

The Ombudsman's final decision

Summary: Mr B complained the Council did not properly support his family and his Autistic children when they were evicted. He also complained they were placed in bed and breakfast accommodation and they had to move between hotels frequently. We found there was fault by the Council and the provision of bed and breakfast accommodation for his family represented service failure. We recommend an apology, a payment and a review of the Council's processes regarding temporary accommodation provision.

The complaint

1. Mr B complains the Council did not support him appropriately when he was being evicted from Temporary Accommodation (TA) provided by the Council.
2. He complains that between April 2023 and August 2023 his family were placed in unsuitable hotel accommodation with no cooking facilities. The family had to move between different hotels frequently.
3. Mr B told us that he has three children, two of which are Autistic and non-verbal. The limited room, lack of cooking facilities and need to move frequently caused significant instability to the family, caused his children to miss school and led to distress to his family, particularly to his disabled children.

The Ombudsman's role and powers

4. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word fault to refer to these. Service failure can happen when an organisation fails to provide a service as it should have done because of circumstances outside its control. We do not need to show any blame, intent, flawed policy or process, or bad faith by an organisation to say service failure (fault) has occurred. (Local Government Act 1974, sections 26(1), as amended)
5. If we are satisfied with an organisation's actions or proposed actions, we can complete our investigation and issue a decision statement. (Local Government Act 1974, section 30(1B) and 34H(i), as amended)
6. The Equality Act 2010 provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. It offers protection, in employment, education, the provision of goods and services, housing, transport and the carrying out of public functions.

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7. The Equality Act makes it unlawful for organisations carrying out public functions to discriminate on any of the nine protected characteristics listed in the Equality Act 2010. They must also have regard to the general duties aimed at eliminating discrimination under the Public Sector Equality Duty.
 8. Discrimination may be direct or indirect. Direct discrimination may occur when a person is treated less favourably because of a protected characteristic. Indirect discrimination may occur when an organisation applies an apparently neutral provision, criterion or practice which puts persons sharing a protected characteristic at a particular disadvantage.
 9. The '[protected characteristics](#)' referred to in the Act are:
 - a) age,
 - b) disability,
 - c) gender reassignment,
 - d) marriage and civil partnership,
 - e) pregnancy and maternity,
 - f) race,
 - g) religion or belief,
 - h) sex, and
 - i) sexual orientation.

How I considered this complaint

10. I spoke to Mr B and considered the information he provided. I asked the Council for information and I considered its response to the complaint.
11. Mr B and the Council had an opportunity to comment on my draft decision. I considered any comments received before making a final decision.

What I found

Legislation and Policy

The main housing duty

12. If a council is satisfied an applicant is homeless, eligible for assistance, and has a priority need a council has a duty to ensure accommodation is available for their occupation.

Housing Act and Homelessness Code of Guidance

13. The law says councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of their household. This duty applies to interim accommodation and accommodation provided under the main housing duty. (Housing Act 1996, section 206 and Homelessness Code of Guidance 17.2)
14. Bed and breakfast (B&B) accommodation can only be used for households which include a pregnant woman or dependent children 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)

The Council's Temporary Accommodation (TA) Policy

15. The policy notes the Council's legal obligations for providing suitable Temporary Accommodation (TA) and the factors it should take into account when deciding if accommodation is suitable.
16. Amongst other things the Council's policy states it would not accept a child's attendance at a specific school in its borough to be grounds for an applicant to refuse an offer of TA. However, it states some priority would be given to finding accommodation within the borough for pupils who have special educational needs or those close to taking examinations.
17. The policy also lists a criteria for prioritising moves between TA placements. The highest priority for a move will be afforded where an applicant's existing TA is in serious disrepair which poses threat to life. The next highest priority is given to a need to move because of an evidenced, critical medical need. Third in the priority list is families that have been placed in non-council shared accommodation for at least 5 weeks. (This is to avoid penalties for families sharing facilities beyond 6 weeks).

Purpose of this decision statement

18. The purpose of this decision statement is to explain our decision on the complaint. It will set out some of the key events that occurred in order to do so. However, it is not intended to be a comprehensive chronology of everything that has happened.

Background

19. Mr B presented as homeless to Haringey Council (The Council) some time before the events of this complaint. The Council placed Mr B, his wife and three children in Temporary Accommodation in a neighbouring borough, Enfield, in 2016. The TA they occupied was a two-bedroom flat in a converted house.
20. Mr B's oldest son (X) was in Year 7 during the events of the complaint. Mr B's youngest son is Autistic and non-verbal. I have referred to him as Y in this statement. Y has an Education, Health and Care (EHC) Plan. Y's EHC plan as at 2022 named a school in the borough of Haringey. Mr B's daughter (Z) is also Autistic and non-verbal.

Mr B's complaint

21. We have considered the events of Mr B's complaint from the start of 2022.
22. In early 2022 Mr B told the Council that the landlord of his TA flat was planning to evict his family. Mr B says the landlord suggested there were rent arrears. However, this was not the case as he had paid his rent to the Council.
23. The Council told us there was no indication that the landlord considered there were rent arrears, but it was aware in March 2022 that the landlord wanted to regain possession of the TA flat in order to sell the property.
24. In June 2022 the Council contacted Mr B and carried out a re-housing assessment. This noted that one of Mr B's sons was Autistic and had an EHC Plan which named a school in the borough of Haringey.
25. The Council told us a rehousing officer met Mr B and kept in contact with him but the relevant team did not provide a wraparound general housing support service.

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26. On 22 November 2022 the Council received a Court Order granting possession of the property to the Landlord of Mr B's TA. It required Mr B and his family to leave the property on or by 15 December 2022.
 27. On 16 January 2023 the Courts granted Mr B's Landlord an Eviction Order. It stated Mr B and his family would be evicted on 6 April 2023. There is evidence that on 3 April, shortly before the eviction date, a re-housing officer sent the Eviction Notice to the team responsible for temporary accommodation. It stated Mr B had been told to expect alternative accommodation or a hotel booking. The officer asked the team to bear in mind that Mr B had a child with special education needs. The officer told the team the address of the school Y attended within the borough.
 28. Mr B and his family were placed in a hotel outside the borough. In the four months between 6 April 2023 and 28 June 2023, Mr B and his family were placed in 5 different branches of the same hotel chain. They moved between these different hotels 7 times during this period. On average, they moved to a new location every two weeks.
 29. Between the end of June and early August, the Council moved Mr B's family to a different hotel which the Council had block booked and contracted to provide TA. Although this remained B&B accommodation, this meant the family were able to remain there, without further moves. The hotels the Council placed Mr B and his family in spanned four different London boroughs.
 30. In May 2023 the Council had identified private sector accommodation that would be available for Mr B's family to move into once void works were done. (Void works are repairs and other work needed before a property is ready for occupation). Unfortunately, the void works took longer than expected.
 31. Mr B and his family were able to move into suitable private sector accommodation on 9 August 2023. This ended the Council's homelessness duty.

The impact of B&B Accommodation

32. The regular moves between different hotels in different London boroughs meant different journey times and complexities for X to try to maintain his school attendance. The journey to school, via public transport, was around 1 hour 30 mins, on average, from the various hotels the family were placed in. Mr B stated he tried the journey with X, but X has travel sickness so the journey was not possible. As a result, X missed school while the family were in hotel accommodation.
33. Mr B told us that the hotels did not have cooking facilities which made it difficult to provide the family with home cooked food. As a result, the children ate a poor diet, became distressed and lost weight.
34. Mr B explained that his Autistic children struggled with the need to move regularly as well as the changes to their diet. This upset them and led to meltdowns. Prior to living in hotels, his two autistic children could not share a room because Y could not tolerate Z's behaviour. Because they had very limited space the proximity of the children caused particular distress to Y. It was upsetting for Mr B, his wife and his eldest son to deal with the distress caused to Y and Z. Mr B said this was explained to the Council and he provided letters from his GP about the impact, but the family remained in hotel accommodation.

What the Council told us

35. The Council told us that it was aware of Mr B's family's circumstances and needs, but it was unable to secure accommodation that was any more suitable. It stated,

if the Council was in a position to provide accommodation that was better suited, it would have done so.

36. A report to the Council's Cabinet in October 2023 stated there was a homelessness crisis in London, which the Council was working hard to mitigate. It noted that for the first time in a decade, the Council had to resort to using hotel accommodation as TA for households facing homelessness. As at September 2023, the Council had 103 households placed in hotels. It recognised the need to address this as a priority. The report explained there had been an increase in demand and a severe downturn in the supply of accommodation it could use as TA. The report included a detailed B&B elimination plan setting out wide ranging actions to address the issue.

Our Findings

Use of B&B Accommodation

37. The Council was unable to find Mr B's family alternative TA when the landlord of their TA flat sought to take back possession of it. This was because it had no available TA due to a significant shortage of available accommodation. For the same reasons, when Mr B's family were evicted, they were placed in B&B accommodation.
38. The Homelessness Code of Guidance states that, wherever possible, the use of B&B accommodation should be avoided for all homeless applicants. It states that living in B&B accommodation can be particularly detrimental to the health and development of children. The Homelessness (Suitability of Accommodation) (England) Order 2003 specifies that B&B accommodation is not suitable for families to occupy. It should only be used for families as a last resort and then, only for a maximum of six weeks.
39. Mr B's family were placed in B&B accommodation for 18 weeks between early April and early August 2023. The use of B&B accommodation for the family represents service failure by the Council.
40. I note that the Council has identified the issue and it is taking positive steps to end the reliance it currently has on B&B accommodation via an action plan.

Equality Act Considerations

41. The Homelessness Code of Guidance makes it clear that B&B accommodation is unsuitable for families in general. Mr B's family includes two Autistic children. The Council told us, despite being aware that Y and Z were Autistic, it was not in a position to provide other accommodation. I note the difficulties the Council has with the housing market in its area. However, because of Y and Z's Autism, the unsuitability of this type of accommodation and the instability caused by the need to move regularly between different locations, is likely to have placed them at a particular disadvantage. The Council did not indicate that it considered how this disadvantage could be mitigated. For example, by planning accommodation to ensure no, or less frequent moves for the family, or by taking additional steps to source hotel or other TA accommodation within its borough for the family which would better enable Y to attend the school named in his EHC plan.
42. The Council's policy for providing temporary accommodation states that some priority will be given to providing accommodation within the borough where an applicant's children have special educational needs and attend a school in the borough. Y's EHC plan named a school in the borough, but there is no evidence that any additional priority was afforded to the family to be accommodated in the borough.

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43. Based on the information the Council provided, we found it did not have sufficient regard to its duty under the Equality Act to prevent indirect discrimination to Y and Z. This was fault.

Agreed action

44. Within four weeks of my final decision:
45. The Council should provide a written apology to Mr B and his family for the length of time they spent in unsuitable B&B accommodation and for the impact this had on the family. The apology should adhere to our guidance on making effective apologies. This can be found on our website, within our Guidance on Remedy [here](#).
46. To recognise the difficulties that the stay in B&B accommodation caused for the family, the Council should pay Mr B £3600.
47. To recognise the distress caused to the family, the Council should make a payment of £1000.
48. Within six weeks of my final decision:
49. The Council should review how it takes account of its Equality Act duties when considering the suitability of temporary accommodation for homeless families. It should present a report to the Council's Cabinet to show what has been considered as part of this review and what steps will be taken to ensure Equality Act duties are properly considered when making decisions about temporary accommodation in future.
50. The Council should provide us with evidence it has complied with the above actions.

Final decision

51. There was fault and service failure by the Council. I have completed my investigation on the basis the Council has agreed to our recommendations to remedy the complaint.

Investigator's decision on behalf of the Ombudsman