

Report

on an investigation into
complaint numbers 12 004 331 & 12 011 635
against London Borough of Ealing

22 November 2013

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

Ms P - the complainant (complaint number 12 004 331)
Ms Q - the complainant (complaint number 12 011 635)

Report summary

Subject

Ms P and Ms Q complained the Council housed them and their children in bed and breakfast accommodation (B&B) for longer than six weeks. The law says when families apply as homeless councils should avoid using B&Bs. As a last resort, councils should use B&Bs for no longer than six weeks. Ms P spent seven and a half months and Ms Q spent 10 months in B&Bs. Both found the experience distressing and inconvenient. In addition, Ms P received wrong information about parking permits and visitors. And Ms Q paid for storage for her belongings.

The Council accepted using B&B to house families was not appropriate but stated this was driven by government welfare reforms over which it had no control. The Council has recently adopted measures aimed at increasing the supply of self contained temporary housing so as to reduce its use of B&B. But in these cases, the Council failed to comply with its legal duties to provide self-contained accommodation.

Finding

Maladministration causing injustice

Recommended remedy

To remedy the injustice caused to the complainants the Council should:

- a. Pay Ms P £1,750 for the inconvenience caused by incorrect information about permits and visitors and for being in unsuitable accommodation for seven and a half months;
- b. Pay Ms Q £2,000 for being left in unsuitable B&B accommodation for 10 months plus £1,260 for the cost of storing her possessions for 14 months;
- c. Apologise to both complainants in writing;
- d. Produce a temporary accommodation strategy, specifying the steps the Council will take to comply with the Homelessness (Suitability of Accommodation) (England) Order 2003
- e. States clearly in its standard information whether people in B&B can have visitors

Introduction

2. Ms P and Ms Q complain about the way London Borough of Ealing (the Council) dealt with their applications for housing.
3. Ms P says:
 - a. She received poor customer service from the housing options team on the day of her eviction;
 - b. She was in a B&B for several months. It took the Council too long to find her self-contained accommodation;
 - c. She could not get a resident's parking permit when she was in the B&B;
 - d. She was not allowed any visitors.
4. Ms Q says:
 - a. The Council left her in unsuitable B&B accommodation for nearly a year;
 - b. Despite accepting a duty to house her under the Housing Act 1996 in September 2012 the Council did not offer her suitable accommodation until March 2013.

Legal and administrative background

5. Councils' responsibilities to people who are homeless or threatened with homelessness are set out in the Housing Act 1996. If a council has reason to believe an applicant may be homeless or threatened with homelessness, it must make such inquiries as are necessary to satisfy itself whether the applicant is eligible for assistance, and, if so, whether it owes a duty to house the applicant. **(S184 Housing Act 1996)**
6. Where a council is satisfied an applicant is homeless, eligible for assistance, has a priority need and has not become homeless intentionally, it must make accommodation available for the applicant and people who normally live with them. This is referred to as being owed 'the full housing duty'. When it has completed its inquiries, the council must tell the applicant in writing of its decision, giving reasons. It must also tell the applicant of their right to ask for a review of the decision. **(S193 Housing Act 1996)**
7. There is an immediate duty to ensure that interim (or temporary) accommodation is available to an applicant the council believes may be eligible, homeless and in priority need. Reasonable belief is all that is necessary to establish this duty. **(S188 Housing Act 1996)**

8. When exercising functions under homelessness law, councils must have regard to the Homelessness Code of Guidance for Local Authorities (July 2006) ('the Guidance'). Provided they have considered the Guidance, councils may choose not to follow it if they have good reasons to do so.
9. The Homelessness (Suitability of Accommodation) (England) Order 2003 says a B&B is not suitable accommodation for families with children and households that include a pregnant woman, unless there is no alternative accommodation available and even then only for a maximum of six weeks.
10. The Guidance says accommodation provided to homeless applicants must be suitable. Councils should avoid using B&Bs where possible.
11. There is no statutory timescale within which councils must complete their inquiries and make decisions on a homeless application. But the Guidance says they should aim to do this within 33 working days.
12. Applicants have the right to request a review of an adverse homelessness decision. (*S202 Housing Act 1996*)
13. Under the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999, councils must notify applicants of the outcome of a review within eight weeks.
14. When a council thinks it is unlikely to owe the full housing duty to a household which includes someone under the age of 18, it must ask the applicant for consent to make the relevant social services authority aware of the facts of their case. (*S213A Housing Act 1996*)

Investigation

15. My investigators have spoken to Ms P and Ms Q about their complaints. They have made written enquiries of the Council and interviewed the Council's Assistant Head of Housing Demand. All the parties have had an opportunity to comment on a draft of this report.

Ms P's story

16. Ms P asked the Council for help in April 2012 as her landlord was selling her home and was going to evict her. A case officer started a homeless assessment on 2 April. Ms P had a 9-year-old son and a baby who was 7 months old at the time she approached the Council.
17. Ms P complained the case officer told her to wait until the morning of the eviction before it would provide housing. On the day of the eviction, she attended the Council's customer service centre as instructed, but her case officer was not there and the housing team was not open until the afternoon. Ms P said she

came back in the afternoon and was not seen until 4pm. She did not get any accommodation until 6pm and it was a B&B for one night.

18. Ms P says she returned to the Council's customer service centre the following morning, as she had been instructed. She was told to wait until 2pm, so she returned then. Ms P was allocated another B&B, where she remained with her two children. Ms P could not park near the B&B because she did not have a residents' permit. When Ms P asked about parking permits, she was told only permanent residents could have a permit. Ms P told my investigator visitors' permits were too expensive. So she had to stay in the car with her children until 8pm when the parking restrictions ended. Ms P said the hotelier's staff told her she could not have any visitors in the B&B.
19. Ms P complained to me in June 2012. I asked the Council to respond to her complaint under its complaints procedure and advised her to contact me if she was not happy with its final response.
20. The Council accepted it owed the full housing duty in July 2012. By that time, Ms P had been in the B&B for six weeks.
21. The Council's Executive Director of Regeneration and Housing responded to Ms P's complaints in July 2012, saying:
 - a. Ms P was evicted on a Wednesday. There was no interviewing service for homeless applicants on a Wednesday or Thursday morning to allow officers to do case work. And Ms P's case officer was unfortunately absent on the day of her eviction. The case officer should have made an appointment for her to see a colleague in the afternoon. He was sorry and said this must have added to Ms P's stress, on what was already a stressful day. He was also sorry about the poor attitude of reception staff. Ms P saw the duty officer just before 3pm, but then had to wait again while staff looked for accommodation for her for that night;
 - b. The Council did not always require people to stay in their accommodation until the day of an eviction. Sometimes it is reasonable to expect people to stay, although this is not ideal;
 - c. The housing department was not responsible for parking permits.
22. Ms P complained again to the Council and the Head of Allocations and Accommodation responded on 30 November saying:
 - a. The Council accepted a duty to rehouse Ms P in July 2012. As set out in the allocations policy, she was in Band C and could bid for properties. Because of a shortage of permanent social housing, it was likely to be several years before Ms P got a permanent home;
 - b. The Council could not '*make provision according to parking restrictions*';

- c. The Council would find self contained temporary accommodation for Ms P and her family in the private sector as soon as possible.
23. The Council moved Ms P and her family to self-contained temporary accommodation in February 2013 following my investigator's enquiries. It told my investigator:
- a. It is standard for B&Bs not to allow visitors. This is because there have been problems in the past with visitors staying overnight;
 - b. Ms P may have been able to get a temporary parking permit at £5 a week for up to six weeks. It was sorry if this was not made clear to her;
 - c. There is a special team which finds properties in the private sector. Recent changes to housing benefit have made this more difficult and there is a reduced supply of self-contained private properties.
24. The Council has guidelines for B&B hoteliers. These say 'no visitors are allowed to visit or stay overnight.' Ms P told my investigator the B&B owner said she was not allowed any visitors and if she wanted to see family or friends she had to visit them.
25. Responding to my investigator's enquiries, the Council recognised its customer service to Ms P on the eviction day was poor. It also recognised she and her family should not have been in a B&B. It offered to pay her £400 to reflect this.

Ms Q's story

26. Ms Q contacted the Council about housing as her landlord was going to evict her on 30 November 2011. On 25 November the Council took a homeless application from her.
27. On 30 November 2011 the Council provided Ms Q and her son (then aged 14) with interim accommodation in a B&B. This comprised two adjacent rooms. They shared cooking and bathing facilities with the other residents. Ms Q had to put many of her possessions into storage, as there was no room for them in the B&B. She says this cost £90 a month. She says living in the B&B with so many other people had a big effect on her and her son. She says they often felt uncomfortable using the shared facilities with so many strangers around and would often go to friends and family to avoid using them. She says there was nowhere for them to socialise properly, being confined to two rooms. She says it affected her son's schooling and put a strain on their relationship. She says it affected her other relationships, as visitors were not allowed after 9pm.
28. On 1 March 2012 the Council decided Ms Q was intentionally homeless and therefore it did not owe her the full housing duty. It wrote to her with its decision.

29. Ms Q asked the Council to review its decision under Section 202 of the Housing Act 1996.
30. The Council says it decided on 26 April 2012 to set aside the decision of 1 March 2012 so her case officer could make further enquires on her homeless application before making a fresh decision. It wrote to Ms Q on 6 June 2012 to let her know what it had decided on 26 April.
31. On 27 June 2012 the Council wrote to Ms Q's MP. It said, having made further inquires on her homeless application, it was now referring her to its Social Services Children's Department. It said it had advised her to contact Social Services for help in securing accommodation in the private sector.
32. The Council wrote to Ms Q on 3 August 2012 asking for more information in support of her homeless application. She replied on 24 August.
33. On 6 September 2012 the Council wrote to Ms Q to let her know it had decided it owed her the full housing duty. It says it began looking for self-contained temporary accommodation for Ms Q after this.
34. Ms Q complained to me on 5 October 2012. I asked the Council to deal with the complaint via its own complaints procedure, as it had not yet had an opportunity to respond to it.
35. On 18 October 2012 the Council offered Ms Q self-contained temporary accommodation in Dagenham. Ms Q told the Council she did not want to move to Dagenham because her son was studying for his GCSEs. The Council accepted this and did not enforce the offer. It says self-contained temporary accommodation is rarely available in the Borough so it could not offer her anything locally.
36. On 1 November 2012 Ms Q and her son went to stay with her parents.
37. When the Council replied to Ms Q's complaint in December 2012, it accepted it had taken too long to deal with her application for housing. It said it would back date her priority date within its choice based lettings scheme to 1 November 2011. It said it was trying to get more properties in the private sector to reduce the time spent by homeless households in B&Bs. However, it said the lack of supply of such properties had contributed to the length of time she had spent in the B&B. It said it would continue to try and find temporary accommodation for her. However, it said it would have to consider housing options outside Ealing. The Council accepted Ms Q's case worker had not dealt with her properly. It told her he was a temporary member of staff and had now left. It apologised for the fact it had referred her to its Social Services department without her consent. It offered to pay Ms Q £400 to resolve her complaint.
38. Ms Q was unhappy with the Council's response and complained again.

39. When the Council replied to her second complaint on 24 January 2013, it accepted her stay in the B&B had exceeded the statutory six-week limit. It also accepted this had had a detrimental effect on her and her son. It offered to pay her £500. It said this offer took into account the cost of storing her possessions.
40. On 22 February 2013 the Council offered Ms Q temporary accommodation in Ealing. When Ms Q went to view the property she said it was unsuitable as it was in disrepair. The Council accepted the property was not suitable at the time of the offer.
41. The Council arranged for Ms Q to view another property in Ealing which she accepted on 5 March 2013. She was then able to take her possessions out of storage.
42. When responding to my investigator's enquires, the Council offered to pay Ms Q £1,000 for the cost of storing her possessions during the 11 months she was in the B&B. It also offered to pay her £250 for her time and trouble pursuing her complaint.

The Council's comments on the use of B&Bs

43. I have considered the Council's comments on a draft of this report along with information provided by the Assistant Head of Housing Demand in interview. In 2010, the Council housed 500 homeless households in temporary accommodation in the private sector. It says that figure dropped to 100 in 2012. It says this is because:
 - a. Properties in the more expensive areas of Ealing are no longer sustainable for benefit dependent households facing welfare benefit caps;
 - b. Private sector landlords are reluctant to renew agreements for benefit dependent tenants.
44. The Council accepted 262 households as homeless in 2010/11. That figure increased to 367 in 2012/13.
45. The Council says these changes have forced it to place increased numbers of households in B&Bs. In January 2009 the Council had just 18 homeless households in B&Bs. It says it now has 281 households in B&Bs, around 100 of whom have been there for longer than six weeks.
46. On average, the Council places 45 households a month in B&Bs. It places about 38 households a month in longer term temporary accommodation. It prioritises applicants by date, unless applicants have special needs which justify overriding this. It keeps a record of all those needing such accommodation, which includes medical needs, key stages of children's education and other special needs. The Council says both complainants were allocated self-contained temporary

accommodation based on an objective assessment of need and the unsatisfactory waiting time and not because they had complained to me.

47. The Council has access to self-contained emergency housing and, where available, will place homeless families in this before it makes a decision on their homeless application. The Council's figures show that in the past 12 months, it placed 366 families in shared units and 263 families in self-contained units before making a decision on these applications. About a third of the self-contained units are in East London.
48. The Council says it costs more for it to house people in B&Bs, as the subsidy provided by the Department for Work & Pensions is less for a B&B than it is for a self-contained property in the private sector.
49. The Council is implementing a strategy for reducing the number of homeless families in B&Bs. When interviewed the Assistant Head of Housing Demand summarised the Council's approach to minimising the use of B&B as follows.
 - a. Increasing financial incentives for landlords to encourage them to house homeless families.
 - b. Housing people in temporary accommodation in the east of London and outside London.
 - c. Acquiring properties due to be demolished for Crossrail and the HS2 rail link for use as temporary accommodation.

Conclusions

50. The Homelessness (Suitability of Accommodation) (England) Order 2003 allows councils to place families in B&B for a maximum of six weeks as a last resort (if they have not got more suitable accommodation). I find maladministration in both of the case of Ms P and Ms Q for the failure to move them to self-contained accommodation after they had been in B&Bs for six weeks.
51. I acknowledge there are various factors which make it difficult for the Council to comply with this requirement. There are increasing demands on its resources because of changes to benefit rules, increased rents and demand on private sector tenancies from other groups. I also recognise the part played by the Council, along with London Councils, in working with the Department for Communities and Local Government to identify actions which will help them avoid housing families in B&Bs for more than six weeks.
52. I welcome the Council moving Ms P, Ms Q and their families to self-contained accommodation after I started my investigations. The Council denies any causal link and says Ms P's move was based on an objective assessment of needs and the unsatisfactory time she had been waiting. A truly objective assessment of

need would have resulted in the Council moving both complainants after no more than six weeks, not after 42 and 33 weeks respectively.

53. The Council has some self-contained emergency housing for families. But this was clearly not enough to meet the needs of homeless families approaching it for assistance.
54. The Council does not have an effective system in place to avoid placing families in B&B for longer than six weeks, otherwise it would not be housing around 100 families in that way.
55. Since interviewing the Assistant Head of Housing Demand, Members have approved a strategy for *Managing the local impact of welfare reform*. This includes a policy on "*Minimising the use of temporary accommodation and Bed and Breakfast in particular by using the statutory power to end a main homelessness duty with a suitable private sector offer following a thorough assessment of the individual housing needs*". The Council should have had in place a strategy for complying with the 2003 Order on the use of B&Bs (see paragraph 9 above), given that the number of homeless families seeking assistance has been rising for some time. The failure to do so is maladministration. It is unclear whether the current strategy will achieve the aim of complying with the 2003 Order.

Ms P

56. The Council accepts it provided a poor service to Ms P on the day of her eviction. Officers told her to return later on, when they knew, or ought to have known, the office was shut. This was maladministration. Not making B&B available until 6pm, when Ms P had a baby was also poor service and maladministration because Ms P had been waiting all day. In reaching this view, I have taken into consideration the competing demands on the Council's homeless service. But, this was an eviction Ms P had warned the Council about in advance. Yet there was no plan of action to deal with the case on the day.
57. The Council placed Ms P and her two young children in B&B for nine months. This is seven and a half months longer than permitted under the Suitability Order and is maladministration.
58. Ms P complained twice about parking permits. The responses to her complaints were misleading and inaccurate and this was maladministration. It was not until my investigator's enquiries that the Council gave accurate information that Ms P could have had a temporary resident's permit. The failure to give Ms P correct advice and information is maladministration.
59. Ms P received inaccurate information about visitors. She was told she could not have any. I consider the Council's guidelines on visitors in B&B lack clarity and are open to interpretation. On one reading, people are not allowed any visitors.

On another reading, they are allowed to have visitors, just not overnight. Having unclear guidelines and giving inaccurate information about visitors is maladministration.

Ms Q

60. The Council took nearly twice as long as the recommended 33 working days to make a decision on Ms Q's homelessness application. When Ms Q asked for a review of its decision, the Council delayed by six weeks in telling her about the decision it had made on 28 April 2012 to overturn the original decision. The Council then took another 65 days to decide it owed Ms Q the full housing duty. These delays resulted in Ms Q having to spend 42 weeks longer than should have been the case in the unsuitable B&B.
61. When Ms Q turned down the offer of unsuitable temporary accommodation in October 2012, the Council did not make a suitable offer until March 2013, after she had complained to me. That additional delay meant Ms Q had to pay for the storage of her possessions for 14 months in total.

Injustice

62. I consider the Council's maladministration caused injustice because:
 - a. Ms P and her children had to live in unsuitable accommodation with shared facilities and a lack of privacy for 42 weeks longer than legally permitted;
 - b. Ms P and her children were inconvenienced and there were restrictions on their family life by not being able to have visitors in their home;
 - c. Ms P was inconvenienced by having to park at some distance from the B&B in the evening and walk with two small children or wait in the car with them until the restriction ended at 8pm;
 - d. Ms Q and her son had to live in unsuitable accommodation with shared facilities for 33 weeks longer than legally permitted;
 - e. Ms Q had to pay for her possessions to be stored between January 2012 and March 2013.

Recommended remedy

63. To remedy the injustice I have identified because of maladministration, I recommend the Council:
 - a. Pays Ms P £1,750 for the inconvenience caused by incorrect information about permits and visitors and for being in unsuitable accommodation for seven and a half months;

- b. Pays Ms Q £2,000 for being left in unsuitable B&B accommodation for 10 months plus £1,260 for the cost of storing her possessions for 14 months;
- c. Apologises to both complainants in writing;
- d. Ensures it has in place a strategy for complying with the Homelessness (Suitability of Accommodation) (England) Order 2003;
- e. States clearly in its standard information whether people in B&B can have visitors.



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