

Report

on an investigation into
complaint no 13 005 484 against
the London Borough of Newham

17 March 2014

Investigation into complaint 13 005 484 against the London Borough of Newham

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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 X	the complainant
Mr X	the complainant's husband
Mr Y	the complainant's son
Officer A	a Housing Choices Officer (a temporary agency worker)
Officer B	a manager

Report summary

Homelessness

A solicitor acting for Ms X complains that the Council did not respond properly to her client's request for housing assistance when she and her family were threatened with homelessness and later became homeless. In particular she says the Council:

- delayed in taking a homelessness application;
- did not offer Ms X and her family suitable interim accommodation when they first became homeless;
- later placed them in bed and breakfast accommodation that was unsuitable because of Mr & Ms X's disabilities;
- failed to notify Ms X of its homelessness decision; and
- failed to reply to her complaint about these matters.

Finding

Maladministration causing injustice and recommendations made.

Recommended remedy

In order to remedy the injustice identified above I recommend the Council:

- a. pay Ms X £750 to recognise the distress and hardship she and her family suffered.
- b. remind caseworkers of the requirement to issue decision letters to applicants and their solicitors and undertake random sampling of cases to make sure this is done.
- c. consider offering a pre-booked appointment to applicants who are elderly or severely disabled and who have a confirmed eviction date to minimise the time they spend in reception waiting to be seen on the day of the eviction;
- d. review the procedure for assessing the suitability of temporary accommodation where a member of the applicant's household has a disability. It should report back to me in three months' time to tell me what it has done to expedite the assessment process.

I welcome the Council's agreement to recommendations a and b above.

Introduction

1. A solicitor acting for Ms X complains that the Council did not respond properly to her client's request for housing assistance when she and her family were threatened with homelessness and later became homeless. In particular she says the Council:
 - delayed in taking a homelessness application;
 - did not offer Ms X and her family suitable interim accommodation when they first became homeless;
 - later placed them in bed and breakfast accommodation that was unsuitable because of Mr & Ms X's disabilities;
 - failed to notify Ms X of its homelessness decision; and
 - failed to reply to her complaint about these matters.
2. Ms X is in her late seventies and her husband, Mr X, is in his eighties. Both have severe disabilities which limit their mobility. They live with their son, Mr Y, daughter-in-law and their two grandchildren. Mr Y is the main carer for both his parents. After the family became homeless, the Council offered them temporary accommodation in Birmingham. They refused the offer because they did not consider it was suitable for Mr & Ms X's needs. The family split up and went to stay with relatives in East London. When the Council later provided temporary accommodation in a neighbouring borough, Mr X did not move in because he could not climb the stairs to the accommodation.

Legal and administrative background

3. When someone applies to a council for accommodation and it has reason to believe they may be homeless or threatened with homelessness, several duties arise, including:
 - to make enquiries;
 - to secure suitable accommodation for applicants who may be eligible for assistance and in priority need pending the outcome of the enquiries; and
 - to notify the applicant of the decision in writing and the right to request a review of the decision.
4. When carrying out these duties, councils must have regard to the Code of Guidance issued by the Secretary of State. (*Homelessness Code of Guidance for Local Authorities July 2006*)

5. The Code of Guidance says there is an **immediate** duty to ensure suitable accommodation is provided for the applicant and their household when the Council has reason to believe someone may be homeless, eligible for assistance and in priority need. *(Code of Guidance, paragraph 6.5)*
6. When deciding whether particular accommodation is suitable for the applicant, councils must consider the location of the accommodation, the medical and physical needs of the applicant and members of the household, and the space and arrangement of the accommodation (among other factors). All aspects of the accommodation must be assessed in light of the particular needs and requirements of the applicant and members of the household.
7. The Code advises councils to carefully consider the suitability of accommodation for applicants where someone in the household has particular medical and physical needs. It says the Secretary of State recommends councils take into account physical access to and around the home, and mobility needs, and says these factors are especially relevant when a member of the household is disabled. *(Code of Guidance, paragraph 17.5)*
8. The law says a council must secure interim accommodation in its own district so far as reasonably practicable. *[Housing Act 1996, section 208 (1)]* The Code recommends applicants who need social services support, or who need to maintain links with specialist medical services or special schools, should have priority for accommodation in the Council's area. *(Code of Guidance, paragraph 16.9)*
9. Usually an applicant can challenge the suitability of temporary accommodation provided after a Council has accepted the main housing duty by using the statutory review procedure. Following the review, there is a right of appeal on a point of law to the County Court. However an applicant can only use this review procedure if they have been notified in writing of the homelessness decision.
10. The Council restructured its Housing Options Service in November 2011, reducing the number of frontline staff by 25%. The Council receives approximately 250-300 new approaches for help with housing every month. Because of these demands, the Housing Options Service operates an appointment system. Emergency appointments are for people who face imminent homelessness (for example, where there is already a Possession Order). Back up appointments are for very urgent cases such as people who are homeless on the day they approach the Council for help.

How we considered this complaint

11. This report has been produced following the examination of the relevant housing records and an interview with the complainant and her son. The two key Council officers involved in these events no longer work for the Council.

12. The complainant's solicitor and the Council were given a confidential draft of this report and invited to comment.

What happened

13. Ms X used to live with her husband, son and daughter-in-law and two grandchildren in a privately rented two bedroom ground floor flat in Newham. They had been tenants of the property since June 2010. The Council had helped Ms X secure this accommodation through its Bond Scheme.
14. On 11 September 2012 solicitors acting for the landlord's mortgage company informed Ms X the landlord had defaulted on mortgage payments. The mortgage company already had a Possession Order for the property. The landlord's solicitors told Ms X they had applied to the Court for a warrant to evict them. They would write again when the date for the bailiffs' visit was fixed.

Ms X asks for housing advice and assistance

15. On 1 October 2012 Ms X and her son went to the Housing Options Service to ask for housing advice and assistance.
16. Officer A, a temporary agency worker in the Homelessness Prevention team, interviewed Ms X. Mr Y interpreted. Officer A:
 - took a copy of the letter from the landlord's solicitor about repossession of the property and several other documents;
 - saw evidence that Mr & Ms X are British citizens;
 - saw a letter from the Department for Work and Pensions confirming Mr X received the higher rate of Attendance Allowance and his son received Carer's Allowance;
 - saw evidence that Mr & Ms X received Pension Credit;
 - recorded details of Mr & Ms X's medical conditions and disabilities on the Housing Options form; and
 - gave Ms X a medical assessment form to complete.
17. In the case notes Officer A noted the property was going to be repossessed. Under the heading Priority Need, she recorded details of Mr & Ms X's medical conditions and the two dependent children in the household. She confirmed Mr & Ms X and their son were British citizens who were eligible for assistance. She asked Mr Y to return with documents to confirm the immigration status of his wife and children.
18. On 1 October the solicitors acting for the mortgage company notified Ms X the eviction would take place on 24 October. They enclosed a copy of the County Court eviction notice. The family were threatened with homelessness within the next 28 days.

19. On 2 October Officer A's manager approved Officer A's recommendation to carry out a homelessness investigation.
20. Mr Y says they met Officer A again on 4 October when they took more documents to the Housing Options Service. She gave Ms X a receipt and ticked the box "bailiffs' warrant/Possession Order". (This may have been the letter confirming the eviction date.) The advice given during this visit is not recorded in the Council's case records but there is a receipt for the documents handed in. Mr Y says Officer A told them it was too early to make a homelessness application and she asked them to consider using the Bond Scheme instead to find private rented accommodation. They agreed to try the Bond Scheme.
21. The case records include a copy of the County Court notice of eviction. This was date-stamped by the Housing Options Service on 8 October. It is not clear whether Officer A saw the notice because she did not refer to it in the case notes.
22. No further action was taken at this stage. Officer A did not contact Ms X to offer her an emergency appointment before the eviction date. Mr Y telephoned twice on 8 and 18 October to find out what was happening with the application. He was not able to speak to Officer A but another officer agreed to send her an email after his second call. Mr Y did not hear from Officer A again before the eviction. The Council says it does not offer pre-booked appointments because sometimes bailiffs' warrants are not executed or applicants may not keep the appointment. It says this would waste officers' time which could be spent on dealing with casework or other emergency cases.

The eviction takes place

23. On 24 October bailiffs evicted Ms X and her family. When my investigator interviewed Ms X and her son, they said they went to the Housing Options Service on that day to ask for emergency accommodation. Mr X's son said they waited in the office from about 9:30 until 2:00pm or 3:00pm. He says they were not interviewed by an officer to establish their circumstances and housing needs. He says a male officer came into the waiting room in the afternoon to tell everyone the only temporary accommodation available that day was in Birmingham. He said the officer announced this to everyone waiting in the room. He asked people to raise their hands if they were interested. He said there was no other accommodation available. Ms X and her family did not want to go to Birmingham and so they left the office when it closed at 4:00pm.
24. The Council says Ms X did not have a booked appointment for 24 October. But its electronic records show Ms X and Mr Y were booked in at reception at 2:16pm and seen at 4:48pm. There are no interview notes. The Council says it would be usual practice for an officer to discuss the eviction and make an offer of interim accommodation. But, without the interview notes, it accepts it cannot say whether Ms X was made an offer and refused it. The Council is currently reviewing the procedures for recording interviews with applicants.

25. Mr Y told me the family had nowhere to stay together that night. So they split up and went to stay with various relatives across East London.

The Bond Scheme and the offer of temporary accommodation in Birmingham

26. On the day of the eviction, Officer A completed forms to refer Ms X to the Bond Scheme. On the case summary she wrote "bailiffs have now evicted the tenant as at 24 October 2012 but client refused BB in Birmingham and [is] currently living with friends".
27. In response to my enquiries, the Council said it suspended the Bond Scheme in the period leading up to 9 November 2012 when new powers to make Private Rented Sector Offers to homeless households came into force. There is a shortage of private rented accommodation and it could not offer properties through the Bond Scheme until the bailiffs' warrant for eviction was executed. So there was no prospect of Ms X being offered accommodation through the Bond Scheme before she was evicted on 24 October.
28. On 25 October Ms X and Mr Y returned to the Housing Options Service. The Council's records show they were seen once in the morning and again in the afternoon. Mr Y says Officer A interviewed them. The Council suggests this interview resulted in the referral to the Bond Scheme (although the referral form Officer A completed was dated 24 October). The only entry in the case notes was made by Officer B. According to her notes, she offered Ms X temporary accommodation in Birmingham but Ms X refused the offer. The Council says the offer was based on the availability of temporary accommodation on the day. The case notes do not record Ms X's reasons for refusing the offer. Nor do they make it clear whether Officer B had considered Mr & Ms X's disabilities and medical circumstances to decide whether an offer in Birmingham was suitable. Mr Y does not remember speaking to Officer B and says they saw only Officer A.
29. Mr Y told my investigator it was not reasonable to expect his elderly parents to uproot and move to temporary accommodation in Birmingham. Ms X is in her late seventies and has diabetes. She suffered a stroke not long before they were evicted. Mr X is in his eighties and is partially paralysed following a stroke. Both have mobility problems. His parents had settled in Newham several years ago and all their close relatives and friends live locally. They attend outpatient clinics at local hospitals and are registered with a local GP practice. Mr & Ms X do not receive support from social services or have a community care package because Mr Y is their full-time carer. However Mr Y told my investigator his siblings provide some help and support in caring for his parents. If the family had moved to Birmingham, they would have lost this family support network. Mr Y's eldest child had just started attending a primary school in Newham in September. Mr Y considered a young family might be able to adapt to moving to a new city where they had no existing support network. But his elderly parents are both disabled and in poor health and they could not have coped with such a major disruption to their lives.

30. Mr Y says the family continued to live separately with relatives. He stayed at his brother's home where he slept in the living room. Mr X stayed with his daughter and her child in her studio flat. Ms X stayed with her daughter-in-law. Mr Y travelled daily by bus to visit both his parents. He needed to administer Ms X's insulin injections and regularly test her blood sugar levels. He also visited Mr X to monitor his blood pressure and check his general health. The Council did not contact Ms X to discuss her housing needs during this time and she was not invited to any interviews at the Housing Options Service. The members of Ms X's household continued to live apart for two weeks. He says they incurred additional travel costs during this period.

The medical assessment and referral to the Occupational Therapy Service

31. Ms X handed in a completed medical assessment form on 29 October. The Council says it needed the form in order to properly consider the suitability of accommodation. On the form Ms X described the features of the property where she had lived before the eviction. She said her husband was disabled and he needed to use a wheelchair all the time. She explained he was paralysed on one side and referred to him getting the "higher mobility rate". Ms X also stated that she had suffered a stroke, and also suffered from asthma, arthritis and diabetes.
32. The Council's medical adviser considered the form on 1 November. She recommended an Occupational Therapist should review their needs and said she would be happy to reconsider the case following that assessment. Ms X and her husband were not known to the Occupational Therapy service and so the Housing Options service made a new referral.

Ms X seeks legal advice and the Council offers temporary accommodation in London

33. Ms X decided to seek legal advice and assistance. On 6 November Ms X's solicitor sent a Pre-Action Protocol letter to the Council's Legal Service. She threatened to issue a judicial review claim because the Council had failed to accept a homelessness application and provide the family with interim accommodation pending enquiries. She summarised the facts and the relevant legal provisions. She considered Ms X was homeless, eligible for assistance and in priority need. She contended that the Council had breached its duties under the Housing Act 1996 and the Equality Act 2010. She said it had also failed to have regard to advice in the Code of Guidance because officers had not considered her client's specific needs and circumstances before deciding whether an offer of temporary accommodation in Birmingham was suitable. She asked the Council to take a homelessness application and issue a decision. She also asked the Council to arrange interim accommodation for Ms X by 8 November.
34. On 8 November Ms X was given a priority appointment at the Housing Options Service. A senior duty officer offered her a licence for self-contained temporary accommodation in a neighbouring borough. Ms X accepted the offer.

35. On 9 November Officer A typed a homelessness decision letter. The Council accepted it owed Ms X the main housing duty under the Housing Act 1996. She was homeless, eligible for assistance, in priority need and not intentionally homeless. But the letter was not sent to Ms X or her solicitor so they did not know the Council had made a decision on the application. The Council says Ms X's new temporary accommodation address (the property she accepted on 8 November) would not have been on the system by 9 November. The Council did not have a correspondence address for Ms X because it did not know where she stayed after the eviction. So the letter remained on the file. The Council says most decision letters are posted to applicants and it is rare for decision letters to be held on the file. It would expect the case officer to try to contact the applicant by email or telephone to confirm an address or to arrange for the letter to be collected.
36. The Council claimed it did not know on 9 November that Ms X was being represented by a solicitor. However Ms X's solicitor had sent a letter by email to the Legal Service on 6 November. She made it clear she was acting as Ms X's representative. It appears this information was not passed on immediately to the caseworker or her manager.
37. On 19 November Ms X's solicitor wrote to the Homeless Persons Unit. She said the temporary accommodation was unsuitable. Mr & Ms X had to climb 14 steps to reach the front door and there was no hand rail. She reminded the Council that Mr X was partially paralysed and he could not manage the steps. She said he had not been able to move in and he was living elsewhere with a relative. The solicitor said Ms X also had great difficulty climbing the steps and it caused her extreme discomfort. There was no shower in the property and Ms X could not manage to transfer into the bath so she had to strip wash instead. The solicitor quoted advice in the Code of Guidance (paragraph 6) and asked the Council to provide suitable accommodation for the family by 27 November.
38. The Council has confirmed the temporary accommodation was a 3 bedroom property on the first floor with no lift. There were 14 steps to access the property and no shower facility.
39. In response to my enquiries, the Council expressed the view that the property was suitable for Ms X and her household in the short term. It did not accept Mr X had not moved into the property. It said he could get around outside without assistance (although this seems irrelevant to his ability to climb steps). In response to the solicitor's letter of 19 November, an officer said Mr Y had told her Mr X lived at the property and he was not staying with a relative. When I interviewed Mr Y, he said he did not make this statement.
40. A Visiting Officer inspected the property on 28 November and 5 December 2012. In the notes for the second visit, she wrote "Dad [Mr X] is not staying as he cannot climb the stairs (disabled)".

41. On 7 December a housing officer told Ms X's solicitor she would ask an Occupational Therapist to assess Mr & Ms X's housing needs to help her decide what would be suitable accommodation. She said they were not already known to the service. She would wait for this assessment, and the Visiting Officer's reports, before deciding whether to move Ms X and her family to alternative temporary accommodation.
42. On 14 December Ms X's solicitor sent a second letter before claim to the Legal Service. She challenged the Council's failure to provide suitable accommodation and have regard to Mr & Ms X's disabilities. She said Mr X could not climb the steps and so he was not living in the property. She asked the Council to provide Ms X and her family with suitable accommodation by 28 December. She threatened to issue judicial review proceedings if the Council did not respond by then. When she sent this letter the solicitor had not been notified that the Council had made a homelessness decision on 9 November. So she threatened judicial review proceedings rather than using the review procedure to challenge the suitability of the accommodation.
43. The Council questioned the statement that Mr X did not move into the temporary accommodation because he could not manage to climb the 14 steps. I found Mr Y's account credible. Mr X is partially paralysed following a stroke. Furthermore the Visiting Officer stated that Mr X was not living at the property when she visited on 5 December.
44. Ms X and her family (except for Mr X) lived in the first temporary accommodation for just over 10 weeks. On 22 January the Council offered Ms X self-contained temporary accommodation in Newham. This property had two steps to the front door. It has a ground floor bathroom and bedroom. Ms X and her family accepted the offer and moved to this property.
45. On 19 February an Occupational Therapist did a joint assessment of Mr & Ms X's housing needs at their new temporary accommodation. This assessment followed the referral made by the Housing Options service in November 2012 (paragraph 31.) The Occupational Therapist said Ms X needed level access to the property and level access to bedroom and bathroom facilities. She said Ms X could manage up to four steps but she could not cope with internal or external stairs. She said Mr X could manage a maximum of two steps with some assistance. She recommended grab rails should be fitted by the front door and an internal step down to the kitchen.
46. Ms X's solicitor requested a review of the suitability of the second temporary accommodation. By then the Council had notified the solicitor that it had accepted the main housing duty so she used the statutory review procedure. The outcome of this review falls outside the scope of this investigation. But it is worth noting the reviewing officer's comment about the first temporary accommodation. She was satisfied the Council had taken remedial action by withdrawing the offer of the first temporary accommodation and finding alternative suitable accommodation for the

family. She considered the request for a review of the suitability of the first accommodation had been superseded by the offer of the second temporary accommodation.

The solicitor's complaint to the Council

47. After the judicial review claim was settled, and the review process was concluded, Ms X's solicitor wrote to the Corporate Complaints team to complain about the Council's handling of Ms X's homelessness application and its performance of its housing duties. She sent a reminder letter on 10 June. Both letters were sent by post to the Corporate Complaints team. On 18 June she complained to me because the Council had not replied.
48. In response to my investigator's enquiries, the Council says it could not find the solicitor's letters when it searched the records held by its Complaints and Members Enquiries team.
49. The solicitor did not send the letters by recorded delivery or email. So there is no evidence that the Council received the letters.

Conclusions

50. The Council did not delay taking a homelessness application. Officer A started to make homelessness inquiries when she interviewed Ms X on 2 October and she made a decision to accept the main housing duty on 9 November. I find no evidence of fault.
51. Ms X gave the Council plenty of notice that she would be evicted on 24 October. By 8 October at the latest the Council had seen the Notice of Eviction. Despite the advance notice, it did not offer Ms X a priority appointment. Mr Y's telephone calls on 8 and 18 October to the Housing Options Service did not prompt the Council to make an appointment before the family were made homeless. The Council says in some cases warrants for eviction are not executed and applicants fail to attend pre-booked appointments. That wastes officers' time. I accept this may sometimes happen. But Ms X and her husband were particularly vulnerable due to their age and disabilities and I consider it would have been appropriate to make an appointment for 24 October. The failure to do so was fault.
52. Mr Y went with Ms X to the Housing Options Service to ask for emergency accommodation on 24 October. She did not have an appointment but the Council has confirmed she attended on that day. The family was homeless and needed somewhere to stay that night. Ms X and her family say they were not interviewed. Mr Y says an officer told everyone waiting in the reception the only temporary accommodation available was in Birmingham. The Council says Ms X was seen by an officer. But there are no interview notes and I have seen no evidence that they were offered interim accommodation that day. That was fault.

53. On 25 October Ms X and Mr Y returned to the Housing Options Service. In the afternoon an officer announced the only accommodation available that day was in Birmingham. This was offered on a take it or leave it basis. Officers had not assessed the specific needs and circumstances of Ms X's household. It took almost four months for the Council to obtain the Occupational Therapist's assessment. So the Council simply did not know whether temporary accommodation in Birmingham would be suitable for Ms X's household. There is a legal duty to ensure temporary accommodation is suitable and takes account of the needs of disabled people in the household. The Council cannot defer that duty. So the Council must find a way to expedite the assessment. It should not wait four months for an Occupational Therapist's report.
54. After Ms X's solicitor threatened judicial review proceedings the Council offered Ms X temporary accommodation in London on 8 November but it was unsuitable. The Council was under pressure to find accommodation quickly to prevent legal action and I am sure the options were extremely limited. But the Council knew Mr & Ms X are both severely disabled and have mobility problems. I have seen no evidence that officers took these factors into account, or considered the physical features of the property, before they made the offer on 8 November. Ms X's mobility problems were immediately apparent when my investigator met her. I consider the Council's failure to consider the suitability of this property for a household with two severely disabled and elderly adults was fault.
55. The Council failed to send Ms X and her solicitor the homelessness decision letter. The solicitor first contacted the Council's Legal Service three days before the decision letter was prepared so I do not accept the Council did not know she was acting as Ms X's representative. Furthermore I see no reason why the decision letter was not sent to Ms X shortly after she moved into the first temporary accommodation. The failure to notify Ms X and her solicitor of the decision was fault. It led Ms X's solicitor to issue judicial review proceedings rather than using the review procedure to challenge the suitability of the temporary accommodation.
56. There is insufficient evidence to conclude that the Council received the solicitor's complaint letters but then lost or mislaid them. I cannot rule out the possibility that the letters went astray in the post so I have not found fault.
57. Ms X and her family suffered a serious injustice due to the faults I have identified. They lived apart and stayed with relatives in cramped and unsuitable accommodation for two weeks after the eviction. Mr X continued to live separately from his wife and from Mr Y, his carer, for a further two and a half months. Mr Y suffered the additional time and inconvenience of travelling between the temporary accommodation and his sister's flat to care for his father. I have no doubt this caused the family considerable hardship and distress at an already stressful time.

Recommendations

58. In order to remedy the injustice identified above I recommend the Council:
- a. pay Ms X £750 to recognise the distress and hardship she and her family suffered.
 - b. remind caseworkers of the requirement to issue decision letters to applicants and their solicitors and undertake random sampling of cases to make sure this is done.
 - c. consider offering a pre-booked appointment to applicants who are elderly or severely disabled and who have a confirmed eviction date to minimise the time they spend in reception waiting to be seen on the day of the eviction;
 - d. review the procedure for assessing the suitability of temporary accommodation where a member of the applicant's household has a disability. It should report back to me in three months' time to tell me what it has done to expedite the assessment process.

I welcome the Council's agreement to recommendations a and b above.



**Dr Jane Martin
Local Government Ombudsman
The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB**

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