Council. They had to leave that property in October 2016 because of a persistent mice infestation.
14. On 19 October 2016 Ms X, her partner and baby moved to a one bedroom flat on the ninth floor of a high-rise block in Haringey. The flat was temporary accommodation provided under the main housing duty.
15. Ms X paid £97 per week rent (including water rates) for the flat. She was not entitled to Housing Benefit because of her earnings.

Water supply problems in the block

16. The block was built about fifty years ago. It is a large block of flats with a shared plumbing system. The plumbing system has not been replaced since it was built. Since then, residents' demand for water has increased because, for example, most people now have washing machines.
17. Homes for Haringey manages the block. It is an Arm's Length Management Organisation which manages the Council's housing stock and temporary accommodation. The block is scheduled for demolition within the next 18 months to two years as part of a planned redevelopment of the area.
18. The Council has known since at least 2015 that some flats in the block are affected by problems with the water supply. Pending demolition, the Council investigated the water supply and tried to find solutions which are not prohibitively expensive in a block scheduled for demolition.
19. In December 2015, the Council installed new water pumps in the block at a cost of more than £60,000. However, these works failed to resolve the problem and

the Council continued to receive complaints from residents about the lack of cold water supply.

20. This is the second complaint we have received about the cold water supply in the block from a homeless family living in temporary accommodation. We upheld a previous complaint and found the complainant had suffered injustice due to fault by the Council. The Council accepted our findings and our recommendations for an apology and financial redress.

Ms X's complaint

21. Before Ms X and her family moved in, a surveyor inspected the flat on 14 September 2016 while it was empty. He drew up a schedule of repairs and works that needed to be done before the flat could be reoccupied. These included:
- removing rubbish, carpets and furniture left in the flat;
 - stripping polystyrene ceiling tiles and replastering the ceilings and walls in the hallway, kitchen and living room;
 - installing new kitchen units, a sink, drainer and worktop;
 - fitting new wall tiles in the kitchen;
 - a chemical clean of the toilet, bath and wash basin in the bathroom;
 - inspecting and testing the electrical installations;
 - putting in plumbing for a washing machine; and
 - laying a new floor screed and easing and adjusting the bedroom door.
22. We have not seen any evidence a gas safety check was carried out or the water supply and pressure was tested. The surveyor inspected the completed works on 7 October 2016.
23. Ms X collected the keys and viewed the flat on 13 October. She reported some outstanding works to Homes for Haringey including signs of damp and mould and a leak on the bedroom ceiling. A contractor visited on 25 October. He did not find any evidence of a leak in the bedroom but said he would arrange for a surveyor to inspect the room for damp and mould.
24. Ms X had also reported the gas central heating radiators were not working when she moved in on 19 October. The gas meter had been disconnected because the former occupier owed arrears. She says when a gas engineer attended to turn on the supply, water leaked onto the floor from the radiator pipework. The kitchen units had to be dismantled to allow access to some pipework. It was difficult to properly test the system because there was not enough water in the tank. Ms X says she was left with no heating for five days and Homes for Haringey did not provide alternative heating appliances.
25. On 31 October 2016 Ms X wrote to a manager in the team responsible for temporary accommodation and lettings to ask for a review of the suitability of the accommodation. The email was headed "section 202 accommodation review request". She explained her concerns about the condition of the property and the reasons why it was unsuitable for her family. She referred to relevant law and guidance and said the property was unsuitable for the following reasons:
- no space for her son's cot so he had to sleep on a mattress with his parents;

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- general lack of space in the flat for her son to play and to store all their belongings;
 - damp and mould on the bedroom ceiling – they were not using the bedroom because her son was born prematurely and was more at risk from respiratory infections;
 - the property had not been properly checked to ensure it met relevant standards before she moved in; and
 - there was no heating or hot water in the flat.
26. On 1 November Ms X sent an email to two Councillors and the MP. She then raised concerns about the lack of cold water and heating in the flat. She said she could not cook and it was too cold to stay in the flat. She had been forced to stay temporarily with friends and relatives. She said the Council had failed to meet essential requirements to provide heating and water.
27. On 4 November Ms X's letter and complaint were passed to Officer A who worked in the temporary accommodation and lettings team at Homes for Haringey.
28. On 29 November an officer in the Customer Feedback team replied to Ms X's complaint at Stage One of the Council's complaints procedure. She said a surveyor would visit on 29 November to inspect the damp and mould in the bedroom. A separate appointment was booked for 12 December to inspect some holes in walls.
29. The Customer Feedback Officer also referred to a Mechanical Engineer's visit on 16 November. He had witnessed the lack of cold water supply in the kitchen. He knew this was not an isolated fault and other flats on the eighth and ninth floors were similarly affected. He was waiting for survey results from residents and a report from contractors before organising remedial works to boost supply from the water pump.
30. The letter said Officer A would separately consider Ms X's request for a review of the suitability of the accommodation and contact her.
31. Ms X says the surveyor did inspect the bedroom on 29 November. It was only then she was told the marks on the ceiling were smoke damage and not mould. Ms X then decorated the room and the family started to use it in December.
32. Ms X did not receive a suitability review decision. A decision should have been made no later than the final week of December 2016.
33. The Council says all review requests received after September 2016 should have been logged and passed to Officer B. He considered requests for reviews of homelessness decisions and the suitability of accommodation. The Council says Officer B was unaware of Ms X's review request. Ms X's letter remained with Officer A who did not respond or pass it on.
34. Ms X continued to chase up the outstanding repairs and the review decision. On 8 February 2017 she sent an email saying there had been no progress with the repairs. She still had no cold water in the kitchen and she could not use her washing machine. The low water pressure also affected the heating and hot water supply. She was spending £20 a week on bottled water and £15 on laundry costs because there was no cold water supply to fill the washing machine.
35. In the same email Ms X reported frequent lift breakdowns and anti-social behaviour in the block. When the lift was out of order, Ms X had to take the other lift to the eighth floor and then carry her baby and buggy up two flights of stairs to
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the ninth floor. The Council's repair records show the lift broke down 15 times in the 10 months Ms X lived in the flat. Ms X says the lift often remained out of order for days or weeks at a time.

36. On 20 February an officer in the Feedback team apologised to Ms X for the failure to respond to her Stage Two complaint which had been registered in November. She said the manager was considering her suitability review request and she should get a decision within the next two weeks.
37. The Council put Ms X on the list for a transfer to alternative temporary accommodation on 6 March 2017.
38. Ms X did not get a review decision as promised in March. The Council says Officer A left his position and he did not put Ms X's review request on file.
39. On 16 May the Council offered to move Ms X to another flat in the same block. Ms X decided not to accept this offer because she knew other flats in the block experienced similar problems with the water supply.
40. On 13 June Officer B picked up the case. The Council says he upheld the review. But he did not send Ms X a decision in writing.
41. On 6 July another manager (Officer C) at Homes for Haringey wrote to Ms X. He accepted her flat was not suitable because it had no adequate water supply. He apologised for the Council's poor communication with her.
42. On 27 July Ms X attended a meeting with two managers from Homes for Haringey. After the meeting one of the managers wrote to acknowledge she had been left without drinking water for 10 months. He said bottled water should have been delivered to Ms X much sooner and he would now arrange for that to happen. He said the Council had failed to respond to her suitability review request. He told Ms X a private rented sector property had been found for her.
43. Although the manager said the Council would deliver bottled water, Ms X says that did not happen so she continued buying bottled water until she moved out of the flat. She told me there was no improvement in the cold-water supply in the 10 months she lived in the flat.
44. On 31 August Ms X moved to a two-bedroomed property managed by a registered social housing provider. It is private rented accommodation let on an assured shorthold tenancy. Ms X is satisfied with her new accommodation.

The Council's comments

45. The Council says it has changed its procedure for handling homelessness review requests since the events described in this statement. The relevant team now logs and monitors all review requests. They are then forwarded to an external consultant who is contracted to make the review decision on behalf of the Council.
46. Many of the issues in Ms X's complaint were about the suitability of the accommodation. These should have been addressed through the statutory review process rather than through the complaints procedure. The Customer Feedback team contacted the manager in February 2017, following further contact from Ms X, to ask him to complete the review. However, that did not happen.
47. The managers who met Ms X in July 2017 apologised for the Council's failings and its poor communication with her. They agreed to find suitable alternative accommodation for Ms X. Ms X refused the first offer in May 2017 but then moved to new accommodation in August.

Conclusions

48. Ms X and her family spent 10 months in unsuitable accommodation. There was no cold water in the kitchen for the entire 10 months: Ms X told me this was not an intermittent problem at times of heavy demand. She had to buy several six-litre bottles of water at a time to use for drinking and cooking. She could not use her washing machine and took laundry to the launderette or used her mother's washing machine. There was hot water in the bathroom so Ms X and her family could take baths.
49. The lack of a cold-water supply in the kitchen means the accommodation fell below minimum acceptable standards. It was fault to place Ms X and her family in this accommodation particularly when the Council knew about the longstanding problems with the water supply.
50. The lack of water supply affected other flats. It was not unreasonable for Ms X to refuse the offer of a move to another flat in the same block in these circumstances. She believes the Council would not fund major repairs to fix the water supply problem because the block is scheduled for demolition.
51. After she moved in and discovered the defects, Ms X promptly requested a review of the suitability of the accommodation. The Council failed to respond. It should have replied by the last week in December 2016. It did not send her a decision in writing as the law requires. The Council's eventual acceptance that the property was unsuitable for Ms X and her family did not dispense with the legal requirement to issue a review decision in writing. These were serious faults.
52. Ms X used the Council's complaint procedure to try to get matters resolved. The Council says it overlooked the Stage Two complaint. That too was fault.
53. Ms X kept pressing for a response. She raised her concerns with local Councillors and her MP. However, it was not until July 2017 that the Council seems to have grasped the full seriousness of the situation. Even then, it did not follow through on its promise to start delivering supplies of bottled water.
54. Ms X believed the black marks on the bedroom ceiling were mould growth so she stopped using this room. Her baby was born prematurely and is susceptible to respiratory infections. Understandably she was not willing to let him sleep in a room which she believed had mould spores on the ceiling. She did not find out until late November 2016 the marks were smoke damage resulting from a fire in the flat. If she had been told this sooner, she would have decorated the room and started to use it. Instead she, her partner and baby shared a mattress in the living room until December.
55. Ms X and her family were left in unacceptable living conditions for far too long. She was put to the inconvenience and expense of buying bottled water and taking her laundry elsewhere. This caused Ms X and her family real hardship. The injustice was exceptionally severe and prolonged and it affected three people, one of whom was a vulnerable baby.

Recommendations

56. The Council has agreed to take the following action within three months of the date of this report:
 - send Ms X a letter of apology (from the Council's Head of Service);
 - pay Ms X £300 a month for 10 months from October 2016 to August 2017;

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- pay an additional £20 a week to reimburse her for the bottled water she bought from 19 October 2016 until 31 August 2017;
 - pay an additional £15 a week for the extra expense of using laundry facilities outside the flat for the same period;
 - tell us what steps it has taken to ensure that any other homeless families placed in the block do not experience similar problems to Ms X;
 - put robust systems in place to log and track the progress of review requests to ensure compliance with the eight-week timescale;
 - remind officers of the requirement to issue a written decision on every review request.

The Council should also consider the report at its full Council or Cabinet and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended)

Decision

57. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Ms X. The Council has agreed to take the action identified in paragraph 56 to remedy that injustice.