

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

**Investigation into a complaint about
London Borough of Tower Hamlets
(reference number: 22 013 057)**

18 March 2024

The Ombudsman's role

We independently and impartially investigate complaints about councils and other organisations in our jurisdiction. If we decide to investigate, we look at whether organisations have made decisions the right way. Where we find fault has caused injustice, we can recommend actions to put things right, which are proportionate, appropriate and reasonable based on all the facts of the complaint. We can also identify service improvements so similar problems don't happen again. Our service is free.

We cannot force organisations to follow our recommendations, but they almost always do. Some of the things we might ask an organisation to do are:

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

We publish public interest reports to raise awareness of significant issues, encourage scrutiny of local services and hold organisations to account.

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 – Allocations, Domestic Abuse

Miss X complained about how the Council dealt with her application for the housing register. In particular, she complained that the Council:

- delayed in dealing with her application for the housing register in 2022;
- wrongly decided that she did not qualify for the housing register and delayed in dealing with her request for a review of its decision;
- gave conflicting information about whether she could seek a review of its decision that she was not eligible for the housing register or make a complaint; and
- wrongly placed her in priority band 2B when it accepted her application in August 2023. Miss X considers she should have been placed in a higher priority band due to her medical needs.

Miss X says that as a result she has been caused significant distress which has worsened her medical conditions and affected her mental health.

Finding

Fault 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, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended)

In addition to the requirements set out above, the Council should take the following actions within three months of the date of this report.

- Send a written apology to Miss X for the distress caused to her by its delay in considering her housing register application, failure to consider her medical conditions, delay in considering her request for a review, retracting its offer for a further review and failure to notify her of her right to seek a review of its decision to award band 2B priority. We publish [guidance on remedies](#) which sets out our expectations for how organisations should apologise effectively to remedy injustice. The organisation should consider this guidance in making the apology we have recommended.
- Make a symbolic payment of £500 to Miss X to acknowledge the distress caused to her.
- Draw up an action plan with clear timescales for reducing the delay in considering applications for the housing register to ensure applications are decided within eight weeks. The Council should provide a quarterly report to the relevant committee to ensure democratic oversight.
- By training or other means, remind officers of the need to ensure they consider whether an applicant who does not have a local connection has housing needs, including medical needs, when considering housing register applications.

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- Review its template letter to ensure it notifies applicants of their right to seek a review of decisions on their housing application in accordance with the Council's housing allocation policy.

The Council has accepted our recommendations.

The complaint

1. Miss X complained about how the Council dealt with her application for the housing register. In particular, she complained that the Council:
 - delayed in dealing with her application for the housing register in 2022;
 - wrongly decided that she did not qualify for the housing register and delayed in dealing with her request for a review of its decision;
 - gave conflicting information about whether she could seek a review of its decision that she was not eligible for the housing register or make a complaint; and
 - wrongly placed her in priority band 2B when it accepted her application in August 2023.

Miss X considers she should have been placed in a higher priority band due to her medical needs.

2. Miss X says that as a result she has been caused significant distress which has worsened her medical conditions and affected her mental health.

Legal and administrative background

The Ombudsman's role and powers

3. 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)
4. When considering complaints we make findings based on the balance of probabilities. This means that we look at the available relevant evidence and decide what was more likely to have happened.
5. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (Local Government Act 1974, section 26D and 34E, as amended)

Relevant law and guidance

Housing allocations

6. 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))
7. 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;

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- people who need to move to avoid hardship to themselves or others. (Housing Act 1996, section 166A(3))
8. Councils must notify applicants in writing of the following decisions and give reasons:
 - that the applicant is not eligible for an allocation;
 - that the applicant is not a qualifying person;
 - a decision not to award the applicant reasonable preference because of their unacceptable behaviour.
 9. The Council must also notify the applicant of the right to request a review of these decisions. (Housing Act 1996, section 166A(9))
 10. Housing applicants can ask the council to review a wide range of decisions about their applications, including decisions about their housing priority.
 11. Statutory guidance on the allocation of accommodation says:
 - review procedures should be clear and fair with timescales for each stage of the process;
 - there should be a timescale for requesting a review - 21 days is suggested as reasonable;
 - the review should be carried out by an officer senior to the original decision maker, or by a panel not including the original decision maker;
 - reviews should normally be completed within a set deadline - 8 weeks is suggested as reasonable.

The Council's housing allocation policy

12. The Council places all applicants eligible for the housing register into three bands depending on their housing needs. The bands are also subdivided into priority groups.
13. The Council's housing allocation policy provides that applicants should normally have a local connection. This is defined as having lived in the borough continuously for the last three years at the point of registration.
14. Where an applicant in housing need does not meet the local connection requirement their application can be accepted and placed in band 2B. When an applicant has lived continuously in the borough for three years their application will be moved to band 2A or higher.
15. The Council's allocation policy provides that an applicant can request a review on any decision that is made about their application. The policy says the Council aims to tell the applicant the result of the review within 56 days.

What we have and have not investigated

16. We have not investigated the Council's recent decision to award band 1B priority to Miss X or Miss X's concerns that the Council has given her a new priority date since she has lived in the borough for three years. These are new issues as the Council made these decisions after we started our investigation.

How we considered this complaint

17. We produced this report after examining relevant documents.

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18. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

What happened

19. The following is a summary of the key facts relevant to the consideration of the complaint. It does not include everything that happened.
20. In 2020, Miss X rented a property in the Council's area as she was fleeing domestic abuse. In January 2022, Miss X applied to join the Council's housing register as her landlord wanted the property back.
21. In May 2022, Miss X submitted a medical form to the Council explaining why her housing was unsuitable due to her medical conditions. Miss X explained she could not leave her property as she had mobility problems and could not manage the stairs to the entrance of her property.
22. The Council made a decision on Miss X's application in July 2022. It decided Miss X did not qualify to join the housing register as she had not lived in the borough continuously for three years. The Council advised Miss X on how to make a homelessness application at this time.
23. In late July 2022, Miss X requested a review of the Council's decision. In her review request Miss X said the Council had not taken account of her medical form or her updates about her worsening health when making its decision. Miss X also said she had moved to the area due to domestic abuse and her current property was not intended to be long term accommodation. This was because it did not meet her medical needs. Miss X considered that the Council should place her in band 1A due to her medical needs and circumstances.
24. The Council considered Miss X's review request in January 2023. In response to our enquiries the Council said that the delay in considering Miss X's review was due to an oversight. The Council refused Miss X's application as she had not lived in the borough continuously for three years. In its letter notifying Miss X of the decision, the Council said she did not fall into the exception categories. This was because she had not provided any medical documents and it could not locate a medical form for her. The Council invited Miss X to submit medical documents in support of her application and these would be considered by a separate team.
25. Miss X requested a further review of the decision. The Council initially advised that there was no further right of review. It then advised Miss X that it would offer a further right of review. Miss X submitted her review request. The Council acknowledged Miss X's request and said it would be forwarded to the relevant team. The Council then notified Miss X that it would not carry out a further review.
26. Miss X made a complaint to the Council about its decision to refuse her application which the Council considered through its two stage complaints procedure. In response to Miss X's stage two complaint, the Council apologised for not considering Miss X's medical conditions when she made her application to join the housing register. The Council said it should have sent Miss X a medical form for completion so her application could be assessed for priority on medical grounds. The Council agreed to reconsider Miss X's application on medical grounds. It also carried out an occupational therapy assessment and Miss X provided additional medical information.

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27. The Council reconsidered Miss X's application and decided she qualified for the housing register due to her housing need. It placed her in band 2B with a preference date of January 2022. The Council explained she had been placed in this band because she had not lived in the borough continuously for three years. It would place her in band 2A from the date she had lived in the borough continuously for three years. Miss X considers the Council should have exercised discretion and placed her in a higher priority band due to her medical needs.
 28. The Council did not notify Miss X of her right to seek a review of the decision to award band 2B priority.
 29. The Council placed Miss X in band 1B on the date she had continuously lived in the borough for three years.

Conclusions

Delay in dealing with Miss X's application for the housing register

30. The Council took six months to consider Miss X's application for the housing register. The Council has said this was due to staff shortages, volume of applications and a backlog of work. We usually expect a council to be able to process an application for the housing register within eight weeks. So, the time taken by the Council to consider Miss X's application is excessive and is fault.
31. In response to our enquiries, the Council said it currently has a six month delay in processing housing register applications. The ongoing delays will cause injustice to other applicants so the Council should take action to address the delays.

Decision on Miss X's housing register application

32. The Council acknowledged it was at fault for not assessing Miss X's application for priority on medical grounds when she first made her application. The Council also did not consider the medical form completed by Miss X in May 2022 when considering her application. This is fault. As a result, the Council did not properly consider whether Miss X was in housing need and therefore exempt from its local connection criteria.
33. The Council took appropriate action to remedy its fault by considering Miss X's application again including her medical conditions and whether she had housing needs. The Council considered Miss X was eligible due to her medical conditions which made her housing unsuitable. We therefore consider, on balance, that the Council would have found Miss X to be in housing need and eligible for the housing register in July 2022 if it had considered and obtained evidence of her medical conditions at that time.
34. The Council did not notify Miss X that she could seek a review of its decision to award band 2B priority when it decided she was eligible for the housing register. This was a new decision on her application so the Council should have notified her of the right to request a review of this decision. Not to do so was fault. As a result, Miss X lost the opportunity to request a review.

Delay in dealing with Miss X's review request

35. The Council's allocation policy provides it will make a decision on a review request within 56 days. The Council took six months to consider Miss X's review request. This is fault which caused distress and avoidable uncertainty to Miss X.

Conflicting information about further reviews.

36. The Council's allocation policy does not contain any provision for a further review. The Council initially agreed to exercise its discretion to offer a further review to

Miss X but then withdrew this offer. It is not clear why the Council changed its mind about offering a further review. This is fault which will have raised Miss X's expectations and caused some uncertainty to her.

Decision to place Miss X in band 2B

37. Miss X considers the Council should have awarded higher priority than band 2B when it accepted her application in August 2023 due to her medical needs and her personal circumstances. The decision to place Miss X in band 2B was in accordance with the Council's allocation policy. But councils have discretion to depart from policy if there are good reasons to do so. There is no evidence to show the Council considered if Miss X's circumstances warranted exercising discretion to award higher priority. But it is not proportionate to investigate the matter further as we cannot know what the outcome would have been even if the Council had considered its discretion.

Injustice to Miss X

38. The Council should have decided Miss X's application by March 2022 and placed her in band 2B at this time. The Council has backdated Miss X's preference date to January 2022 which is the date of her original application so she has not lost waiting time as a result of the fault by the Council.
39. We also do not consider the faults prevented Miss X from successfully bidding on a property. The Council has provided details of the properties Miss X has bid on and her place in the queue. The properties were offered to applicants with higher priority and longer waiting time. Miss X's position in the queue for each property was very low. So, we consider it is unlikely that she would have successfully bid on a property even if she had been on the housing register from March 2022.
40. But the delay in dealing with her application and considering her medical needs caused distress to Miss X which the Council should remedy. The Council's delay in dealing with Miss X's review, the retraction of its offer to carry out a further review and missed opportunity to seek a review also caused distress to her.

Recommendations

41. 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, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (Local Government Act 1974, section 31(2), as amended)
42. In addition to the requirements set out above, the Council has agreed to take the following actions within three months of the date of this report.
- Send a written apology to Miss X for the distress caused to her by its delay in considering her housing register application, failure to consider her medical conditions, delay in considering her request for a review, retracting its offer for a further review and failing to notify her of her right to seek a review of its decision to award band 2B priority. We publish [guidance on remedies](#) which sets out our expectations for how organisations should apologise effectively to remedy injustice. The organisation should consider this guidance in making the apology.
 - Make a symbolic payment of £500 to Miss X to acknowledge the distress caused to her.

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- Draw up an action plan with clear timescales for reducing the delay in considering applications for the housing register to ensure applications are decided within eight weeks. The Council should provide a quarterly report to the relevant committee to ensure democratic oversight.
 - By training or other means, remind officers of the need to ensure they consider whether an applicant who does not have a local connection has housing needs, including medical needs, when considering housing register applications.
 - Review its template letter to ensure it notifies applicants of their right to seek a review of decisions on their housing application in accordance with the Council's housing allocation policy.

Final decision

43. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Miss X. The Council has agreed to take the action identified at paragraph 42 to remedy that injustice.