

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

**Investigation into complaints against
London Borough of Haringey
(reference numbers: 17 017 941 & 18 005 090)**

29 March 2019

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 B The complainant

Report summary

Housing

Ms B complains that, when the Council provided accommodation at Property X and Property Y when she and her family were homeless, the Council did not deal properly with her requests to review each property's suitability and failed to deal properly with disrepair at both properties.

Ms B says this left her and her family without cooking facilities, heating and hot water for periods, she had to buy take-away food and she and her family have had unsatisfactory living conditions. Ms B also reports she suffered uncertainty, inconvenience and expense and went to time and trouble pursuing her housing complaints.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused by the faults identified above, we recommend the Council should:

- apologise to Ms B for the injustice its faults caused;
- pay Ms B £1,600 to recognise the injustice its faults caused. This comprises £500 for the injustice related to the faults with the suitability review requests, £1,000 for the injustice related to the disrepair and problems in Properties X and Y and £100 for referring Ms B to the incorrect Ombudsman;
- reimburse Ms B for the cost of cleaning Property Y and for the purchase of curtains and blinds. Ms B should show the Council evidence of the cost if requested;
- conduct an inspection of Property Y with Ms B present. At this inspection, Ms B should point out everything she considers a problem. The Council should check each point, give Ms B a clear schedule of works explaining what it will do about each point (with timescales) and its reasons for any points it will not act on. The Council should then ensure any agreed works are done promptly and should inspect the works on each point after completion, again with Ms B present to identify any points where she is still not satisfied. The Council should keep clear records of what happens, and when, on each point;
- complete an audit of other suitability review requests received between December 2017 and December 2018 to identify any failures to follow the statutory timescale and offer a suitable remedy for any injustice caused; and
- review its record-keeping of temporary accommodation repairs to ensure it has complete records of what happens on every repair request and that it follows up on any jobs that are not completed.

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*)

The complaints

1. The complainant, Ms B, complains that, when the Council provided accommodation at Property X and Property Y when she and her family were homeless, the Council did not deal properly with her requests to review each property's suitability and failed to deal with disrepair at both properties.
2. Ms B says the alleged failures when she lived at Property X meant she and her family were without cooking facilities, heating and hot water for periods, she had to buy take-away food, she and her family lived with damp, leaks and a cockroach infestation, she experienced stress and went to time and trouble.
3. Ms B says the alleged failures regarding Property Y gave her and her family unsatisfactory living conditions, she suffered inconvenience, expense and uncertainty and has been to time and trouble.

The law relevant to this complaint

4. Subject to some other legal restrictions, we have discretion over whether to initiate, continue or discontinue an investigation. (*Local Government Act 1974, section 24A(6)*)
5. 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*)
6. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)
7. We cannot investigate a complaint if someone has started court action about the matter. (*Local Government Act 1974, section 26(6)(c), as amended*) Sending a letter before action in line with a 'pre-action protocol' is not the start of court proceedings.
8. 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*)
9. 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*)
10. 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*)

The Council's role in homelessness applications

11. Part 7 of the Housing Act 1996 and the Homelessness Code of Guidance for Local Authorities set out councils' powers and duties to people who are homeless or threatened with homelessness.

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12. If a council is satisfied someone is eligible, homeless, in priority need and unintentionally homeless it will owe them the main homelessness duty. Generally, the 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*)
 13. The law says councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of his or her household. (*Housing Act 1996, section 206 and (from 3 April 2018) Homelessness Code of Guidance 17.2*)
 14. Homeless applicants may request a review of the suitability of temporary accommodation provided once the council has accepted the main homelessness duty. (*Housing Act 1996, section 202*) The review must be completed within eight weeks. If the applicant is dissatisfied with the review decision, or if a council fails to reach a decision within eight weeks, the applicant can appeal to the county court on a point of law within 21 days. (*Housing Act 1996, sections 203 and 204*)

How we considered these complaints

15. We considered the information Ms B provided and discussed the complaints with her. We made written enquiries of the Council, considered its responses and examined relevant documents. 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

16. The Council owes Ms B and her children the main homelessness duty. It provided temporary accommodation at Property X from December 2017. The Council then offered different temporary accommodation at Property Y in April 2018. Ms B did not move there until June 2018 after some repairs were done. She remains at Property Y.
17. Ms B initially complained to us about matters at Property X and we began an investigation. Later, Ms B also complained to us about matters at Property Y where she was now living. Therefore each complaint has a different reference number. This report covers both complaints because some of our findings are similar, we want to draw public attention to some common points and it is easier for Ms B and the Council to receive one document dealing with both matters.

Suitability reviews

18. In January 2018, we issued a report on someone else's complaint against the Council (our reference 16 014 926). That report is on our [website](#). We found the Council had not dealt with a suitability review request for seven months and had then failed to put its decision in writing. During that investigation, the Council told us that, since the events complained of, it now monitored all review requests and an independent review service decided the reviews. The Council also accepted our recommendations to:
 - put robust systems in place to log and track the progress of review requests; and
 - remind officers of the requirement to issue a written decision on every review request.

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19. So the background to the current complaints is that the Council had undertaken to improve following previous problems with its handling of reviews.
 20. Ms B considered Properties X and Y unsuitable and sought suitability reviews. For the reasons in paragraph 8, we can consider the roles of both the Council and the independent review service it uses.

Request for suitability review - Property X

21. Ms B requested a suitability review on 11 December 2017. The Council acknowledged the request but never decided the review. Council officers chased progress with the independent review service several times. On 12 April 2018, the Council acknowledged the deadline had passed and asked for a further six weeks, without giving a reason. Ms B did not agree the extension. On 17 April 2018, the Council offered Ms B a different property. On 24 April 2018, it said it would therefore not now progress the review request.
22. A council can offer a move instead of reviewing a property's suitability. However, it should do so within the timescale for completing a review. Here, the Council neither decided the review nor offered the new property until four months after Ms B's review request, more than twice the legal timescale. The Council was at fault for the two-month delay.
23. The Council told us that, in the same period of December 2017 to April 2018, it received four suitability review requests, none of which received a reply in eight weeks. So the Council's fault here affected other people, not just Ms B. This would be concerning in any event but is especially worrying as the Council had claimed to us that it was tracking review requests after previous delays.
24. The Council's fault here caused Ms B avoidable frustration and some time and trouble pursuing the matter. Ms B also had avoidable uncertainty and anxiety because, while she awaited a review decision, she did not know if the Council might decide Property X was unsuitable and move her family elsewhere.

Request for suitability review – Property Y

25. When the Council offered Ms B Property Y in April 2018, Ms B considered it unsuitable. She requested a suitability review. The Council passed the request to the independent review service. The eight-week timescale gave the Council until mid-June to complete the review.
26. Ms B agreed a request for an extension till 20 June. On 22 June 2018, Ms B chased a response. The Council apologised. It said the review had not started because it had not yet told Ms B in writing that it considered Property Y suitable. The Council said this was because:

'Reviews are into the decision of the officer and in the case of a property's suitability they are a review into the decision of the officer that the property is suitable for the customer. They are not a review into the property's suitability.'

Ms B promptly reiterated she wanted a review.

27. The Council's distinction between a property's suitability and an officer's decision about a property's suitability is pedantic. It is true the law says the review right relates to '*...any decision of a local housing authority as to the suitability of accommodation offered...*' (*Housing Act 1996, section 202(1)(f)*) However, if the Council offers accommodation, it is implicit that it considers the accommodation suitable so the applicant immediately has the right to request a suitability review. The Council did not dispute the validity of Ms B's review request when she made it.

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28. Also, the distinction the Council drew was not a reason for two months' delay with the review request. The law and statutory guidance give no justification for making an applicant who has requested a review wait indefinitely for the Council to say separately in writing that it considers a property suitable before the review timescale starts. Indeed, the Council's letter of 17 April 2018 offering the accommodation told Ms B she had the right to request a review within 21 days of receipt of the letter. Ms B had the review right then, not two months later.
 29. There was no good reason for the two months' inaction between April and June. The Council wasted all of the statutory eight weeks it had to complete the review. That was fault.
 30. The Council then said the review would be completed by 20 August 2018. On 17 August, the independent review service sought an extension to 14 September, which Ms B's solicitor agreed the same day. After we began investigating the complaint about Property Y, the review service wrote to Ms B on 20 November 2018, saying it was minded to decide the property was suitable, giving Ms B an opportunity to comment. The Council sent Ms B a decision letter on 3 December 2018. The letter stated the Council considered Property Y suitable and told Ms B about her right to go to court on a point of law.
 31. Overall, the Council took almost eight months to complete the review. Allowing for the four-week extension Ms B agreed, that was still five months longer than the statutory timescale. We cannot see a good reason for this. The delay was fault. Again, the fault is compounded by the fact that it happened after the Council had claimed to be following our previous recommendations in order to prevent such delays.
 32. We have considered how this delay affected Ms B. Between April and June 2018, Ms B awaited the review decision while she was still in Property X after the Council offered Property Y. The delay caused her uncertainty because she knew if the Council were to decide Property Y was not suitable, she would not move there and would either remain in Property X or the Council would offer somewhere else. This avoidable uncertainty restricted Ms B's ability to plan. In particular, it prevented her moving one of her children between schools as smoothly as she had wanted to.
 33. From June 2018, Ms B was in Property Y but the uncertainty continued about whether she would remain there or move again, depending on what the review might decide. The prolonged uncertainty and Ms B's understandable frustration, her time and trouble pursuing the matter and her justified anger at the Council's repeated failure to complete an important responsibility, were all injustices resulting from the Council's fault.

Our findings on the Council's handling of reviews overall

34. The Council mishandled both Ms B's review requests over a considerable period. This suggests the Council has not properly improved this important service area since the previous faults we found. That fault caused Ms B significant injustice. The evidence also suggests other homeless people who requested suitability reviews were similarly affected.
35. Commenting on a draft of this report, the Council acknowledged unacceptable delays happened and the changes it had previously made were not effective enough. It added that it no longer uses an external contractor, instead conducting reviews itself, which it says means reviews now happen more quickly.

Suitability of the offers of Properties X and Y

36. Separate from the Council's handling of the review requests, there is the question of whether Properties X and Y were legally suitable offers for Ms B.

Property X

37. As explained above, the Council never gave a formal decision about whether Property X was suitable under homelessness law. As paragraph 14 explained, Ms B had the right to go to the county court when eight weeks passed without a review decision. So the restriction in paragraph 6 applies.
38. If Ms B had gone to court, she would have been at a disadvantage because, while the Council knew why she considered Property X unsuitable, she would not have known the Council's position on the points of alleged unsuitability. So she would have had an incomplete understanding of how likely her appeal was to succeed. Given the potential cost of an unsuccessful appeal, in all the circumstances we considered it reasonable to use the discretion described in paragraph 6 to investigate the suitability of the offer.
39. The Council told us it offered to move Ms B from Property X in recognition of a problem with the gas supply in April 2018, not because it believed any of Ms B's arguments actually made Property X legally unsuitable as temporary accommodation.
40. We have considered Ms B's reasons for arguing Property X was unsuitable. For a property to be suitable as temporary accommodation under homelessness law, the property need not be ideal or even desirable in every respect. A property can have drawbacks and still be suitable as temporary accommodation.
41. Ms B initially sought a review request for the following reasons.
- *Property X is on a busy main road and within a parade of shops, therefore risky to children.* In inner London, it is not unusual for families to live on busy roads. We do not consider this makes a property unsuitable for a homeless family, particularly as Ms B would reasonably be expected to supervise her children in the street.
 - *The main communal entrance door only had a single lock and Ms B's toddler could reach and open it from inside.* The Council's minimum standards say a property's 'front entrance door' should have a rim latch and a five-lever mortice deadlock. However, we take that to refer to the main door entering the accommodation itself, not a communal entrance to flats. Also, it was reasonable to expect that normal supervision would prevent a small child getting from the flat into the communal entrance area. So we do not believe this point made Property X unsuitable.
 - *All the windows look onto brick walls, which Ms B said was bad for her children's development.* While this is clearly not ideal, we do not believe it made the property unsuitable.
 - *Property X is next to a bar, from which there was noise and the bar's customers discarded cigarette ends, which landed on Property X's terrace.* Ms B said the Council's minimum standards for leased temporary accommodation ruled out using properties next to social venues. However, that policy dated from April 2009. The 2015 version of the policy, which applied when Ms B was in Property X, no longer included that point, presumably due to increased pressure on accommodation since 2009.

The 2015 policy said accommodation above premises with late licences was unacceptable. However, Property X was behind, not above, such premises. So it did not breach the Council's minimum standards.

Beyond that, while being so near late-opening premises was not desirable, we must have some regard to the shortage of temporary accommodation in London and to there being many properties for families that might be close to sources of noise, litter or disruptive behaviour. Overall, we are not persuaded that Property X's proximity to the bar made it unsuitable as temporary accommodation, though it was not ideal.

42. Ms B later added that she considered the property unsuitable because there was damp in three rooms and the remedial work would be disruptive. Paragraphs 65 to 69 below give more details. The Council stated it had identified three small, localised areas of damp and it considered most of the repairs straightforward. In the circumstances, we are not persuaded this matter made Property X unsuitable accommodation overall.
43. Ms B also said frequent problems with the boiler made Property X unsuitable. Paragraphs 51 to 58 below deal with this in more detail and explain why we propose to find some fault in the Council's handling of this disrepair. However, while the intermittent boiler problems from December 2017 to March 2018 were undoubtedly inconvenient and should not have happened, the evidence does not suggest Property X was without heating and hot water for such periods as to make it unsuitable accommodation.
44. Ms B later cited the Council's minimum standards policy, which said accommodation with rear access is not acceptable. However, this point is evidently aimed at properties that are *only* accessed from the rear, for example, from a service lane or from behind another property. Property X's access was from the main street to the front. So we see no breach of this point.
45. Ms B also says it was difficult to ventilate the living-room to prevent condensation because it had no windows, just French doors. That is not necessarily unusual in such properties. We do not consider it made the property unsuitable for the family.

Property Y

46. When Ms B complained to us about Property Y, the Council had not yet decided her review request. However, during our investigation, the Council issued a review decision stating it considered Property Y suitable. From then, the position differed from that with Property X, where Ms B had not known the Council's view about suitability.
47. In line with our usual practice, we told Ms B we would not expand our investigation to cover events that happened after our investigation started so the current investigation would not consider the review decision. Ms B therefore made a separate complaint about the review decision. We must consider each complaint on its merits. We decided not to pursue that new complaint.
48. Responding to a draft of this report, Ms B expressed dissatisfaction with the Council's review decision in respect of Property Y's state of repair and affordability. As explained above, the Council's review decision is not part of our current investigation so we cannot comment further on it.

Disrepair

49. The Council leased both Property X and Property Y from private landlords. So the Council held those landlords responsible for some repairs. The Council provided both properties under its homelessness duty towards Ms B. Therefore paragraph 8 of this report applies. We consider the Council is ultimately responsible for the landlords' actions and inactions.

Disrepair - Property X

50. Ms B reported a number of repair problems in the six months she lived in Property X. We shall deal with the points we consider most significant.

Boiler

51. Ms B says the boiler failed repeatedly from when she moved in in December 2017 until a repair on 10 March 2018. The Council told us Ms B first reported a boiler problem on 5 February 2018. However, documents the Council also sent us show Ms B contacted the Council about the boiler regularly from 3 January 2018. Ms B said then that the landlord had frequently sent someone to repair the boiler but she was dissatisfied the boiler was breaking down so often. Ms B described fault codes displayed on the boiler screen.
52. Later in January, the Council acknowledged it failed to tell the landlord about one boiler breakdown Ms B had reported. This left Ms B and her family without heating and hot water for two days. The Council apologised.
53. Also in January 2018, the landlord's representative reported the boiler failures were because Ms B had not topped up the pay-as-you-go system. That claim was incorrect and was therefore fault on behalf of the Council. This understandably annoyed Ms B.
54. On 1 March 2018, Ms B reiterated the boiler faults persisted despite the landlord's representative frequently trying to repair it. On 6 March, the Council established a screw was missing from the boiler flue. That was repaired on 10 March and Ms B said the boiler did not break down again thereafter.
55. An underlying problem with Property X's gas supply (low gas pressure because of an inadequate pipe) might have contributed to some of the failures. We shall deal with this gas supply matter in more detail below. Nevertheless, we have identified some distinct failures by the Council regarding the boiler.
56. The Council was at fault for the incident when Ms B had no heating or hot water for two days in January. That would have caused significant inconvenience to a family with young children in winter.
57. We consider the Council is also ultimately responsible for the failure to notice the missing screw until Ms B had been reporting repeated boiler problems for two months. That was fault. Had this problem been noted and repaired sooner, Ms B might have been spared the inconvenience of reporting and dealing with repeated boiler failures.
58. Several times when Ms B telephoned the Council about problems with the boiler, the Council wrongly disclaimed responsibility for Property X or incorrectly passed Ms B between different departments and contractors. The Council later apologised for this and said it had now given appropriate information to staff. The Council's fault here caused Ms B avoidable time and trouble.

Gas supply

59. Property X received a gas safety certificate less than two months before Ms B moved in. In mid-April 2018, Ms B reported the gas jets on the cooker had gone out. The Council advised her to contact the gas supplier, which found low gas pressure and shut off the boiler. The supplier then investigated and replaced a pipe that was too narrow. This took six days, during which Property X had no gas. Therefore Ms B had no heating, hot water or cooking facilities.
60. Ms B is dissatisfied the Council offered no alternatives, for example, alternative heating, during this time. She reports she had to buy takeaway food as she could not use the cooker and she had to throw away some fresh food she had intended to cook as it did not keep for six days.
61. In recognition of the problems with the gas, in April 2018 the Council offered Ms B alternative accommodation at Property Y. However, it quickly agreed Property Y was not ready for Ms B to move into. So that offer did not deal meaningfully with the immediate problem when there was no gas supply. (We shall deal separately below with other matters about Property Y.) Although the gas supply problem was not the Council's fault, the Council was at fault for its inadequate reaction once it knew of the problem.
62. Ms B argues as she had repeatedly reported boiler problems, the Council should have realised sooner there was a gas supply problem. So she says her family was in a potentially unsafe property because of fault by the Council. The Council disagrees, saying the gas supplier dealt with the pipe problem so it was not a problem caused by the landlord, therefore the Council was not responsible.
63. Evidently this issue was not straightforward. We note Ms B reported boiler problems repeatedly. However, it is also the case that, after the repair in early March, over a month passed with no boiler problems. The inadequate pipework was discovered later after a new problem, with the cooker, not the boiler. So, on balance, we do not consider the Council should reasonably have suspected the boiler failures might suggest a wider gas supply problem rather than just a boiler problem. So we do not fault the Council here.
64. The fact that the gas supplier investigated and resolved the pipe problem suggests it was not a problem for which Property X's owner was clearly solely responsible. Additionally, Property X itself had a current gas safety certificate. So we do not consider the Council was at fault for the existence of some inadequate pipework.

Damp and mould

65. In December 2017, soon after moving in, Ms B told the Council there was damp in a bedroom. Council officers visited and said this was likely to be condensation. Ms B reported damp in the bedroom again a month later. Council officers visited and agreed work was needed to deal with damp (none of which related to condensation) in three rooms. Ms B argues the Council should have recognised the problem as damp, not condensation, at the outset. She points out the officer who said it was just condensation did not use a damp meter, unlike at the second visit.
66. The work appears to have resolved most of the problems except the damp in the bedroom. In March 2018, Ms B reported mould spores there. The Council said the continuing problem resulted from damp coming through the external wall. It stated it would ask the landlord to deal with this by 18 June 2018 as it was not urgent. Ms B says the work had not happened when she moved out at the end of June.

She told us the mould was not significant but she found it worrying because it was in the room where her baby slept.

67. It does appear unsatisfactory that the first visit suggested the problem was probably condensation, apparently without much detailed consideration, when only a month later the Council was able to diagnose damp unrelated to condensation. On balance, we consider the Council was at fault for its first judgement. But for that fault, remedial work might have taken place sooner.
68. However, we also note the problem in the bedroom continued after the initial remedial work and the Council's judgement, after seeing the situation, was that this was not significant. Overall, therefore, while the wrong diagnosis was annoying for Ms B, we do not consider it disadvantaged her significantly in practical terms.
69. After that, the main ongoing problem appears to have been damp and mould in one bedroom. We understand Ms B's concern. However, she and the Council appear to agree there was not a significant amount of mould. Based on its visits and understanding of the situation, the Council was entitled to judge this was not urgent. We do not propose to find fault by the Council on this point.

Cockroach infestation

70. The Council told us it does not have a record of Ms B reporting a cockroach infestation. However, we have seen emails from Ms B to the Council reporting this matter on 8 April, 12 April and 3 May 2018. Two of the emails had photographs of cockroaches attached. One of those photographs is below.



So we are satisfied the Council knew about this problem.

71. There is no evidence the Council did anything. Ms B says in mid-June 2018 the landlord sent someone, who appeared unqualified in pest control and sprayed a substance in the property, which did not reduce the number of cockroaches Ms B found.
72. It is inadequate that nothing happened for two months after Ms B reported the infestation. The Council was at fault for not acting and for later claiming it was not aware of this matter. In the circumstances, we accept Ms B's statement that the landlord's belated action did not improve matters. So the Council is ultimately responsible for Ms B and her family living with the unpleasantness of a cockroach infestation for their final two months in Property X.

Front door lock

73. On 1 March 2018, Ms B reported the lock was broken on the outside door serving Property X and some other flats. On 5 March, Ms B told the Council the lock was still broken and she had tried reporting this to different sections of the Council. She said the door was not secure and one intruder had already got into the communal hall. Ms B added the landlord's attempted repair had worsened the problem. The lock was not repaired until around 10 March.
74. The security of the main door from the street was an important matter. Taking over a week to repair this appears to be fault. The fault caused Ms B to feel insecure in the property, which made her understandably anxious, especially after discovering an intruder.

Intercom entry system

75. There was an intercom entry system so callers at the main door could identify themselves and be admitted to the communal hall, from where Ms B could open Property X's door. Ms B says this only worked for around three weeks of the six months she lived there.
76. From December 2017 to March 2018, Ms B told the Council the intercom was not working and had not been repaired since she initially reported it. The first time Ms B reported this, the Council told the landlord to repair it within three days. By February 2018, the Council apologised for the lack of repair.
77. The intercom was repaired, it seems between mid-March and mid-April 2018. On 9 May 2018, Ms B reported it had stopped working again. In late June, shortly before moving out, Ms B told the Council this had still not been repaired.
78. Ms B says the intercom's not working caused her to miss callers, including deliveries, and several deliveries left at the street door (the courier having obtained no answer from the broken intercom) had been stolen. Ms B also asked visitors and couriers to telephone her when they were at the door. However, this caused some inconvenience as Ms B would then have to take her two small children with her from the flat to open the street door manually. Had the intercom worked, Ms B could simply have opened the street door remotely. By February, Ms B reported she had bought her own bell for Property X but this was also less convenient because callers for the other flats were pressing her bell in error.
79. The evidence satisfies us Ms B is accurate that the intercom did not work for most of the six months she lived there. It was fault for the Council not to ensure a prompt and reliable repair. The fault caused Ms B inconvenience over a considerable period, including chasing the matter, answering the door in person and installing her own bell. She also had to deal with lost deliveries although we do not hold the Council directly responsible if anything was stolen from the doorstep.

Bedroom window

80. Ms B says throughout her time in Property X one bedroom's sash window only stayed open if she propped it open. We have not found evidence of Ms B reporting this before 13 April 2018. After that, we consider it was fault not to repair this in the remaining two months Ms B lived there. This caused Ms B some inconvenience and concern about having a child in that bedroom, in case the child dislodged the item used to keep the window open.

Other points

81. Ms B reported some other matters, for example, rust from a bath panel falling onto the floor (a point Ms B reiterated when replying to a draft of this report), a noisy oven fan, a leaking pipe and the condition of the carpet in the communal hall. We do not consider such matters disadvantaged Ms B significantly enough in practical terms to warrant our considering them further. Instead we have focussed on points of disrepair that might have caused a significant injustice.

Disrepair and related matters – Property Y

82. Ms B has complained about problems in Property Y since the Council offered the property in April 2018 and since she moved in in June 2018. She says some repairs were delayed, or poorly done, or not done at all.
83. Ms B sent us a copy of the Council's document '*Standards for Approved Private Sector Leased Accommodation.*' She says Property Y did not meet some of the minimum standards. However, that document dates from April 2009. It was replaced in 2015 by the Council's minimum property standards policy, which Ms B has also seen. So we have not given weight to the 2009 document. Our references to the Council's standards are from the 2015 policy and a 2016 leaflet about the temporary accommodation letting standard.
84. The Council and Ms B had various records of repair-related matters. The Council's records gave completion or invoicing dates for some jobs, presumably because the Council understood those jobs had been done. However, the records also listed many items as 'cancelled' or 'on hold' without giving any reason. Ms B says she learned from those records that jobs had been cancelled without her having been told at the time.
85. We therefore asked the Council for a comprehensive list of each item of alleged disrepair Ms B or her representatives reported, each item the Council noted at its visits and what happened and when on each item. The Council told us it could not provide this information but it was 'satisfied' all the works were done and no target dates were missed. It is not clear how the Council can be satisfied on those points when its records do not show all the information or target dates and when Ms B clearly disputes that some works have been done.
86. The Council is providing Property Y for Ms B as temporary accommodation under the Council's homelessness duty. Therefore the Council is responsible for resolving any repairs or problems that should be dealt with. It is at fault for not being able to produce evidence for its assertion that it has met its responsibilities.
87. Before offering a property as temporary accommodation, the Council should inspect the property while it is empty to note any work to be done either before or after the new household moves in. It is not clear how the Council inspected Property Y in April 2018 before offering the property to Ms B. The Council says there was an inspection on 9 April 2018. However, the only inspection record we have seen is a 'post-void inspection record' dated 6 July 2018. That was after Ms B moved in and after some works had been done.
88. The lack of clear details of what the Council did about particular reported problems has impeded our investigation somewhat. As far as possible we have reached a view on the balance of probabilities, based on the information from the Council and Ms B. We shall deal first with some general points and then with the more significant individual points.

The Ombudsman's power to consider Property Y's condition

89. The Council's reply to a draft of this report said a claims management company acting for Ms B had recently sent it a letter under the housing disrepair pre-action protocol about conditions at Property Y. The courts expect people to follow that protocol before beginning court action for disrepair. Sending a pre-action letter is not the same as starting court action, as paragraph 7 explained. So we did not automatically lose the power to continue considering this part of the complaint.
90. The Council argues that, as Ms B had the pre-action letter sent, it would be reasonable to expect Ms B to take court action on this part of the complaint so the restriction in paragraph 6 applied and the Ombudsman should discontinue investigating this element. The restriction in paragraph 6 principally applies to matters we can consider before beginning an investigation rather than once an investigation is underway. Nevertheless, using our general discretion described in paragraph 4, we have had regard to the principle of the legal restriction in paragraph 6.
91. The Council argues the pre-action letter shows Ms B is 'willing and able' to take court action and anticipates doing so. From our experience of complainants sending pre-action letters to councils and to us, sending a pre-action letter does not necessarily mean the complainant actually intends to take court action. Further, the point of the pre-action protocol is to seek resolution where possible without having to take court action.
92. Ms B's pre-action letter sought dispute resolution and a meeting. Ms B told us she had the letter sent because she was seeking a resolution rather than because she was necessarily determined to take court action. She expressed concern about the time and effort court action would take and said she intended to await our final report.
93. We are not persuaded the pre-action letter means Ms B is necessarily 'willing and able' to take court action or clearly anticipates taking such action.
94. The Council says a complaint to the Ombudsman should be a last resort. There is nothing in law to support that. Nor has the Council put this argument in relation to any other parts of Ms B's complaints that we are investigating. Complaining to us is free and relatively straightforward compared with taking court action. Also, people can complain to us without losing their right to go to court later whereas anyone who takes court action does lose the right to complain to us, as paragraph 7 explained. That does not suggest we are supposed to be the last resort and is not the position set out in relevant case law (*Anufrijeva v London Borough of Southwark [2003] EWCA Civ 1406*).
95. The law states that, where someone could take the matter to court, we can investigate if we are '*satisfied that in the particular circumstances it is not reasonable to expect*' the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*) Here, 'the particular circumstances' include:
- Our investigation was already at an advanced stage, indeed, we had already issued a draft report, when the question of the pre-action letter arose.
 - We have been able to establish the key facts and make draft findings and recommendations about the disrepair in Property Y.
 - The pre-action letter only covers disrepair in Property Y, which is just one part of Ms B's multi-faceted complaints we have investigated. We consider it sensible for us to deal with all parts of the complaints together.

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- If we complete our investigation with the current recommendations and if the Council accepts those recommendations, Ms B might be satisfied and not take further action. Discontinuing our investigation of this point now would deprive Ms B and the Council of the benefit of considering our fairly straightforward proposed remedy (below) and would instead involve both parties in the time and expense of pursuing the pre-action process and possibly going to court.
 - The public interest is better served by us issuing a report drawing attention to all the faults found, including regarding conditions at Property Y.
96. For the reasons above, and having spoken to Ms B, we do not consider it is reasonable in the particular circumstances to expect Ms B to take court action on this point. Therefore we have continued dealing with the complaint about the condition of Property Y.
- General points*
97. Ms B viewed Property Y on 17 April 2018 and immediately expressed concern about its condition. Council officers visited and on 26 April and agreed 21 items of repair were needed. The Council also sent Ms B a list of intended repairs on 1 May 2018. It later apologised for giving conflicting and confusing information about which of those works would be done and when.
98. In June, Ms B said most works had not yet happened. The Council said it told the landlord on 27 June to finish outstanding works by 19 July. On 13 July, the Council told Ms B it would agree the scope of any outstanding or further works by 27 July. On 5 September, Ms B said most of the promised works still had not happened.
99. Meanwhile, in August 2018 a surveyor instructed by Ms B visited Property Y and sent the Council a list of recommended repairs. These included some items that were outstanding from the earlier lists. On 2 October, after a Council manager visited Property Y, the Council agreed to arrange some more works Ms B wanted although it said these were not all items of disrepair and it considered Property Y's condition was sound overall.
100. The Council noted on 21 November 2018 its contractor said all the remaining works were done (except a job to a sink unit that turned out to be impracticable). However, the Council did not address Ms B's point, in an email the previous day, that some of the listed work had not been done.
101. Ms B states nine items the Council had initially agreed in April 2018 remained undone in December 2018, after the Council claimed everything had been completed. Ms B has also seen records between the Council and a contractor and she states the contractor has claimed to have completed works that were not in fact done.
102. Some items on the various repairs lists overlap, others are different. This is not necessarily surprising as circumstances at a property might change over time. However, the Council should have a clear record of what works it agreed and when each item was completed, with an explanation of any gaps. It does not have that. Instead, in each case, issuing a list of repairs was seemingly followed by confusion about what would happen and when and a lack of clarity about whether and when all the agreed jobs were done.
103. It would be disproportionate for this report to give details of every problem Ms B reported or the Council identified. Instead, we shall cover some of the items we consider more significant, where we have concerns.

Window locks

104. Some windows lacked locks, which the Council considers essential before a family can move in. The Council says the landlord had agreed to do these works while the property was empty and it does not know why this did not happen. These works were not done until June 2018, after which Ms B moved in. Responding to a draft of this report, Ms B said while there is something on the kitchen window that might be a lock, she has never had a key for it so cannot lock it.
105. The key point here is that the Council should have noticed the absence of any window locks at the void inspection, rather than waiting for Ms B to notice it on viewing the property. This was fault, which delayed Ms B being able to move.
106. If the kitchen window cannot currently be locked, our recommendation d) below should enable that to be resolved.

Cleanliness

107. The Council's leaflet for sub-tenants of properties such as Property Y says properties should be 'thoroughly cleaned' before being offered. At Property Y, Ms B found rubbish left behind radiators, food left in the oven and the cooker not cleaned. The Council then arranged to remove the rubbish in the house and replace the oven. The Council is at fault for not noticing or addressing those points at the void stage. It is also at fault for leaving debris from the oven removal outside Property Y for about four weeks.
108. Ms B says she had to have the property cleaned before moving in. She sent us a cleaner's bill for £17.50. The Council says tenants often choose to clean a property themselves before moving in. That might be true but it does not overcome the evidence that the Council failed to meet its own standard of 'thoroughly' cleaning the property before offering it. In the circumstances, we consider, on balance, that Ms B's having to clean the property resulted from the Council's failure to do so rather than just her own preference. We do not consider it unreasonable for Ms B to have paid a cleaner.

Garden clearance

109. The Council's leaflet also said a property's garden would be cleared of rubbish when the Council offered the property. Ms B reported rubbish in the garden at the outset. The Council agreed to remove it. Ms B says the rubbish was never cleared. The Council's records note Ms B reporting this matter more than once but contain no evidence the Council resolved it. On balance, we accept Ms B's account. The Council is at fault for this failure.

Garden fence and gate

110. The Council's procedure says these should be 'in a serviceable condition' when it offers a property. On first seeing Property Y, Ms B reported the garden fence was in a poor state on one side. On 26 April 2018, the Council agreed to replace this. Ms B and her representatives continued reporting this matter, saying on 5 June the whole length of fence had fallen down. The Council said the target date for completion was 13 July. However, it appears the work only happened in late September or early October 2018. The records do not suggest any good reason for the delay.

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111. Ms B reported the garden gate was in disrepair on 5 June 2018. She continued reporting this. The Council cancelled the planned repair for unknown reasons. The gate was repaired on 16 October.
112. We consider the Council was at fault for taking so long to complete these works. The fence and garden clearance being incomplete would have limited Ms B's and her children's use of the garden as well as causing some justified concern about security. The delay also caused Ms B avoidable time and trouble pursuing the matter.

Windows

113. In April 2018, the Council agreed to replace a downstairs window that did not close. In June, the Council told Ms B it had told the landlord to replace several ill-fitting downstairs windows. At least one of those works (in the living-room) was outstanding in August 2018. It is not clear when these repairs happened. Meanwhile, on 11 June 2018 Ms B reported a bedroom window frame was rotten. She pursued this several times but any repair appears only to have happened in September.
114. It seems unlikely these faults developed suddenly after Ms B moved in. Rather it is more likely they were present while the property was void and the Council failed to notice these problems. We consider that was fault. The delay repairing the window frame between June and September was also fault. But for those faults, Ms B would have had better thermal insulation sooner in the affected rooms and would also have been spared time and trouble pursuing the matters.
115. Responding to a draft of this report, Ms B said the window frames were only repaired externally, not internally and many of the window frames are rotten. Ms B states this affects the property's energy efficiency and might be a safety problem.
116. Our recommendation d) below will enable Ms B to point out everything she is concerned about and obtain a response from the Council. Inadequate window frames might well affect energy efficiency although we could not calculate this exactly. We consider the payment recommended at recommendation b) below appropriately covers all aspects of inadequate living conditions resulting from the Council's faults.

Curtains and blinds

117. The minimum standards document says, '*All habitable rooms to have curtains and blinds that are in good condition.*' Ms B reported there were no blinds or curtains so she had to supply them herself. We have not seen evidence the Council disputed Ms B's account. So the Council seems to be at fault here, which caused Ms B the expense of getting curtains and blinds.

Door frames

118. In April 2018, Ms B said some of the door frames were rotten. The Council agreed to replace the rotten bathroom door frame. In June, the Council stated three door frames were rotten. It seems poor the Council had not noticed this problem at the void inspection. Ms B repeatedly told the Council the remedial work had not been done, including after the Council said it understood the landlord had done works. Work did not happen until November 2018. Ms B says even then the door frames were not replaced as intended, just packed with some material and painted.
119. Taking seven months to deal with this was fault, which caused Ms B inconvenience and repeated avoidable time and trouble contacting the Council. It also seems questionable whether the door frames have been properly repaired.

Mould

120. Between April and September 2018, Ms B repeatedly told the Council there was mould around the bathroom sink that was not coming off with normal household cleaning products. Ms B says in July the Council sent workers who only proposed replacing the sealant and mastic and painting over the mouldy tiles rather than dealing with the mould. Ms B refused that proposal as inadequate.
121. The Council says an inspection in September 2018 found mould behind the bathroom sink that required treatment. It states it found no evidence of mould in the front bedroom but agreed to apply mould block there as Ms B was concerned. On 20 November Ms B told the Council no mould treatment had happened. The Council appears not to have checked the discrepancy between Ms B's statement and the Council's contractor saying at the same time all works were complete.
122. A works list Ms B obtained seems to show the bathroom works should have included cleaning mould off the walls and replacing wall tiles. However, Ms B says no new tiles were fitted, instead one old tile was removed then re-fixed.
123. The Council appears to be at fault for taking so long to deal with this and for not checking the mould treatment work had actually been done even when Ms B said it had not. As a result, Ms B and her family lived with mould in the bathroom for many months longer than necessary and it is not clear if this has been resolved.
124. In April 2018, the Council also agreed to fix the bathroom sink and its surround to the wall, from which it had come loose. This work was still outstanding in mid-August, for no apparent reason. It is not clear when this was done. That, too, was fault, which caused some inconvenience.
125. Responding to a draft of this report, Ms B said mould and damp problems continue. She stated the Council said the mould was due to condensation therefore within her control, which she disputes. We consider our recommendation d) below will also cover this point.

Decoration and wall plaster

126. When Ms B removed some wallpaper in a bedroom, the plaster fell away. Ms B is unhappy the Council has not dealt with the exposed crumbling plaster. Ms B says she does not want to allow a child to sleep in the room so two children are sharing a bedroom.
127. The Council says this problem happened because Ms B removed wallpaper without written permission. Ms B says a Council manager, who has since left, said she could decorate and the Council only said she needed written permission after she started removing wallpaper. Ms B reiterated this when responding to a draft of this report. The Council has no information about what the manager allegedly said but points out Ms B's sub-tenancy agreement said she was '*Not to make any alterations to the property or its fixtures.*'
128. Ms B also points out her survey found that some plaster underneath wallpaper elsewhere in Property Y was not in good condition and might crumble or fall out if exposed. The Council's position is that there is no danger to the plaster if the wallpaper is not disturbed.

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129. We do not believe we can reach a clear enough view, on balance, about what a manager might have told Ms B. We note what the sub-tenancy agreement says. Overall, there is not enough evidence the Council was at fault on this point.

Provision of toilets and sinks

130. The toilet is separate from the bathroom. Ms B is dissatisfied there is no sink in the toilet and that there is no upstairs bathroom. She says these points are particularly undesirable as she has young children, one of whom is toilet training. The Council has not agreed to install further facilities.
131. We understand why another sink and an upstairs bathroom might be desirable but we do not consider they are necessary to provide a reasonable state of repair. Those are not items of disrepair. Insofar as they relate to arguments about Property Y's suitability as temporary accommodation for Ms B, we cannot consider them, as paragraphs 46 to 48 explained.

Other points about Property Y's condition

132. Ms B raised other concerns about Property Y but it would be disproportionate to list them all. The important points are that the evidence does not give a clear overall picture of what happened on every report of disrepair but it shows clear failures to notice some items of disrepair and to follow through properly even once the Council committed to doing certain repairs. There was fault here. It had a significant adverse effect on Ms B, including living conditions worse than they should be, time and trouble pursuing matters and having to take time off work to allow access for repairs.

Further points in Ms B's response to a draft of this report

133. Responding to a draft of this report, Ms B said the Council will only pursue repairs that are necessary under section 11 of the Landlord and Tenant Act 1985. We note that but it is not our role to decide precisely what the Council's legal obligations are.
134. In her response to our draft, Ms B also said the amount of disrepair was unreasonable and she was concerned with how the Council checked the property when it was empty and how it considered health and safety. We note all those comments. The important point for us is that we agree the Council was at fault for the disrepair. We have recommended a remedy for that (see below), which we consider adequate.
135. Ms B's response also mentioned an infestation of ants at Property Y. We understand the Council has taken some action but Ms B reports the problem continues. We have drawn this point to the Council's attention and suggested it might consider either referring this to its environmental health section or taking other action.
136. Ms B states Property Y had a cracked window when the Council offered it. We are not clear whether this has since been repaired. If it has, it is not significant enough to investigate further now. If it has not been repaired, Ms B can report this at the inspection in recommendation d) below.
137. Ms B also says there are cracks and blown plaster in walls and ceilings and protruding nails in the floor, contrary to the Council's minimum standards. Ms B has not reported the nails to the Council. In the circumstances, we shall not consider that point further now.

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138. Our recommendation d) below will enable Ms B to raise all these concerns with the Council, which can then take action as appropriate.

The Council's complaint-handling

139. Ms B took her complaints about disrepair in Properties X and Y through the Council's formal complaints procedure. When the Council finished considering the complaint about Property Y, it told Ms B if she was still dissatisfied she should contact the Housing Ombudsman Service.
140. That was incorrect. The Local Government and Social Care Ombudsman considers complaints about temporary accommodation provided under the Council's homelessness duties. The Council should have known this from its experience of other such complaints we have investigated. The Council's fault here caused Ms B some avoidable time and trouble complaining to the wrong ombudsman before coming to us.

Conclusions

141. There were faults by the Council in its handling of both of the suitability review requests and in its handling of Ms B's reports of problems at each property. Those faults caused Ms B significant injustice.

Recommendations

142. To remedy the injustice caused by the faults identified above, we recommend the Council should:
- a) apologise to Ms B for the injustice its faults caused;
 - b) pay Ms B £1,600 to recognise the injustice its faults caused. This comprises £500 for the injustice related to the faults with the suitability review requests, £1,000 for the injustice related to the disrepair and problems in Properties X and Y and £100 for referring Ms B to the incorrect Ombudsman;
 - c) reimburse Ms B for the cost of cleaning Property Y and for the purchase of curtains and blinds. Ms B should show the Council evidence of the cost if requested;
 - d) conduct an inspection of Property Y with Ms B present. At this inspection, Ms B should point out everything she considers a problem. The Council should check each point, give Ms B a clear schedule of works explaining what it will do about each point (with timescales) and its reasons for any points it will not act on. The Council should then ensure any agreed works are done promptly and should inspect the works on each point after completion, again with Ms B present to identify any points where she is still not satisfied. The Council should keep clear records of what happens, and when, on each point;
 - e) complete an audit of other suitability review requests received between December 2017 and December 2018 to identify any failures to follow the statutory timescale and offer a suitable remedy for any injustice caused; and
 - f) review its record-keeping of temporary accommodation repairs to ensure it has complete records of what happens on every repair request and that it follows up on any jobs that are not completed.
143. The Council has agreed recommendations a), c), d), e) and f). We welcome that.

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144. On recommendation b), the Council agreed to pay the £500 recommended regarding the suitability review requests. The Council has not yet agreed the recommended payment in respect of the properties' conditions because it said we should not make recommendations concerning Property Y as the Council believed Ms B should take court action on that aspect. The Council suggested we make a recommendation just about Property X. We have explained above why we do not consider it reasonable to expect Ms B to take court action about Property Y. So we are satisfied recommendation b) in its entirety remains appropriate. We encourage the Council to agree.
145. A draft of this report also recommended the Council review what happened to Ms B's two review requests and make any changes necessary to ensure it meets the review timescales. In response, the Council explained it has already changed its procedures as described in paragraph 35, to positive effect. In the circumstances, we no longer consider our recommendation on this point necessary. Nevertheless, the Council could reasonably have a mechanism in its new procedure to ensure it meets the statutory timescales for completing reviews.
146. 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*)
147. If the Council accepts these recommendations, it should then complete points a) to c) within one month of accepting the recommendations. On point d), it should contact Ms B within one month and complete the rest of point d) without undue delay thereafter. It should complete points e) to f) within three months of accepting our recommendations.

Final decision

148. We have completed our investigation with a finding of fault causing injustice.