

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

**Investigation into a complaint about
London Borough of Croydon
(reference number: 21 004 836)**

23 June 2022

The Ombudsman's role

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

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

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

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

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

Key to names used

Miss X The complainant

Report summary

Housing - Homelessness

Miss X complained about the temporary accommodation the Council provided her family with while she is homeless and the priority it gave her for social housing.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council or Cabinet and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

To remedy the injustice caused, the Council should:

- apologise to Miss X;
- arrange suitable alternative temporary accommodation for her and her family;
- pay Miss X £300 a month for the period between January 2021 and when it makes Miss X an offer of suitable alternative temporary accommodation to recognise the distress caused by having to live in overcrowded accommodation;
- pay Miss X £200 for the time and trouble of having to complain to both the Council and us; and
- refer Miss X to its Children's Services team to establish what additional support it can provide for Miss X and her children.

To improve services to Miss X and other homeless families, the Council should:

- review its procedures for keeping the suitability of temporary accommodation under review to ensure it properly reviews suitability where there are relevant changes of circumstances; and
- review its policy for referrals between its housing, children's services and environmental health teams to ensure that it makes appropriate referrals where families with children may need support or are living in overcrowded accommodation.

The Council has accepted our recommendations.

The complaint

1. Miss X complained the Council failed to provide her with suitable accommodation after it accepted a duty to house her in 2014 and has not given her the correct priority under its housing allocation scheme. She said it should have found permanent accommodation for her by now and that the temporary accommodation it has provided is not suitable. As a result, she said she is living in overcrowded housing and this is affecting her mental health. She wanted the Council to provide her with suitable accommodation.

What we have investigated

2. We have considered events covered by Miss X's complaint from July 2020 onwards.
3. The final section of this report gives our reasons for not considering events before this.

Legal and administrative background

The Ombudsman's role and powers

4. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
5. We cannot 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*)
6. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
7. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

Homelessness and temporary accommodation

8. Part 7 of the Housing Act 1996 and the Homelessness Code of Guidance for Local Authorities set out councils' powers and duties to people who are homeless or threatened with homelessness.
9. If a council is satisfied an applicant is homeless, eligible for assistance, and has a priority need the council has a duty to secure that accommodation is available for their occupation (unless it refers the application to another housing authority under section 198). (*Housing Act 1996, section 193 and Homelessness Code of Guidance 15.39*)
10. 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 homelessness duty. (*Housing Act 1996, section 206 and (from 3 April 2018) Homelessness Code of Guidance 17.2*)

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11. When deciding if accommodation is suitable, the law says councils must consider several factors, including:
 - the size of the property and whether it is legally overcrowded;
 - affordability for the applicant;
 - the location of the accommodation;
 - the Council's duty to safeguard and promote the welfare of any children living in the accommodation and their rights to an education;
 - the Homelessness Code of Guidance for Local Authorities; and
 - any relevant parts of the Council's homelessness strategy.
 12. The duty to ensure accommodation is suitable is an ongoing duty. Councils must keep the suitability of accommodation under review and respond to any relevant change in circumstances which may affect suitability, until such time as the accommodation duty is brought to an end. (*Homelessness Code of Guidance 17.8*)

Overcrowding in housing

13. The law sets out tests to decide whether living accommodation is 'overcrowded'. (*Housing Act 1985, sections 324-326*)
14. A home is overcrowded if either:
 - two people of the opposite sex aged over 10 and who are not living together as a couple have to sleep in the same room; or
 - more people live in the property than the number or size of rooms in the property can accommodate under the rules.
15. For the second of these tests, the law says accommodation with a single room can accommodate two people.
16. When calculating the number of people for the second test, children under one year old do not count and children aged between one and ten years old count as half a person.

Housing allocations

17. 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)*)
18. An allocations scheme must give reasonable preference to applicants in the following categories:
 - homeless people;
 - people in insanitary, overcrowded or unsatisfactory housing;
 - people who need to move on medical or welfare grounds;
 - people who need to move to avoid hardship to themselves or others;(*Housing Act 1996, section 166A(3)*)
19. The Council operates a choice-based lettings scheme which allows housing applicants to bid for available properties which it advertises. Properties are allocated to the bidder who has held the highest priority for the longest time. The scheme has three levels of priority which include the following groups of people:

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- **Additional preference – band 1:** Members of the armed forces; people living in properties which cause a serious health hazard; people escaping violence, harassment or intimidation; people who need to move because of a serious health or disability need; people who have more bedrooms than they need and people who need to move because their home needs major renovation.
 - **Increased priority – band 2:** Applicants who are working at least 16 hours a week; people engaged in training or education; foster carers; adoptive parents and people working with the Council to prevent their homelessness.
 - **Moderate priority – band 3:** All other applicants who are entitled to a 'reasonable preference'.
20. We may not find fault with a council's assessment of a housing application or a housing applicant's priority if it has carried this out in line with its published allocations scheme.

How we considered this complaint

21. We produced this report after examining relevant documents and interviewing the complainant.
22. We gave the complainant and the Council a confidential draft of this report and invited their comments. We took any comments received into account before the report was finalised.

What we found

What happened

23. Miss X applied to the Council as homeless in 2013. At the time she applied, Miss X was a single person with no children. The Council accepted it owed Miss X the main housing duty and placed her in a studio flat as temporary accommodation in early 2014. Miss X also joined the Council's choice based letting scheme and the Council placed her in band 3.
24. Between 2014 and 2017, Miss X had two children. With the help of a housing adviser, she asked the Council to review the suitability of the temporary accommodation in 2017. The Council decided the accommodation was still suitable, and there is no evidence Miss X used her right to appeal this decision in court.
25. Between 2017 and 2021, Miss X had two further children. She complained to the Council in early 2021 that:
- it had not yet given her a permanent home;
 - the temporary accommodation was too small for her and her four children; and
 - she should have higher priority under the Council's choice based letting scheme.
26. In her complaint, Miss X set out the difficulties sharing a single room with four children was causing both her and the children.
- She and her four children, including her new-born child, were all having to live and sleep in a single room.
 - Neither Miss X nor her children had any private living space or the ability to spend any time alone.

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- These close living arrangements, particularly during the COVID-19 lockdowns, had caused both Miss X and her children severe stress and anxiety.
 - Her eldest child had no quiet space to take part in online lessons or complete their schoolwork from home, which was affecting their education.
 - Miss X was also recovering from cancer, which had left her with physical weakness making it difficult to access her flat.
27. Miss X asked the Council to provide her with suitable accommodation.
28. In its response to her complaint, the Council told Miss X that she had the correct banding under its choice based letting scheme and that she should continue to bid on properties to find a permanent home. It also offered to help Miss X find private rented accommodation if she wished to consider this alternative.
29. Miss X was not satisfied with the Council's response, so she complained to us in July 2021.

Analysis

Housing priority

30. The Council last reviewed Miss X's priority under its choice based letting scheme in May 2021, after Miss X told it she now had four children. The Council explained to Miss X it had correctly placed her in band 3, because she had a 'reasonable preference' because she was homeless but did not meet the requirements of the higher bands. However, it decided that she now needed, and could bid on, three-bedroom properties.
31. There is no evidence the Council ignored any relevant information about Miss X's circumstances, and it has explained the reasons for its decision. Therefore, we are satisfied the Council has correctly applied its policy when deciding Miss X's priority should be band 3.
32. However, in response to our enquiries the Council has said it is continuing to review Miss X's priority to see if it can award her increased preference on a discretionary basis.

Permanent housing

33. The law does not require councils to provide a permanent home for people to whom they owe the main housing duty. Councils can meet this duty by providing temporary accommodation. There is no limit on how long councils can provide someone with temporary accommodation, though most councils will seek to rehouse people as soon as possible.
34. We recognise the demand for social housing far outstrips the supply of properties in many areas. We will not usually find fault with a council for failing to re-house someone, if it has prioritised applicants and allocated properties according to its published lettings scheme policy.
35. The evidence shows the Council has correctly applied its allocations policy and has offered Miss X other options for permanent housing, which it says she has declined. We are satisfied there is no fault with how the Council has supported Miss X to find a permanent home.

Suitability of temporary accommodation

36. The duty to provide suitable accommodation is an ongoing duty and the Council must review this where it has reasons to believe that accommodation may no longer be suitable, for example, if an applicant's circumstances change.

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37. Given the changes reported by Miss X, and the significant effect her current accommodation was having on her and her family, the Council should have reviewed the suitability of the temporary accommodation. However, the Council has not provided any evidence it did so or that it asked Miss X for any further information or evidence about the impact her current accommodation was having.
 38. When Miss X told the Council she had four children in January 2021, she and her family counted as two and a half people under overcrowding rules. Miss X's studio flat can house two people under those rules, so at this stage Miss X's accommodation was overcrowded by half a person. When Miss X's youngest child turned one year old in May 2021, Miss X's home was overcrowded by one person.
 39. The Council has also not provided any evidence it considered the effect of living in the accommodation on Miss X's children, considered whether it should refer Miss X to its Children's Services team for other support or whether the overcrowding in the property represented an environmental health risk to Miss X and her family.
 40. In its response to our enquiries, the Council said it still considers the temporary accommodation to be suitable. However, it has not explained why it considers a one-bedroom studio flat to be suitable in light of its May 2021 decision that Miss X needs three bedrooms or that it has considered the other factors it should have done, such as whether Miss X's home was legally overcrowded. In the absence of a proper decision-making process, we can decide what would have happened if a decision was made properly.
 41. On the balance of probabilities we are satisfied that, had the Council properly reviewed the suitability of Miss X's temporary accommodation, it would have concluded that the accommodation was unsuitable. Miss X lives with four children in a single living space and has told the Council about the significant impact that this was having on her and her children's welfare. According to the legal test Miss X's property is overcrowded and the law requires the Council to consider this when deciding whether accommodation is suitable.

Conclusions

42. The Council was at fault because it failed to:
 - properly review the suitability of the temporary accommodation it provided for Miss X after she told it her circumstances had changed;
 - consider referring Miss X to its Children's Services team for support; and
 - consider whether the overcrowding in Miss X's property was an environmental health risk to Miss X or her children.
43. As a result, Miss X and her children have been living in unsuitable, overcrowded temporary accommodation since January 2021. This has caused them significant stress and impacted their wellbeing.

Recommendations

44. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council or Cabinet and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

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45. In addition to the requirement set out above, the Council has agreed, within a month of the date of this report to:
- apologise to Miss X;
 - arrange suitable alternative temporary accommodation for Miss X;
 - pay Miss X £300 a month for the period between January 2021 and when it makes her an offer of suitable alternative temporary accommodation to recognise the distress caused by having to live in overcrowded accommodation;
 - pay Miss X £200 for the time and trouble of having to complain to both the Council and us; and
 - refer Miss X to its Children’s Services team to establish what additional support it can provide for Miss X and her children.
46. Within three months of the date of this report, the Council has agreed to:
- review its procedures for keeping the suitability of temporary accommodation under review to ensure it properly reviews suitability where there are relevant changes of circumstances; and
 - reviews its policy for referrals between its housing, children’s services and environmental health teams to ensure that it makes appropriate referrals where families with children may need support or are living in overcrowded accommodation.
47. After we issued the draft of our report, the Council offered Miss X alternative temporary accommodation. If Miss X disagrees this accommodation is suitable for her needs, she can ask the Council for a review and, if necessary, appeal to the County Court.

Decision

48. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Miss X and her family. The Council should take the action identified in paragraphs 44 to 46 to remedy that injustice.

Parts of the complaint that we did not investigate

49. We have not investigated events before July 2020.
50. Miss X complained about issues from 2014, which is more than 12 months before her complaint to us in July 2021. Her complaint about events before July 2020 are therefore late.
51. We can only usually consider complaints where someone complains to us within 12 months of something a council has done. Miss X has not given any reasons why she did not complain to us sooner about earlier problems with her housing. Therefore, we do not consider there are good reasons to consider those events now.