

## **The Ombudsman's final decision**

Summary: The Council failed to properly consider Ms X's needs as a disabled person, or her basic human rights, when it placed her in interim and temporary accommodation. As a result she and her family have been living in unsuitable accommodation for the past eleven months and the situation is ongoing. During Ms X's time in the accommodation, she has been largely restricted to being cared for in her bed, unable to wash or shower, use the kitchen or store her wheelchair safely. The Council's faults have caused Ms X a prolonged period of avoidable distress, indignity, and uncertainty. The Council has agreed to pay Ms X £3,850 and continue to pay her £350 each month until a suitable offer of accommodation is made.

---

## **The complaint**

1. Ms X complained the Council:
  - has failed to provide her with temporary accommodation which is suitable for her needs as a disabled person;
  - unnecessarily delayed in progressing her housing case; and
  - failed to communicate with her properly regarding her housing situation.
2. Ms X said the Council's actions have impacted her physical health and mental wellbeing, caused her distress and led to financial loss due to the cost of storing her belongings.

## **The Ombudsman's role and powers**

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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*)
4. 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*)

- 
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*)

## **How I considered this complaint**

6. I considered the information provided by Ms X and the Council.
7. I considered the relevant law and guidance as set out below.
8. I considered our [Guidance on Remedies](#).
9. I considered all comments made by Ms X and the Council on a draft decision before making a final decision.

## **What I found**

### **Law and guidance**

#### **Human rights**

10. The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to. It requires all local authorities - and other bodies carrying out public functions - to respect and protect individuals' rights.
11. Article 8 of the Act sets out the right to respect for private and family life, home and correspondence. This is a qualified right. Case law says that any housing a council provides should be in a condition such that it does not breach Article 8 rights. *Bernard v LB Enfield [2002] EWHC 2282 (Admin)*
12. The Ombudsman's remit does not extend to making decisions on whether a body in jurisdiction has breached the Human Rights Act – this can only be done by the courts. But the Ombudsman can make decisions about whether a body in jurisdiction has had *due regard* to an individual's human rights in their treatment of them, as part of our consideration of a complaint.

#### **Equality Act**

13. The Equality Act 2010 provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. It provides the UK with discrimination law which protects individuals from unfair treatment and promotes a fair and more equal society.
14. The Act says, a public authority must, in the exercise of its functions, have due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
15. It goes on to say that the steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include steps to take account of disabled persons' disabilities. (*Equality Act 2010, section 149*)

#### **Homelessness**

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

#### **Prevention, relief and main housing duties**

17. If a council is satisfied an applicant is threatened with homelessness and eligible for assistance, the council must help them to secure that accommodation does not stop being available for their occupation. This can include helping them

---

remain in their property where it is reasonable for them to do so. In deciding what steps to take, councils must assess the applicants' case and have regard to their needs. This is called the prevention duty and applies for a period of 56 days. (*Housing Act 1996, section 195*).

18. If a council is satisfied the applicant is homeless and eligible for assistance, it will owe a relief duty. This duty means a council must take reasonable steps to secure accommodation for any eligible homeless person. When a council decides the relief duty has come to an end (usually after 56 days), it must notify the applicant in writing. (*Housing Act 1996, section 189B*)
19. If homelessness is not successfully prevented or relieved, a council will owe a main housing duty to applicants who are eligible, have a priority need for accommodation and are not homeless intentionally.
20. The main housing duty means the council must secure suitable accommodation for the applicant, which may be social housing or private rented accommodation with a lease of at least 12 months. (*Housing Act 1996, section 193 and Homelessness Code of Guidance 15.39*)

### **Personalised Housing Plans (PHPs)**

21. After carrying out an initial housing assessment, the council must prepare a PHP with the applicant. The PHP sets out the steps both the authority and the applicant will take to try to resolve the applicant's homelessness.
22. Councils must give every applicant a written copy of their PHP setting out the reasonable steps each party should take.
23. This should be kept under review when there are changes to the applicant's housing situation and at a minimum, with every change in duty. (*Housing Act 1996, section 189A(8) and the Code, paragraph 11.24*)

### **Suitability of interim and temporary accommodation**

24. There are two types of accommodation councils provide to certain homeless applicants:
  - a) Accommodation secured on a temporary basis by a council for a homeless applicant during the prevention and or relief stages is called *interim* accommodation. (*Housing Act 1996, section 188*)
  - b) Accommodation secured by a council for a homeless applicant once the council accepts a main housing duty is called *temporary* accommodation. (*Housing Act 1996, section 193*)
25. 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. This duty applies to interim and temporary accommodation. (*Housing Act 1996, section 206 and Homelessness Code of Guidance 17.2*)
26. Interim and temporary accommodation can be the same physical property. What changes is the legal duty under which a council provides it. This is important because there is a statutory right to review the suitability of temporary accommodation. This then carries a right of appeal to county court on a point of law.
27. While there is no statutory right to review the suitability of interim accommodation, the Council should still consider whether the interim accommodation is suitable for the needs of the applicant.

- 
28. The duty to provide suitable accommodation is immediate, non-deferable, and unqualified. (*Elkundi, R (On the Application Of) v Birmingham City Council [2022] EWCA Civ 601*)
29. Councils must complete reviews of decisions within eight weeks of the date of the review request for suitability of accommodation.

### **Bed and breakfast accommodation**

30. 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*)

### **Protection of personal belongings**

31. Where the council owes or has owed certain housing duties to an applicant, it must protect the applicant's personal property if there is a risk it may be lost or damaged. A council may make a reasonable charge for storage and reserve the right to dispose of the property if it loses contact with the applicant. (*Housing Act 1996, section 211, Homelessness Code of Guidance chapter 20*)

### **Housing allocations policy**

32. Every local housing authority must publish an allocations scheme that sets out how it prioritises applicants and its procedures for allocating housing. All allocations must be made in strict accordance with the published scheme. (*Housing Act 1996, section 166A(1) & (14)*)
33. This Council's Housing Allocations Policy prioritises applicants by Band. Band A is the highest priority band for housing applicants. The average waiting time for applicants in this band to be matched with a permanent offer of housing is 1-2 years. (*Allocation Policy 2018, Lewes District Council*)

## **What happened**

### **Background**

34. Ms X lives with her husband and young child.
35. Ms X has multiple chronic health conditions affecting neurological processing, mobility and vision.
36. She uses a wheelchair when outside the home. In her former adapted property, she could use several mobility aids instead of her wheelchair inside the home.

### **Homeless application and enquiries into homelessness**

37. In July 2021 the family's private landlord wanted to sell their home. The family were served a notice to quit effective from 22 November 2021.
38. Ms X approached the Council as homeless on 20 August 2021. Her application stated that she was a wheelchair user and that adaptations had been made to her current property to help her access it. Her application stated that she and her family would be evicted in November.
39. The Council responded the same day to say it had received the application and asked her to send supporting evidence as some was not included alongside her application form.

- 
40. On 15 September Ms X made a stage 1 complaint to the Council. She said her housing officer's communication with her had been poor.
  41. The Council said it attempted to contact Ms X at least once when she was not available during this period and the records show the Council did not call Ms X on at least one occasion when it said it would.

### **Prevention period**

42. From 27 September 2021, the Council needed to decide whether it owed a prevention duty to Ms X as by this point she would be homeless in the next 56 days. It needed to confirm this in writing and issue her with a PHP. There is no evidence it did this.
43. On 7 October Ms X called the Council to ask for an update on where they would live after the eviction. She said her husband had been expressing suicidal thoughts, her young child was very anxious, and Ms X's social worker had told her that it would not be suitable for her to move into emergency accommodation.
44. The next day Ms X's housing officer said she would contact Ms X's landlord to see if there were any options for keeping them in their property for longer. The landlord did not agree to this request.
45. On 19 October the Council responded to Ms X's stage 1 complaint. It apologised for the poor communication, said her case had now been referred to the emergency accommodation team and the Council would offer her a loan for the cost of storing her belongings if she were to go into emergency accommodation. Its complaint response did not say whether it had accepted a prevention duty to Ms X.
46. On 2 November Ms X informed the Council that due to her visual impairment and neurological condition, being housed outside of her local area would be too difficult to manage, as she cannot learn new routes and would lose access to her local doctor and consultants. She also outlined her issues with independently bathing and needing a secure area to store her wheelchair.
47. On 9 November the Council discussed with Ms X a possible emergency accommodation placement in a one-bedroom, self-contained unit in her local area.
48. Ms X followed the conversation up with the Council by email the next day. She said she could not leave her wheelchair in the communal area in that emergency accommodation as that would breach her contract with her wheelchair provider, which meant she could lose her wheelchair. She also asked what the walking distance would be from the place she stored her wheelchair to the accommodation. The Council did not respond to this email.
49. On 12 November the Council completed a temporary accommodation request form with Ms X. As part of this it carried out a suitability assessment for any interim accommodation. The suitability assessment recorded the following:
  - a two-bedroom property would be suitable for the family;
  - moving out of the local area would mean Ms X lost her GP, mental health team and neurologist locally;
  - Ms X struggles to learn new routes due to her conditions;
  - Ms X relies on her wheelchair outside of the home and uses crutches inside the home where she can;

- 
- Ms X requires somewhere to store her wheelchair safely;
  - Ms X needs widened doorways and a wetroom or accessible shower; and
  - cannot currently bathe or shower unaided.

### **Relief duty period**

50. On 15 November, one week before Ms X 's notice from her landlord was due to expire, the Council accepted a relief duty and sent Ms X a copy of her Personalised Housing Plan (PHP).
51. The PHP said she needed a two-bedroom property and it would be suitable for her to be relocated out of the local authority area, provided there were direct links to her child's school. Regarding her disability, it said she needed ground floor wheelchair access.
52. The PHP did not list any actions for Ms X to take to find somewhere else to live, or list any actions that the Council would take to help her find somewhere else to live.
53. The next day, the Council formally offered Ms X the interim accommodation that was discussed over the phone the week before. The emergency accommodation was a self-contained unit with one bedroom, a living area and to the side a small kitchen and bathroom. Ms X, her husband and her child all shared the one bedroom.
54. The accommodation did not have an adapted shower or wetroom and only the front door was wheelchair accessible. Ms X and her family were not allowed guests to visit, or to stay away from the accommodation themselves. They accepted the offer and moved in.
55. After two weeks in the interim accommodation, Ms X emailed the Council to say that she was restricted to being cared for in her bed in the accommodation and it was impacting her physical health.
56. The records show there was not sufficient room for Ms X to manoeuvre her crutches around the accommodation, she could not use her specialist stool to access the kitchen and the layout and size of the shower meant her husband could not assist her with bathing. As it was not adapted, she could not use it independently. Therefore, while living in the accommodation Ms X was unable to wash herself properly.
57. The Council asked Ms X to provide some outstanding financial evidence and advised her to look for properties in the private-rented sector.
58. Ms X submitted the outstanding evidence requested but the Council accepts that it lost this information and she had to send it again. In one of these emails, on 6 December 2021, Ms X said due to her wheelchair not having safe storage, her wheelchair charger had been stolen.
59. Ms X emailed the Council again. She said the 56-day period of the relief duty was due to end in mid-January 2022. She said she could not find suitable properties in the private-rented sector and asked what enquiries the Council had made regarding alternative accommodation for the family.
60. The Council responded. It asked Ms X what barriers she was facing accessing accommodation in the private-rented sector and what estate agents she had approached.



- 
61. A caseworker from a homelessness charity then contacted the Council on Ms X's behalf. They restated that Ms X's wheelchair charger had been stolen and asked what steps the Council were taking to source suitable temporary accommodation once the 56-day relief period ended.
62. The Council responded to say it was busy assessing other applicants and again said that due to waiting times for suitable accommodation, finding a property in the private-rented sector was the solution for Ms X.
- Main housing duty decision period**
63. On 10 January 2022 the relief period ended. By this stage the Council should have decided whether it owed a Main Housing Duty. It did not do this.
64. Ms X made a fresh Stage 1 complaint to the Council. She complained:
- about the lack of updates and contact on her case;
  - that she was in unsuitable accommodation, which meant she was restricted to living mainly in bed;
  - that her wheelchair was at risk of being removed by her wheelchair provider due to it not being stored safely in the accommodation; and
  - about the cost of storing her belongings whilst she waited for suitable accommodation to be identified.
65. The next day Ms X's MP contacted the Council to raise a safeguarding alert as they had received communication from Ms X which said she and her husband were having suicidal thoughts.
66. In February 2022, Ms X was assigned a new housing officer. Emails show that the housing officer was informed by a senior member of the housing team that if Ms X identified private-rented properties the Council would help her by topping up the rent.
67. Ms X told her new housing officer she had found a property in the private-rented sector and asked if the Council would help top up the rent. The records from this time are unclear but Ms X said her housing officer told her she would not be eligible for support from the Council for the three-bedroom property she had identified.
68. On 7 March 2022 the Council upheld Ms X's Stage 1 complaint and accepted in its letter that her current accommodation was unsuitable. It said:
- her housing officer was no longer employed by the Council;
  - regarding her wheelchair storage, it said it would contact the building manager to see if it could be stored somewhere else;
  - the Council would top-up her rent for any private-rented properties she found;
  - Ms X would only need to pay £25 a month towards her storage costs until the debt was repaid;
  - Ms X could continue to bid on properties on the Council's housing register; and
  - she had been awarded the Council's highest priority band, Band A.
69. Ms X asked to go to Stage 2 of the Council's complaints process.
70. On 16 March 2022 the Council accepted a Main Housing Duty to Ms X. It did not send Ms X the decision until 24 March 2022.

- 
71. From the date of the main housing decision, Ms X occupied the self-contained unit as temporary accommodation, rather than interim accommodation. The suitability of the accommodation from that point carried a statutory right of review.
  72. The Council's letter accepting the Main Housing Duty said she had the right to request a review of its decision regarding the duty and her banding. The Council did not inform her of her review right regarding the suitability of the temporary accommodation.
  73. By this stage, the Council had already accepted the accommodation was not suitable and said Ms X was on a waiting list for an adapted property. It said the accommodation provider would not allow adaptations to the properties, so adapting the accommodation was not an option.
  74. Telephone records from this time show the Council called Ms X to discuss whether she would want to move to hotel accommodation. The Council said there would be limited kitchen facilities but being in a hotel would enable her to wash herself. Ms X said she would consider it but decided it was not suitable.
  75. On 31 March 2022 the Council responded at Stage 2 of the complaints process. It apologised again for poor communication. It did not offer any further action regarding the suitability of the temporary accommodation. It offered Ms X £150 as a financial remedy.
  76. On 8 April 2022, the Council carried out an occupational therapy assessment of Ms X's temporary accommodation. It said there was no way to make the bathroom accessible and she could not use the kitchen as there was no space for her specialist stool to sit on.
  77. The Occupational Therapist said Ms X needs a level access property with a level access shower or the ability to adapt, and a toilet with room for a frame around, among other changes.
  78. On 11 April 2022 Ms X complained to the Ombudsman. She said she had been living in accommodation that was unsuitable for her disability for the past five months.

#### **Efforts to find alternative accommodation**

79. There are no records to show that the Council contacted alternative accommodation providers for Ms X before 14 April 2022.
80. From April onwards the Council contacted several landlords on Ms X's behalf and made offers directly to landlords to top up Ms X's rent for a twelve-month period. The Council has considered several properties but none have been suitable for Ms X and so either the Council has halted the process or Ms X has turned the unsuitable offers down.
81. Ms X and her family are still living in the unsuitable temporary accommodation, meaning they have now been living there for approximately eleven months.

#### **My findings**

##### **Unsuitable interim accommodation**

82. The Council was aware when Ms X approached it as homeless, that she was disabled and used a wheelchair.
83. The Council's suitability assessment said that suitable accommodation would be a two-bedroom property within the local area due to her medical needs. It should have widened doorways and an accessible bathroom. It recorded that she uses



---

her wheelchair outside of the home, so would need storage for that, and uses crutches inside the home, so it should have been evident that she would need space in the accommodation to manoeuvre crutches.

84. However when the Council sent Ms X her PHP after accepting the relief duty, most of this information had been disregarded. Instead it said she needed a two-bedroom property with ground floor wheelchair access and outside the local area would be fine.
85. Ms X told the Council the interim accommodation was unsuitable before she moved in, during the suitability assessment, two weeks after she moved in and has continued to do so.
86. On balance, if the Council properly considered suitability when Ms X raised concerns in November 2021, it would have decided the accommodation was unsuitable at that point. At the point it accepted the interim accommodation was unsuitable, the Council was under an immediate duty to identify suitable alternative accommodation.
87. It took no steps to do this between November 2021 and 14 April 2022. This was fault. This fault means Ms X has been in unsuitable accommodation for longer than she should have.

#### **Unsuitable temporary accommodation**

88. In March 2022, once the Council accepted a main housing duty to Ms X and the accommodation she occupied became temporary, rather than interim accommodation, the Council considered hotel accommodation.
89. However, this type of accommodation can only be provided to households with dependent children in an emergency, if there are no other options, and then only for a maximum of six weeks. In the event, Ms X said this was not suitable and this option was not pursued.
90. Since April 2022, the Council has taken appropriate steps to identify alternative temporary accommodation but has not been able to do so. We recognise the difficulties councils face due to the national shortage of housing and that properties with adaptations for disabled people are scarce.
91. However, the law says temporary accommodation must be suitable. The Council accepts that Ms X's is not. The Council therefore has a legal duty to secure alternative accommodation for the family. It has not done so. This service failure is fault.

#### **Human rights and the Equality Act**

92. Ms X is living in circumstances where she cannot regularly leave her bed, is unable to wash herself or use the kitchen, and risks losing her wheelchair. Living in this type of accommodation has had an impact on her ability to care for her child as well as herself.
93. Under Article 8 of the Human Rights Act, Ms X has a right to respect for her private and family life. This engages her Article 8 rights. In failing to consider the suitability of the accommodation prior to offering it or when Ms X raised concerns, the Council failed to have due regard for these rights. This was fault.
94. The Council also had a duty under the Equality Act to take account of Ms X's needs as a disabled person. As set out above, it failed to properly consider the suitability of the accommodation with regards to Ms X's disability.

- 
95. As a result of all the faults identified above, Ms X has spent eleven months in unsuitable accommodation, causing her indignity and distress.

#### **Failure to review temporary accommodation**

96. When the Council accepted a main housing duty, Ms X had a statutory right to ask the Council to review the suitability of the accommodation. The Council failed to inform her of this right, which was fault. This meant Ms X was not able to ask for a review.
97. However, this fault did not cause additional injustice in this case. The Council had already accepted the accommodation was unsuitable, so carrying out a formal review was not necessary.

#### **Delays progressing case**

98. Following Ms X's initial request for assistance - which made clear that Ms X was disabled and due to become homeless - the Council took no action, apart from one telephone call to Ms X's landlord, for almost two months. This delay in acting in the early stages of Ms X's homelessness was fault.
99. The Council failed to decide whether it owed a prevention duty and then delayed in deciding whether it owed duties to Ms X at the relief and main housing duty stages. The Council's decision on whether it owed a main housing duty was significantly delayed. These delays caused avoidable frustration and uncertainty to Ms X and her family.

#### **Poor communication**

100. The Council accepted it had not communicated well with Ms X over the course of this complaint period.
101. The records show that rather than responding to Ms X's concerns regarding her accommodation, it instead asked her for more evidence or continued telling her to look in the private-rented sector. We note that Ms X often resorted to using the Council's complaints process to get updates on her case.
102. The Council's poor communication was fault which caused avoidable frustration and uncertainty to Ms X and put her to unnecessary time and trouble.
103. The Council also failed to communicate what it was doing through Ms X's PHPs, as it did not update these at each stage of the homelessness process, or did not produce one at all. This was fault.
104. This fault caused Ms X uncertainty and meant she spent a lot of time without an up-to-date document setting out the duties owed to her, the type of support the Council could offer and the steps she could take to resolve her housing problems.

#### **Storage of belongings**

105. The Council charged Ms X for storing the family's belongings and arranged a gradual repayment plan for the costs. The Council can make a reasonable charge for the cost of storage, which it did. The Council was not at fault.
106. However as set out above, Ms X has been in unsuitable accommodation for longer than necessary, so the continued cost of storage during this time is a contributing factor to the injustice caused to the family. This is reflected in the financial remedy.

---

### **Previous cases**

107. The Ombudsman has found fault leading to injustice in two other cases against this Council covering a similar time and for which we have recommended service improvements.
108. The Council has already agreed by February 2023, to provide us with an audit of the homeless applications it has received since its restructure of its housing team, to ensure they are being dealt with within the statutory time frames and where they aren't, for evidence of an action plan outlining the further changes that need to be made.
109. The Council also held a meeting with its housing team in July 2022 to discuss the learning from another Ombudsman case. This included reminding staff of their duties around ending the prevention duty and the need for timely communication with applicants.
110. Therefore in my recommendations, I have not repeated service improvements that we have already made.

### **Agreed action**

111. Within one month of the date of the final decision, the Council has agreed to:
- apologise to Ms X for the injustice caused by the faults in this case;
  - pay Ms X £3,850. This is a payment of £350 per month that Ms X has been in accommodation that is unsuitable due to her disability and reflects the significant distress and indignity she has been caused;
  - pay Ms X £350 for each month that she remains in the accommodation beyond October 2022 until an offer of suitable alternative accommodation is made or the Council ends its main housing duty; and
  - provide Ms X with monthly updates on the action being taken to find her suitable accommodation.
112. Within three months of the date of the final decision, the Council has agreed to provide evidence that it has:
- shared a copy of this decision with its homelessness team and considered the learning from this case;
  - identified steps it will take to ensure disabled homeless applicants' needs are considered early in the homelessness process in future;
  - reminded staff in the homelessness team about councils' duties around suitability of interim and temporary accommodation; and
  - referred this decision and the lessons learned outcomes to the Council's Cabinet Member for Housing and the Council's Scrutiny Committee.

### **Final decision**

113. I have completed my investigation. I have found fault leading to injustice and recommended a financial remedy and several service improvements.

### **Investigator's decision on behalf of the Ombudsman**