

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

**Investigation into a complaint against
London Borough of Haringey
(reference number: 19 014 008)**

25 June 2020

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Ms B - the complainant

Report summary

Homelessness

Ms B complains about the way the Council responded to her request for housing.

Finding

Fault causing injustice.

Recommendations

The Council has accepted our recommendations to apologise, pay Ms B's court cost orders, review a sample of homeless cases, provide additional staff training and make payments to Ms B to reflect her avoidable distress. The Council should also make further payments to recognise Ms B has been in Bed and Breakfast for over six weeks, causing further inconvenience and additional avoidable costs because of a lack of cooking facilities.

The complaint

1. Ms B complains about London Borough of Haringey's (the Council's) actions in response to her request for housing. She complains it did not have an appropriate plan for her after she told officers her landlord was starting legal proceedings to evict her. Ms B says the Council's fault caused her distress, uncertainty and she also incurred avoidable court costs.
2. Ms B also complains a social worker from children's services discussed a threatening text she received with the person alleged to have sent the text.

What we have investigated

3. We investigated the Council's housing needs team's actions from August 2019. We explain the reasons for not investigating children's services or earlier events at the end of this report.

The Ombudsman's role and powers

4. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
5. We cannot normally investigate a complaint unless we are satisfied the council knows about the complaint and has had an opportunity to investigate and reply. However, we may decide to investigate if we consider it would be unreasonable to notify the council of the complaint and give it an opportunity to investigate and reply. (*Local Government Act 1974, section 26(5)*)
6. 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 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*)

How we considered this complaint

8. We produced this report after examining relevant documents and speaking to the complainant.
9. We gave the complainant and the Council a confidential draft of this report and invited their comments. We took their views into account before finalising this report.

What we found

Law and guidance

10. Part 7 of the Housing Act 1996 and the Homelessness Code of Guidance for Local Authorities (the Code of Guidance) set out councils' powers and duties to people who are homeless or threatened with homelessness. The Code of Guidance is statutory guidance on how councils should carry out their functions and they must have regard to it.
11. Someone is threatened with homelessness if, when asking for assistance from the Council on or after 3 April 2018:
 - he or she is likely to become homeless within 56 days; or
 - he or she has been served with a valid section 21 notice which will expire within 56 days. (*Housing Act 1996, section 175(4) & (5)*)
12. 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. (*Housing Act 1996, section 175*)
13. If councils are satisfied applicants are threatened with homelessness and eligible for assistance, they must help them ensure accommodation does not stop being available for them. This is called the prevention duty. In deciding what steps to take, councils must have regard to their assessments of the applicants' cases. (*Housing Act 1996, section 195*)
14. Councils must take reasonable steps to secure accommodation for any eligible homeless person. This is called the relief duty. When a council decides this duty has come to an end, it must notify the applicant in writing. (*Housing Act 1996, section 189B*)
15. Homeless applicants may request a review within 21 days of being notified of a decision that they are not homeless. The council must advise applicants of their right to appeal to the county court on a point of law, and of the period in which to appeal. (*Housing Act 1996, sections 202, 203 and 204*)
16. The Code of Guidance says:
 - the housing authority should maintain contact with the tenant and landlord to ascertain if there is any change in circumstances which affects whether or not it continues to be reasonable for the applicant to occupy. (*Paragraph 6.34*)
 - it is **unlikely to be reasonable** for an applicant to remain in the property beyond the expiry of a valid section 21 notice unless the authority is taking steps to persuade the landlord to allow the tenant to continue to occupy for a reasonable period to provide an opportunity to find alternative housing. (*Paragraph 6.35*)
 - it is **highly unlikely to be reasonable** for the applicant to continue to occupy after the date a court has ordered the applicant to leave. (*Paragraph 6.36*)
 - housing authorities **should not consider it reasonable** for an applicant to remain in occupation until the court issues an eviction warrant. (*Paragraph 6.37*)
 - housing authorities should **ensure homeless families who are owed legal duties of housing are not evicted through the enforcement of a court**

order as a result of a failure to offer suitable accommodation. (Paragraph 6.38)

17. In April 2018, the Council introduced guidelines for officers to assess when to provide temporary accommodation to applicants with a valid section 21 notice. The guidelines set out the paragraphs of the Code of Guidance described in the last paragraph. They explain it is not acceptable to have a blanket policy or practice of providing temporary accommodation at the point of eviction and when assessing a case, the officer needs to consider the following.
- The preference of the applicant.
 - The landlord's position.
 - The financial impact on the landlord and on the applicant.
 - The burden on the court where there is no defence to proceedings.
 - The general cost to the Council.

The procedure includes guidance on how and when to apply the above principles, explaining the housing needs team's role is to consider whether it is reasonable for the tenant to remain in their home at different points in the possession process. Officers complete a form to demonstrate they have considered relevant factors and applied them to each case.

18. Bed and Breakfast (B&B) accommodation can only be used for households which include a pregnant woman or dependent child when no other accommodation is available and then for no more than six weeks. B&B is accommodation which is not self-contained, not owned by the council or a registered provider of social housing and where the toilet, washing, or cooking facilities are shared with other households. (*Homelessness (Suitability of Accommodation) (England) Order 2003 and from 3 April 2018 Homelessness Code of Guidance paragraph 17.32*)
19. Councils should avoid using bed and breakfast accommodation. It should only be used as a last resort in an emergency and then for the shortest time possible. (*Homelessness Code of Guidance paragraph 17.30*)

What happened

20. Ms B has six children; some have disabilities. When Ms B complained to us in November 2019, she was living in a privately rented four-bedroom house and the court had set an eviction date for February 2020.
21. Ms B made a homeless application to the Council in February 2019 because she thought she and her family were not safe at her current address. The Council decided Ms B was not homeless and she asked for a review. Meantime, Ms B's landlord served her with notice of seeking possession. This is the first stage a landlord takes to evict a private tenant and is called a 'section 21 notice'.
22. The Council upheld Ms B's review in June 2019. It decided:
- Ms B was threatened with homelessness and eligible for assistance and the Council owed her the prevention duty (see paragraph 13). This was because she was likely to become homeless within 56 days because her landlord had served her with a section 21 notice which had expired;
 - it was reasonable for her to remain in the property because it was an adequate size, was in a reasonable condition and there was no ongoing threat of violence;

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- one of Ms B's children needed a bedroom of their own because of their disabilities. This could be achieved by reconfiguring the sleeping arrangements of the family members.
23. At the end of June, Ms B saw a housing needs officer who noted the review partly overturned the 'not homeless' decision because Ms B's landlord had served a section 21 notice since the original decision. The notes of the interview indicate Ms B's solicitor was appealing the review decision in court, although Ms B told us her solicitor advised against an appeal. The notes indicate Ms B did not want to proceed with the interview with the housing needs officer and refused to sign papers to enable the Council to get information from other agencies relevant to its inquiries about her housing.
 24. At the beginning of August, Ms B asked for an urgent appointment with the housing needs team. Ms B provided copies of texts with threats to harm her. She told the Council these texts were from associates of the family who had undesirable connections. Ms B showed the texts to her housing needs officer who asked the police about the risk. The police said they would recommend rehousing to reduce the risk. The housing needs officer told Ms B the information did not warrant an immediate move into emergency housing. The housing needs officer said "*if you are unable to find alternative suitable and affordable accommodation by the time the eviction process has taken its course, we would have to consider providing emergency accommodation*".
 25. The Council wrote to Ms B saying it had decided she was threatened with homelessness and eligible for assistance. The letter included an assessment and personalised housing plan for her. (An assessment includes the reason why a person has become homeless and an analysis of housing and support needs. A personalised housing plan sets out the steps the applicant and the council will take to try and resolve the applicant's homelessness.)
 26. In September, the court ordered Ms B to leave her home by the end of the month and to pay her landlord's costs of £424.50.
 27. Ms B's representative emailed the Council asking it to provide suitable housing before the eviction notice. A senior housing needs officer replied saying five-bedroom properties were rare in Haringey and the Council would nominate Ms B for a private rented property if one became available. The officer also said social housing of the size Ms B needed was rare and she was likely to wait 12 years or longer for this. The officer said "*we will not be in a position to accommodate before the notice of eviction*".
 28. At the start of October, Ms B asked the housing needs officer what the plan was for her housing. The housing needs officer replied saying the Council would not offer emergency housing at the moment and asked Ms B to provide a copy of the eviction notice when this was available. The housing needs officer said any housing the Council offered may not be in Haringey. This was in response to a comment from Ms B explaining all her support was in the borough and she could not face transferring all her children's care and other services to a different area.
 29. An internal note by the housing needs officer said the Council would only move Ms B if the landlord confirmed he would suffer hardship by going through the eviction process. The housing needs officer spoke to the landlord who said he would not allow Ms B to stay at the property. She offered the landlord a payment if he would give Ms B a new tenancy. The landlord declined.

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30. The head of housing needs emailed officers in the middle of October saying she had received an enquiry from Ms B's local councillor. The head of housing needs said she was concerned officers had responded to Ms B's representative saying the Council would not provide housing until the eviction (see paragraph 27). The head of housing needs went on to say "*I must remind you this is not the legal position – if we are insistent that she stays until the eviction (and there may be good reasons for this) we need to be able to demonstrate that this has been properly considered as per the procedure.*" The head of housing needs asked the officers to discuss the case and update her by the close of business. The Council provided us with no evidence of any update by officers.
 31. There were further emails between housing officers and Ms B's representatives and her child's social worker in November. The housing needs officer said the Council would help with an incentive payment to a potential landlord if Ms B could find a suitable private property herself. The housing needs officer said "*in the event Ms B is evicted before she finds another property, then we will look for emergency accommodation when she is evicted.*"
 32. Ms B told the housing needs officer her property was not safe for one of her daughters because of the daughter's involvement in criminal activity and asked for an update on what the Council intended to do. The housing needs officer said the Council would only start looking at emergency accommodation for the date of the eviction. She also said the Council could move the family as a matter of urgency if there was police evidence.
 33. Ms B complained to us in November 2019.
 34. Ms B sent a copy of the eviction notice to the Council at the end of December 2019. The Council offered Ms B a five-bedroom property in a different area at the start of January 2020 and asked if Ms B would consider it. Ms B said she did not want to move to the area. The Council withdrew the offer.
 35. The housing needs officer confirmed again in an email to a professional working with one of Ms B's children that "*we do not arrange emergency accommodation until the day the eviction is carried out. Having said that, the emergency accommodation team have been alerted to the needs of the family and will try to find suitable accommodation on the day.*"
 36. In the middle of January, the housing needs manager sent an internal email to officers saying he was approving Ms B's case for emergency accommodation before the eviction due to the complex medical issues of family members.
 37. At the start of February, the Council offered Ms B a privately rented five-bedroom house in another London borough. The property needed some work and so was not ready. And the police told the Council it was not in a safe area for one of Ms B's children. So, the Council withdrew the offer. The eviction took place on 11 February. Ms B attended the Council's offices after the eviction and officers placed the family in a hotel. Due to the size of the household, family members are in different rooms and this is particularly challenging for Ms B when some of the children have disabilities. And, due to booking problems the family have had to move hotels and Ms B told us she had to pay for one night from her own money.
 38. At the time of writing (beginning of June 2020) Ms B and her family remain in a hotel. The Council had identified a property for them which it hopes to have ready soon.
 39. The Council told us:

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- since October 2019, there had been 14 four bed properties available, some of which were not in suitable areas for Ms B. Although Ms B needed five bedrooms, there had not been any available. The four-bedroom properties would not have been offered to Ms B because there were other families who had been waiting longer for an urgent move for reasons such as domestic abuse and serious disrepair where there was a risk to life. It was likely that the Council would have only been in a position to offer Ms B a commercial hotel;
 - it had discussed a four-bedroom property in a different borough with Ms B. She said she wanted to stay in the borough. The Council was not going to offer this property formally as it would only consider enforcing offers in Haringey or in a neighbouring borough;
 - this was an isolated case of a failure in service which had not arisen in other cases and was due to the complex nature of the case. This was no excuse for failing to apply the Code of Guidance and procedures.

Findings

40. We normally expect complainants to use a council's complaints procedure before we investigate a complaint. Ms B had not complained to the Council before contacting us, but we investigated her complaint about homeless services' actions since June 2019. This is because it would be unreasonable to make Ms B wait for the Council's complaint response. We took into account Ms B was facing imminent homelessness with no indication of any action from the Council at the time we started our investigation.
41. The Council failed to have regard to or act in line with the Code of Guidance when dealing with Ms B's case. The Code of Guidance makes it clear that where a valid section 21 notice has expired:
 - making a family remain in accommodation beyond the date of a court order is highly unlikely to be reasonable; and
 - making a family remain until an eviction warrant is not reasonable.Authorities must have regard to the Code of Guidance. We would expect the Council to show it has taken account of any relevant parts of the Code of Guidance and to be able to justify its reasons if it decides not to follow it.
42. There is no evidence the Council took account of paragraphs 6.35 to 6.37 of the Code of Guidance or provided any justification for not following it in Ms B's case. As a result, the Council's actions in failing to provide alternative accommodation from the end of September were fault as the Code of Guidance in these respects is very clear. The failure to provide alternative accommodation continued to be fault from the end of December 2019, once the Court set an eviction date.
43. The Code of Guidance also tells councils they must ensure homeless families who are owed legal duties of housing are not evicted through enforcement of a court order because of a failure to offer suitable housing. We consider the Council did not act in line with paragraphs 6.36 to 6.38 of the Code of Guidance. We consider it likely that had we not started investigating Ms B's complaint, she would not have been offered any accommodation until the day of the eviction. This is based on documented statements from officers and managers in the Council's housing needs team. As events turned out, the Council offered Ms B a private property it later accepted was not in a suitable location and so withdrew the offer. But this was not until a few days before the eviction.

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44. We note the Council considered the financial hardship of the landlord to be a relevant factor in deciding whether to offer Ms B 'early' emergency housing (i.e. before the date set by the court for eviction). But we cannot see any evidence Ms B's financial hardship was considered even though she is a lone parent of six and the court made a costs order against her. The failure to consider Ms B's finances was fault as it was not in line with the Council's policy.
 45. There is evidence from internal emails and statements to Ms B and professionals supporting her, that several officers in the housing needs team were either not aware of the changes to the law and to the Council's procedures, or they were aware of the changes but chose to disregard them. This was after the Council's head of housing needs reminded staff of the law, asked them to document their consideration and provide her with an update. Officers did not complete the relevant paperwork to demonstrate they had applied the Council's policy. These were additional faults.
 46. The Council accepted the prevention duty. There is no evidence it accepted the relief duty, although it should have done so at the point it became unreasonable for Ms B to remain in her current property. The failure to accept the relief duty when Ms B had become legally homeless within the definition in section 175 of the Housing Act 1996 read with paragraphs 6.35 to 6.37 of the Code of Guidance, was fault.
 47. We note also that because of the lack of planning, the Council appears to have had no option but to place a family of seven, including six children, some of whom have disabilities, in Bed and Breakfast. This is permitted under the law, but only when there is no other accommodation available and for a maximum of six weeks. We consider Bed and Breakfast may have been avoidable had the Council had regard to the Code of Guidance set out above. We are aware of the practical difficulties presented by the size of Ms B's household and the needs of individual members and we note the Council's position about the difficulties of procuring accommodation of a suitable size and in a suitable location. But these practical difficulties do not provide a justification or excuse for the Council's failings. The Code of Guidance does not exempt a council from providing suitable accommodation at the appropriate time in an eviction process because of supply issues. At the time of writing Ms B and her family remain in Bed and Breakfast. This is in breach of the Suitability Order and Code of Guidance which says Bed and Breakfast may only be used for a maximum of six weeks.

Injustice

48. The fault identified caused Ms B avoidable distress and uncertainty about her housing and about the legal duties the Council owed her. We note the Council's view that this case is an isolated example of service failure. But, given the comments from several officers in the Council's housing needs unit, we consider there are likely to be others dealt with by these officers in the same way, who may have also suffered a similar injustice.

Recommendations

49. 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*)
50. The Council has accepted our recommendations to:

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- apologise;
 - pay Ms B £1,500 to reflect her avoidable distress. Our [Guidance on Remedies](#) suggests a payment of more than £1,000 is appropriate in exceptional circumstances for severe or prolonged distress. We have recommended £1,500 because Ms B has six children, one of who is exceptionally vulnerable. It also reflects that the Council had to move Ms B between hotels causing additional distress and upheaval;
 - pay Ms B's costs orders;
 - review a sample of cases (to be selected by us) since the Homelessness Reduction Act came into force to see whether there are any others in a similar position and remedy any injustice to them in line with our [Guidance on Remedies](#); and
 - provide refresher training for staff involved in this case and for any other staff who have not received training since the Homelessness Reduction Act came into force.
51. In addition to the recommendations agreed in the previous paragraph, the Council should also:
- pay Ms B £150 for each week she remains in Bed and Breakfast after 24 March 2020. This payment is to recognise the avoidable inconvenience of being in Bed and Breakfast for longer than six weeks based on there being seven people in the household, some of whom have disabilities;
 - pay Ms B £100 a week for each week she is in Bed and Breakfast after 24 March. This is to recognise the additional costs of takeaway main evening meals because of a lack of cooking facilities; and
 - reimburse Ms B for the night of Bed and Breakfast she paid for out of her own money.

Final decision

52. There was fault by the Council which failed to act in line with the Homelessness Code of Guidance when dealing with Ms B's application for housing. This caused her avoidable distress and financial loss. The Council will apologise, pay her legal costs and also make her payments to recognise avoidable distress and inconvenience. The Council will also review a sample of homeless cases to ensure there is not a systemic problem affecting others. It will ensure all officers have received training in the Homelessness Reduction Act.

Parts of the complaint we did not investigate

53. We did not investigate the review decision of June 2019. This is because Ms B had a right of appeal to the county court and it was reasonable for her to go to court as she had a solicitor representing her who was familiar with her case having supported Ms B to request a review.
54. We did not investigate complaints about children's services contacting the person who sent Ms B the threatening texts. Ms B has not used the Council's complaints procedure and it is reasonable for the Council to respond as there is not the same urgency as there was in her homelessness complaint.