

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

**Investigation into a complaint about
London Borough of Bromley
(reference number: 20 012 225)**

16 March 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

Mr B The complainant

Report summary

Housing

Mr B complained that the London Borough of Bromley failed to deal properly with his approaches to them for help when he was threatened with homelessness in 2019. He complained that initially the Council failed to accept a duty when his landlord wrote to him to ask him to leave. He also complained that later, although it did agree to provide some help, the Council still failed to effectively and promptly secure accommodation for him and his family until he complained, which was over a year after he first approached it for help.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The Council must consider the report and confirm the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. We have agreed an extension for this to happen, to take account of the upcoming local elections. (*Local Government Act 1974, section 31(2), as amended*)

To recognise the injustice caused to Mr B and his family, within a month of this report, the Council will:

- send Mr B a written apology which acknowledges the fault and the impact this has had on him and his family; and
- pay £6,000 for the family remaining in overcrowded accommodation from the time of Mr B's first approach in August 2019 until November 2020. This is calculated at a rate of £400 a month. This is slightly higher than the usual rate we would recommend and reflects the degree of overcrowding and the extended period this continued.

To address wider systemic issues, within three months of this report, the Council provide us with:

- evidence on how it will ensure that all relevant staff are aware of their responsibilities in relation to assessing homeless applicants, when a prevention duty is owed, when a relief duty is owed, when interim accommodation should be considered and when any prevention duty, relief duty and PHP should be reviewed. The Council should consider how this can best be achieved and tell us how and when it will do this;
- more detail on comments made to us that it has a new housing management system and that this incorporates computer generated monitoring and reminders to assist staff with managing homelessness cases. The Council has said that this together with adjusted methods of working will ensure closer monitoring of future cases. It should also provide us with evidence of how this has been implemented;

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- more information on its comments that its new Head of Housing Options and Support has reviewed the casework management system with a view to implementing any necessary changes. In addition, the Council said it was establishing Key Performance Indicators across the service and that the management team was also creating a performance reporting and quality assurance framework aimed at improving the overall quality of casework and customer care delivery. The Council should provide us with further details on this and how the changes it has made will ensure that the faults identified in this case will not recur in future; and
 - evidence of how the Council will ensure that housing staff consider relevant rights of applicants under the Human rights Act 1998 as part of their wider consideration of the Council's duties under housing legislation.

The Council has accepted our recommendations.

The complaint

1. The complainant, whom we refer to as Mr B, says the Council failed to deal properly with his homeless application. Specifically, he says it:
 - a) failed to make enquiries or complete an assessment of his application when he presented himself as threatened with homelessness in July 2019;
 - b) failed to recognise that the accommodation in which he was living in July 2019 was unsuitable not only because he was threatened with homelessness but also because it was very overcrowded with seven people living in a one bedroom flat;
 - c) failed to provide interim accommodation either in July when he first presented to the Council or in August or September when he presented as threatened with homelessness again;
 - d) delayed devising a Personalised Housing Plan (PHP) and then failed to review this; and
 - e) failed to ensure he had suitable accommodation until November 2020 when he complained to the Council.

Mr B says that the Council's failings meant he remained living in unsuitable overcrowded accommodation between July 2019 and November 2020. He says this situation placed the family under a high level of stress and his children were sleeping in the hall and kitchen due to the lack of space.

Legal and administrative background

Our jurisdiction

2. 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. 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*)
3. The Human Rights Act 1998 sets out the fundamental rights and freedoms that everyone in the UK is entitled to. This includes respect for private and family life. The Act requires all local authorities to respect and protect individuals' rights. The Ombudsman's remit does not extend to making decisions on whether or not 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 or not 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.
4. This complaint involves events that occurred during the COVID-19 pandemic. The Government introduced a range of new and frequently updated rules and guidance during this time. We can consider whether the council followed the relevant legislation, guidance and our published "Principles of Good Administrative Practice during COVID-19".
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*)

The relevant law and guidance on homelessness

6. Part 7 of the Housing Act 1996 (the Act) 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.
7. The Act says that someone is threatened with homelessness if, when asking for assistance from the Council, he or she is likely to become homeless within 56 days or he or she has been served with a valid Section 21 notice which will expire within 56 days. Serving of a section 21 notice is a landlord's first step in evicting a tenant.
8. The Act also says that where a housing authority has reason to believe that a person asking the council for help with accommodation may be homeless or threatened with homelessness, it must make enquiries as to whether the person is eligible for help and what, if any, duties are owed to that person. These enquiries take the form of an assessment undertaken by the council and should usually include an in-person interview.
9. Assessments must include details of the circumstances that have caused the applicant to either become homeless or be threatened with homelessness, the applicant's housing needs and what support they would need to have and keep suitable accommodation. The Act is clear that an applicant should not be treated as having accommodation unless it is reasonable for them to occupy it. Councils decide what is reasonable to occupy based on what they find out but section 177(2) of the Act states this could include overcrowding.
10. If, after completing inquiries the Council decides it does not owe a duty to an applicant, it must give them a decision in writing and fully explain the reasons for its decision. All letters must include information about the right to request a review and the timescale for doing so. Grounds for requesting a review include a decision that the applicant is not eligible for assistance.
11. Where applicants are threatened with homelessness and eligible for assistance, housing authorities must take reasonable steps to help prevent their homelessness. This is called the prevention duty.
12. Under the prevention duty councils are required to help applicants secure accommodation but do not have to secure such accommodation themselves. The prevention duty comes to end in particular identified circumstances that include where the applicant becomes homeless but where a landlord has served a valid section 21 notice. The Council is required to notify the applicant of the end of this duty and the reasons for this and the applicant may ask for a review of this decision.
13. Councils have a relief duty where they are satisfied that an applicant is homeless (as opposed to threatened with homelessness) and eligible for assistance. Under the relief duty the council is required to take reasonable steps to help the applicant secure accommodation that will be available for at least 6 months. Again, it does not have to secure the accommodation itself though it may choose to do so. When the Council decides the applicant is in priority need and is not intentionally homeless the relief duty ends after 56 days. The Council must then decide if a main housing duty is owed.

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14. If, after completing an assessment, the Council does consider it owes the applicant a duty it must draw up a Personalised Housing Plan (PHP) with the applicant to either prevent or relieve their homelessness. This details the actions both the council and the applicant will take to try to resolve the threatened or actual homelessness. The PHP must be kept under review.
 15. If homelessness is not successfully prevented or relieved the council will owe the main housing duty to applicants who are eligible, have a priority need for accommodation and are not intentionally homeless. Households with priority need if homeless include families with children. Councils may perform the main housing duty by providing accommodation itself, securing accommodation from someone else or helping the applicant to find their own secure accommodation.
 16. A council must provide interim accommodation if (and as soon as) it has reason to believe a person (or household) may be homeless, eligible and in priority need.

The Council's housing allocations policy

17. Applicants who qualify to join the housing register in the London Borough of Bromley are placed on one of six bands. These are referred to as Emergency, Band 1, Band 2, Band 3, Band 4 and Band 5. Band 2 is for households where there is a moderate need to move but it is not urgent. The council's policy states that Band 2 includes people who are unintentionally homeless and in priority need.

The Human Rights Act 1998

18. Article 8 of the Human Rights Act 1998 confers a right for individuals to enjoy a family life and home. This right does not oblige councils to provide housing but it does mean that councils are required to consider whether housing conditions enable families to enjoy a family life and home. When considering whether accommodation is suitable councils must take account of whether the accommodation might cause physical or psychological harm or if inadequate accommodation interferes with private or family life.

How we considered this complaint

19. We produced this report after examining relevant documents, discussing the complaint with Mr B and making targeted enquiries of the Council.
20. We gave the complainant and the Council a confidential draft of this report and invited their comments. We considered the comments received before making our final decision.

What I found

What happened

21. Mr B first approached the Council in July 2019 stating he had been served with a Section 21 notice by his landlord. This told him he was required to leave his rental property. The property was a one-bedroom flat in which he had originally been living alone but in which his partner and five children had also been living since earlier that month. At that time his children were aged between 6 months and 8 years.
22. The Council interviewed Mr B about his homelessness in early August. As a result of the information it obtained at that time the Council did not accept a homelessness duty. It said this was because the Section 21 notice served by

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- Mr B's landlord was not valid. The Council contacted Mr B's landlord to tell them this. The Council provided Mr B with a letter issued under section 184 of the Housing Act 1996 confirming that Mr B was not homeless or threatened with homelessness as the accommodation in which he lived was reasonable for him to continue to occupy. It therefore confirmed it did not have a duty to assess or provide him with a PHP or take steps to arrange accommodation. The letter advised Mr B that he had a right to request a review of that decision. The Council confirms that Mr B did not seek a review. The form completed by the Council's homelessness team at that time recorded that the household was not severely overcrowded.
23. Mr B's landlord issued a further section 21 notice in August. Mr B presented himself to the Council as threatened with homelessness again in late August. In early September the Council invited Mr B for another interview. As a result of this interview it recognised and noted that Mr B was living with his partner and five children in a one bedroom open-plan flat. The Council accepted a homeless prevention duty towards him immediately and invited him back for a further interview towards the end of September, though this was re-arranged for early October when Mr B did not attend.
 24. The Council says it found out at that September interview that Mr B's partner and five children had arrived to live with Mr B from abroad in July 2019. The form completed at the interview in early September again notes that the family was not severely overcrowded. The Council agreed that, as part of its prevention duty, it would look for a private sector rental property for the family. The Council drew up a PHP with Mr B. This said the Council would ensure that Mr B's case would be referred to the housing management team so the Council could seek a property for Mr B in the private rental housing sector. It also said Mr B agreed to take some actions including actively seeking a privately rented property.
 25. A manager in the homelessness team agreed the Council would seek a private rental sector property in mid-October and the Council started to look for a four-bedroom private rental property.
 26. A Council officer conducted a home visit to the family in late October. That housing officer emailed the homelessness team confirming that the flat was a third-floor one bedroom flat with a small open plan kitchen/diner/living room. She said the children were sharing a bunk bed in the living area with the youngest sleeping in a travel cot.
 27. The Council says that, while under this prevention duty, it put Mr B forward for two privately rented properties in December 2019 and January 2020. Mr B was keen to accept the first property but unfortunately the landlord accepted a different applicant. The Council says that Mr B did not reply to an offer to view the second property in January. The Council advised Mr B that if he did not respond to the Council's efforts to contact him it would close his case.
 28. The Council says that in the event it decided not to close his case because of the impact of the COVID-19 lockdown. It offered Mr B further private rented properties to view in April and June 2020 but says Mr B did not respond to either of these invitations or respond to contact by email or telephone.
 29. In October 2020, having sought advice on his situation, Mr B complained to the Council about its handling of his homelessness application. He was still living in the same one-bedroom flat with his partner and five children.

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30. In November the Council put forward another private rental property. In response Mr B asked under which duty the Council was offering that property stating he had not received a decision letter on whether it accepted a main housing duty. He also confirmed he was still living in unsuitable accommodation and complained he had not been offered interim accommodation.
 31. In response the Council found interim accommodation for Mr B and his family and they moved into this in mid-November 2020. This is a four-bedroom property.
 32. Around a week later the Council responded to Mr B's complaint, accepted a main housing duty and terminated its prevention duty.
 33. In mid-December 2020 the Council added Mr B's housing application to its housing register. His registration date was backdated to late August 2019 and placed in Band 2H. The Council confirms that H denotes homeless. The Council says that Mr B has yet to bid on any properties under its choice-based lettings system and that two suitable four bed properties have become available since December 2020.
 34. The Council confirms that between August 2019 and December 2020 six four-bedroom properties were advertised on its choice-based lettings system. Four of these were allocated to applicants in Band 1, another was given to an applicant in Band 2 as a direct offer and the other was offered under the Emergency Band. All the offers made under Band 1 and Band 2 were to applicants who had been on the system for at least three years.

Analysis

35. The Council recognises that there was fault in its handling of Mr B's homeless application in that:
 - it should have accepted a relief duty when Mr B first approached the Council in July 2019 and provided interim accommodation at that point;
 - its officers should have progressed with, and reviewed, the PHP but did not;
 - it should have made "timely" enquiries to investigate the cause of Mr B's homelessness to consider if it owed a main housing duty;
 - it only offered interim accommodation when Mr B complained in October 2020;
36. The Council offered to apologise and make a payment of £4,000 to Mr B to recognise the period of time the family had spent in unsuitable accommodation. We acknowledge and thank the Council for this proactive response.

Our findings

37. The Council failed to:
 - interview Mr B properly in July 2019 and this meant it did not then ascertain the family was living in overcrowded circumstances. This in turn meant it did not consider whether the accommodation was reasonable for them to continue to occupy. Its failure to consider this is fault. The Council has acknowledged it should have accepted a relief duty at this point and we agree with that analysis;
 - consider whether the family required interim accommodation. It seems probable that had it considered this it would have decided they were homeless, eligible and in priority need. They therefore should have been offered interim accommodation in July. This failure also amounts to fault. Had the Council accepted the relief duty in July, it would have considered whether to accept the

main housing duty in September. It did not make this decision until October 2020. This delay of 13 months is fault;

- properly consider the overcrowding when Mr B returned in August 2019. This was a further missed opportunity to consider this. It then wrongly accepted a prevention duty after interviewing Mr B and visiting his property;
- review the prevention duty or the PHP at any point until Mr B complained. Had it done so it may have considered the suitability of the accommodation and whether it owed a relief duty before Mr B complained and raised the matter himself. The failure to review the PHP or the prevention duty until then is fault; and
- consider whether the family's housing conditions enabled them to enjoy a family life and home under Article 8 of the Human Rights Act 1998. We have seen no evidence that the Council considered this right. On balance, it seems unlikely the Council took this into account, given the failure to consider whether it was reasonable for them to continue to occupy their existing accommodation, and the circumstances of that accommodation. This is fault.

38. While the period covered by this complaint includes events that occurred during the COVID-19 pandemic, we consider that had the Council acted without the faults identified they would not have been affected by the COVID-19 pandemic period. We have not therefore taken account of specific guidance in place at that time.

Injustice

39. As a result of the identified fault Mr B and his family were caused avoidable injustice. Specifically, they:

- lost the opportunity to be provided with relief duty and moved to interim accommodation from August 2019. In making this statement we acknowledge that although Mr B first approached the Council in July 2019, he could have asked for a review of the decision that he was not homeless, eligible and in priority need then, and we consider it reasonable for him to have done so. We therefore believe the injustice to Mr B starts from August when he made his second approach to the Council for help and it failed to properly consider that application as detailed;
- remained living in highly overcrowded and unsuitable accommodation for around 15 months longer than necessary. This in turn caused Mr B and his family significant avoidable distress and frustration; and
- lost the opportunity for timely consideration of whether they were owed the main housing duty. The injustice is mitigated by the backdating of the family's priority under its allocations policy and we accept the family did not miss out on any suitable properties during the period between September 2019 and October 2020.

40. We recognise that Mr B did not respond to the Council's contact about private rental accommodation between January and June 2020. But, were it not for the fault identified above, he would have moved to interim accommodation significantly before then.

Recommendations

41. To recognise the injustice caused to Mr B and his family, within a month of this report, the Council will:

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- send Mr B a written apology which acknowledges the fault and the impact this has had on him and his family; and
 - pay £6,000 for the family remaining in overcrowded accommodation from the time of Mr B's first approach in August 2019 until November 2020. This is calculated at a rate of £400 a month. This is slightly higher than the usual rate we would recommend and reflects the degree of overcrowding and the extended period this continued.
42. To address wider systemic issues, within three months of this report, the Council provide us with:
- evidence on how it will ensure that all relevant staff are aware of their responsibilities in relation to assessing homeless applicants, when a prevention duty is owed, when a relief duty is owed, when interim accommodation should be considered and when any prevention duty, relief duty and PHP should be reviewed. The Council should consider how this can best be achieved and tell us how and when it will do this;
 - more detail on comments made to us that it has a new housing management system and that this incorporates computer generated monitoring and reminders to assist staff with managing homelessness cases. The Council has said that this together with adjusted methods of working will ensure closer monitoring of future cases. It should also provide us with evidence of how this has been implemented;
 - more information on its comments that its new Head of Housing Options and Support has reviewed the casework management system with a view to implementing any necessary changes. In addition, the Council said it was establishing Key Performance Indicators across the service and that the management team was also creating a performance reporting and quality assurance framework aimed at improving the overall quality of casework and customer care delivery. The Council should provide us with further details on this and how the changes it has made will ensure that the faults identified in this case will not recur in future; and
 - evidence of how the Council will ensure that housing staff consider relevant rights of applicants under the Human rights Act 1998 as part of their wider consideration of the Council's duties under housing legislation.

Decision

43. We have completed our investigation into this complaint. There was fault by the Council which caused Mr B and his family injustice. The Council will take the action identified in paragraphs 41 and 42 to remedy that injustice.