

Report for: **Cabinet 15 September 2020**

Title: **Findings of an Ombudsman investigation into the case of Ms B, where a report has been issued**

Report
Authorised by: **Bernie Ryan, Monitoring Officer and Assistant Director of Corporate Governance**

Lead Officer: **Bernie Ryan, Monitoring Officer and Assistant Director of Corporate Governance**

Ward(s) affected: **N/A**

Report for Key/
Non-Key Decision: **Non-Key Decision**

1. Describe the issue under consideration

- 1.1 Ms B (a pseudonym) complained about the Council to the Local Government and Social Care Ombudsman (“the Ombudsman”). Her complaint related to the way the Council dealt with her homelessness application.
- 1.2 On 25 June 2020, the Ombudsman published a report (shown at Appendix 1) finding fault with the Council and making recommendations as to the steps to be taken by the Council as a result.
- 1.3 It is for Cabinet to note the steps taken so far and decide what further steps should be taken.

2. Cabinet Member Introduction

- 2.1. A report from the Housing Ombudsman in June 2020 found the Council at fault with regard to a resident’s homelessness application. I would like to take this opportunity to apologise to Ms B for the distress caused by the Council’s failings. I am however glad to note that Ms B has been financially compensated and is now being housed in a suitably sized home let by the Haringey Community Benefit Society. I am also glad that the Council has taken the opportunity to learn from this incident and has taken steps to ensure that this mistake does not reoccur.

3. Recommendations

It is recommended that Cabinet:

- 3.1. Accepts the findings and recommendations of the Ombudsman in the report shown at Appendix 1.
- 3.2. Notes and approves officers’ compensatory payments to Ms B totalling £5,304.37, as set out in paragraph 6.14 below.

- 3.3. Adopts this report as the Council's formal response under s.31 Local Government Act 1974, to be communicated to the Ombudsman.
- 3.4. Adopts this report as the Cabinet's formal response as required by s.5A Local Government and Housing Act 1989, for distribution to all members and the Monitoring Officer.

4. Reasons for decision

- 4.1. As set out in the Ombudsman's report, Ms B has been found to have suffered injustice as a result of faults on behalf of the Council.
- 4.2. Where a report such as this is made by the Ombudsman, it must be laid before the authority (s.31 Local Government Act 1974). In cases such as this where the Council is operating executive arrangements, "the authority" means the executive, i.e. Cabinet (s.25(4ZA) Local Government Act 1974).

5. Alternative options considered

- 5.1. The Ombudsman cannot force the Council to follow its recommendations, but local authorities generally do follow them.
- 5.2. If the Ombudsman is not satisfied with the Council's response, he will make a further report explaining this and making recommendations. He can also require the Council to make a public statement about the matter.
- 5.3. Therefore, Cabinet could choose to reject any of the recommendations made by the Ombudsman.
- 5.4. However, this alternative is not recommended because the Ombudsman's recommendations represent an appropriate remedy for the reasons set out above.

6. Background information

- 6.1. The full background is set out in the Ombudsman's report, as shown at Appendix 1.
- 6.2. The Council was at all times acting through its agent Homes for Haringey (the Council's Arm's Length Management Organisation set up to manage housing) to whom the relevant functions had been delegated.
- 6.3. Ms B has six children, some of whom have disabilities.
- 6.4. In February 2019, Ms B was living in private rented accommodation. She initially made a homeless application to the Council because she felt her family were not safe at her current address. Her landlord then served her with section 21 notice seeking possession, i.e. the first step towards evicting her.
- 6.5. In June 2019, the Council found that:

- Ms B was threatened with homelessness and eligible for assistance. She was deemed likely to become homeless within 56 days because her landlord had served her with a section 21 notice that had expired.
 - It was reasonable for Ms B to remain in the property because there was no ongoing threat of violence and it was an adequate size. One of her disabled children required a separate bedroom but this could be achieved by reconfiguring the family's sleeping arrangements.
- 6.6. In August 2019, Ms B provided evidence of threats to harm her. The Council consulted the police, who recommended re-housing Ms B in order to reduce the risk. The Council advised Ms B that an immediate move into emergency housing was not warranted but, if she was unable to find suitable accommodation by the time the eviction process had taken its course, they would consider providing emergency accommodation.
- 6.7. In September 2019, the Court ordered Ms B to leave her home by the end of the month and pay her landlord's costs of £424.50.
- 6.8. In October 2019, Homes for Haringey's Head of Housing Needs informed officers that she was concerned Ms B had been told housing would not be provided until she was evicted. This was because, following the Homelessness Reduction Act 2017 coming into force on 3 April 2018:
- Under the Housing Act 1996, a person is homeless if they do not have accommodation that they are entitled to occupy, which is accessible and physically available to them (and their household) and which it would be reasonable for them to continue to live in. Councils must take reasonable steps to ensure accommodation does not stop being available (the prevention duty) and secure accommodation for any eligible homeless person (the relief duty).
 - The Code of Guidance states that it is unlikely to be reasonable for an applicant to remain in occupation beyond the expiry of a section 21 notice and housing authorities should not consider it reasonable for an applicant to remain in occupation until the court issues an eviction warrant. Authorities should ensure homeless families are not evicted through the enforcement of a court order as a result of a failure to offer suitable accommodation.

However, unfortunately there was no evidence that appropriate action was taken to remedy the situation as a result of those concerns.

- 6.9. Ms B complained to the Ombudsman in November 2019. In summary, the issues were:
- Failing to find alternative accommodation for Ms B before she was evicted by her landlord (on 11 February 2020).
 - Once Ms B was evicted, placing her family in bed and breakfast accommodation for more than 6 weeks (i.e. beyond 24 March 2020).

6.10. Ms B was evicted on 11 February 2020. She subsequently attended the Council's offices and was placed in a hotel. Due to the size of the family and booking problems, the family were placed in different rooms, had to move hotels and Ms had to pay for one night out of her own money.

6.11. Ms B moved to suitable five-bedroom accommodation let by the Haringey Community Benefit Society on 15 June 2020.

6.12. The Ombudsman has recommended that action be taken to remedy this. In essence, the recommendations seek to compensate Ms B for the additional costs incurred by her as a result of the above and ensure the fault is not repeated in the future.

The Ombudsman's recommendations

6.13. The Council should apologise to Ms B.

6.14. The Council should pay Ms B £5,304.37. This is comprised of:

- Ms B's cost orders from the court proceedings, in the sum of £424.50.
- £1,500 to reflect Ms B's avoidable distress, reflecting the fact that Ms B has six children (one of whom is exceptionally vulnerable) and had to move between hotels, causing additional distress and upheaval;
- £250 for each week she has remained in bed and breakfast accommodation between 24 March 2020 and 15 June 2020 (12 weeks x £250), totalling £3,000. This is broken down as:
 - £150 per week for avoidable inconvenience where there are seven people in the household, some of whom have disabilities; and
 - £100 per week to recognise the additional costs of takeaway, main evening meals because of the lack of cooking facilities.
- The cost of the night in bed and breakfast accommodation that Ms B paid for out of her own money, namely £379.87.

6.15. The Council should provide refresher training for staff involved in this case and for any other staff who have not received training since the Homeless Reduction Act 2017 came into force.

6.16. The Council should review a sample of homeless cases (selected by the Ombudsman) since the Homelessness Reduction Act 2017 came into force (on 3 April 2018) to see whether there are any others in a similar position and remedy any injustice to them.

Action already taken

6.17. The Ombudsman's findings are accepted. The service is sorry for the mistakes made and is determined to learn from them. An apology has been given to Ms B, and the payments referred to at paragraph 6.14 above have been made.

6.18. In relation to staff training:

- Staff training was previously provided prior to the Homelessness Reduction Act 2017 coming into force on 3 April 2018, including the implementation of procedures particularly relevant to this case. However, it is acknowledged that this did not prevent the fault identified by the Ombudsman in this case.
- The errors in this case were highlighted to the relevant staff.
- The Housing Demand service confirmed all Housing Needs staff had re-read and understood the existing procedures by asking each individual member of staff had signed a statement to this effect. In the future, all new procedures and staff will be subject to the same individual sign-off mechanism, to ensure they have been read and understood.
- Additional staff training was tailored to the weaknesses identified in this case and delivered on 21 April 2020 (having been delayed due to Covid-19). Evidence of this has already been shared with the Ombudsman.

6.19. In relation to the review of homeless cases:

- The Ombudsman initially recommended that all cases since April 2018 where an applicant presented as homeless due to the loss of private sector accommodation should be reviewed to ensure that there was not a systemic failure in the service.
- On 27 February 2020, the Head of Service informed the Ombudsman that there were 1,190 such cases and provided a spreadsheet of all those cases (appropriately anonymised).
- The Ombudsman agreed it would be disproportionate to review every case and would inform the Council of an appropriate sample number. On 12 August 2020, the Ombudsman confirmed that 21 sample cases should be reviewed (4 for the officer involved in this and 1 for each of the other 17 officers in post at the relevant time). The Ombudsman asked for this to be done within 4 months.
- The review was concluded on 21 August 2020. Only one other case was identified where similar circumstances occurred and a customer was incorrectly informed that they would need to remain in their property until a possession order was made. However, the service found alternative accommodation for the customer and provided them with financial assistance before possession proceedings were issued. Therefore, fortunately, there was no detriment or injustice identified in that case. That error was made by a caseworker in the same team as the caseworker in the case of Ms B. That error also occurred before the new sign-off mechanism was introduced and additional training delivered. The outcome of the review will be discussed with all officers and communicated to the Ombudsman.

6.20. The Council should review a sample of homeless cases (selected by the Ombudsman) since the Homelessness Reduction Act 2017 came into force (on 3 April 2018) to see whether there are any others in a similar position and remedy any injustice to them.

6.21. A public notice advertisement was placed in two newspapers on 8 July 2020: (i) the Enfield Independent and (ii) the Hampstead and Highgate Express, stating that copies of the Ombudsman's report were available to inspect by the public at the Council's offices for a period of three weeks. A copy of the notice published in each newspaper is shown at Appendix 2.

6.22. The Ombudsman's recommendations are considered to be appropriate because:

- It is right to offer compensation to Ms B given the Ombudsman's findings of injustice.
- The Council must identify any similar past faults in order to remedy them and provide additional training in order to help prevent any similar injustices occurring in the future.

6.23. The relevant functions are discharged by Homes for Haringey. However, it is fully recognised that the Council was at fault in this case and Ms B spent longer in bed and breakfast accommodation than she should have done. In order to provide context, the steps that were taken by officers are set out below:

- Officers took some steps to find alternative accommodation for Ms B. For example, by seeking private rented sector accommodation, offering accommodation in various other boroughs (albeit ultimately unsuitable) and attempting to persuade Ms B's previous landlord to renew her tenancy.
- Social housing of the size needed by Ms B is in short supply and families can be on a waiting list for many years. In this case, there were additional complexities due to concerns about the family's safety in certain locations. However, fortunately suitable accommodation was found for Ms B as of 15 June 2020.
- The Council found Ms B's current property in April 2020 but it required work in order to convert it from a four bedroom to a five bedroom property. This meant Ms B could not move in until 15 June 2020.
- Ms B continued to receive support from other Council services, such as Children's Services, throughout.

7. Contribution to strategic outcomes

7.1. The actions taken following the Ombudsman's investigation will help to achieve the Borough Plan Outcome 3: 'we will work together to prevent people from becoming homeless and to reduce existing homelessness'. This will include contributing to delivering the following objective: -

Ensure access to high quality housing support that prevents or relieves homelessness for people with additional needs.

7.2. It is also part of the good administration of the Council to learn from any mistakes.

8. Statutory officer comments

Finance

8.1. The Ombudsman's finding is being reported to members in accordance with the Local Government and Housing Act 1989.

8.2. The Ombudsman's findings are not legally binding on authorities or enforceable although the Ombudsman can publish another report if not satisfied with the authority's response.

8.3. The service has accepted the recommendations and this reports highlights actions taken and being taken with respect to the recommendations.

8.4. The financial implication is limited to cost of training to staff and payment of £5,304.37 to Ms B and these will be contained within the service budget.

Legal

8.5. As this is a report from the Monitoring Officer, all legal implications are set out in the body of the report, and as follows.

8.6. The Council is required to give public notice by advertisements in newspapers stating that copies of the Ombudsman's report will be available to inspect by the public at the Council's offices for a period of three weeks (s.30 Local Government Act 1974).

8.7. Where a report such as this is made by the Ombudsman, it must be laid before the authority (s.31 Local Government Act 1974). In cases such as this where the Council is operating executive arrangements, "the authority" means the executive, i.e. Cabinet (s.25(4ZA) Local Government Act 1974).

8.8. The Monitoring Officer is obliged to consult with the Head of Paid Service and the Chief Finance Officer and confirmation is given that this has been done which facilitated the preparation of this report. This report must be sent to each member of the authority and Cabinet must meet within 21 days thereafter. Implementation of the proposal or decision must be suspended until after the report has been considered by Cabinet (s.5A Local Government and Housing Act 1989).

8.9. Where Cabinet considers an Ombudsman's report and it is considered that a payment should be made or other benefit given to a person who has suffered injustice, such expenditure may be incurred as appears appropriate (s.31(3) Local Government Act 1974).

8.10. The Ombudsman must be informed of the action taken by the Council and any action it is proposed to take within 3 months of the date on which the Council

received the report, or such longer period as may be agreed by the Ombudsman in writing (s.31(2) Local Government Act 1974).

8.11. If the Ombudsman does not receive notification of such action or is not satisfied with it, he will make a further report explaining this and making recommendations. He can also require the Council to make a public statement in any two editions of a newspaper circulating the area within a fortnight (s.31(2A) and (2D) Local Government Act 1974).

8.12. An Ombudsman's report should not normally name or identify any person (s.30 Local Government Act 1974). Therefore, the complainant is referred to as "Ms B" and officers have not been identified.

Procurement

8.13. There are no specific procurement implications that arise from this report.

Equalities

8.14. The Council has a Public Sector Equality Duty under the Equality Act 2010 to have due regard to the need to:-

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act.
- Advance equality of opportunity between people who share those protected characteristics and people who do not.
- Foster good relations between people who share those characteristics and people who do not.

8.15. The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

8.16. The proposed decision is to note the outcomes of the Ombudsman's investigation and the actions that have been taken since. The report notes that the people affected are Ms B and six children, some of whom have disabilities.

8.17. To this extent, the report concerns people who share the protected characteristics of sex, pregnancy/maternity, age, and disability.

8.18. There is no indication in the Ombudsman's report of a breach of the Public Sector Equality Duty. However, the case of Ms B represents a missed opportunity to advance equality of opportunity for people who share protected characteristics. To the extent that changes made in the service since the Ombudsman's investigation prevent similar cases to Ms B, the Council and Homes for Haringey will be better able to advance equality of opportunity. The case of Ms B is an indication of wider social inequalities. People from groups that have been marginalised and those who are protected under the Equality Act 2010, including women, BAME people, people with disabilities, and LGBT+ people are known to be more vulnerable to homelessness. A contributing factor is the overrepresentation of these groups in

the private rental sector. The Council is working to mitigate this through schemes including advice services and landlord licensing.

9. Use of appendices

9.1. Appendix 1: Local Government Ombudsman report – reference number 19 014 008.

9.2. Appendix 2: Notice published on 8 July 2020 in the Hampstead and Highgate Express and Enfield Independent.

10. Local Government (Access to Information) Act 1985

10.1. None