

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

**Investigation into a complaint about
London Borough of Tower Hamlets
(reference number: 22 012 133)**

19 September 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

Ms X	The complainant
Y	Her eldest child

Report summary

Housing – Domestic abuse, homelessness, allocations

Ms X complained about the Council's handling of her homelessness when she fled domestic abuse with her children.

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, 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 remedy the injustice to Ms X and Y from the faults identified, the Council has agreed to:

- apologise to Ms X in line with our guidance on [Making an effective apology](#);
- pay Ms X £100 a week for the nine weeks she spent in unsuitable B&B, a total of £900;
- pay Ms X £200 a month for the 18 months she spent in unsuitable temporary accommodation, a total of £3,600;
- pay Ms X a further £500 to recognise her avoidable distress and uncertainty resulting from the failure to tell her about her review rights and delay completing the suitability review; and
- pay Y £1,500 to recognise their significant and avoidable distress and loss of dignity.

To remedy the injustice to others who have not complained, the Council has agreed to:

- write to the eight other applicants identified whose reviews were delayed explaining our finding of fault and injustice;
- apologise to those applicants in line with our guidance on [Making an effective apology](#);
- make a symbolic payment of £200 to each applicant to recognise their avoidable distress and uncertainty; and
- consider whether the outcome of the review means there is further injustice to the applicant because of the delay. Remedy any such injustice in line with our Guidance on Remedies.

The Council should also take the following action to improve its services.

- Share a summary of the learning from this decision, as well as the full report, with all officers who deal with homelessness applications to ensure lessons are learned from what went wrong in this case.
- Ensure case notes or other records are clear about whether a property has been offered as interim accommodation and show consideration of its suitability for the applicant.

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- Amend the suitability and risk assessment form to include the location of children's schools and to enable officers to identify if there are any specific requirements for a property to be suitable.
 - Amend the housing circumstances and needs assessment to include details of housing needs. This should include the necessary size and type of accommodation as well as information about location, access, or other factors necessary for accommodation to be suitable for an applicant.
 - Ensure all offers of temporary accommodation are made in writing and set out the statutory right to request a suitability review.

The complaint

1. Ms X complained about the Council's handling of her homelessness when she fled domestic abuse with her children. In particular, she says the Council:
 - tried to "gatekeep" her application by telling her to approach another borough and took too long to accept her homeless application;
 - delayed providing interim accommodation and then provided unsuitable mixed-sex bed and breakfast (B&B) accommodation for three months;
 - provided unsuitable temporary accommodation in a property which is too small and lacks proper heating and bathing facilities;
 - took too long to complete a statutory review of the suitability of this temporary accommodation; and
 - wrongly told her she would not qualify to join the Council's housing register and then placed her in the wrong priority band.
2. As a result, Ms X says she and her children have experienced avoidable distress which has negatively affected their 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. 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)
5. 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.

Homelessness law and guidance

6. 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.
7. Councils must complete an assessment if they are satisfied an applicant is homeless or threatened with homelessness. Councils must notify the applicant of the assessment. This assessment must include:
 - the circumstances that have caused them to become homeless or threatened with homelessness;
 - their housing needs; and
 - their support needs.(Housing Act 1996, section 189A and Homelessness Code of Guidance paragraphs 11.7)

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8. If councils are satisfied applicants are homeless and eligible for assistance, they must take reasonable steps to secure accommodation. This is called the relief duty. When a council decides this duty has come to an end, it must notify the applicant in writing. The relief duty usually lasts 56 days. (Housing Act 1996, section 189B)
 9. A council must secure interim accommodation for applicants and their household if it has reason to believe they may be homeless, eligible for assistance and have a priority need. (Housing Act 1996, section 188)
 10. Bed and breakfast (B&B) accommodation can only be used for households which include a pregnant woman or dependent child when no other accommodation is available and then for no more than six weeks. B&B is accommodation which is not self-contained, not owned by the council or a registered provider of social housing and where the toilet, washing, or cooking facilities are shared with other households. (Homelessness (Suitability of Accommodation) (England) Order 2003 and Homelessness Code of Guidance paragraph 17.35)
 11. If, at the end of the relief duty, 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. This is called the main housing duty. (Housing Act 1996, section 193)
 12. The law says councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of his or her household. This duty applies to interim accommodation and accommodation provided under the main homelessness duty. (Housing Act 1996, section 206 and Homelessness Code of Guidance 17.2)
 13. Councils must assess whether accommodation is suitable for each household individually. Whether accommodation is suitable will depend on the relevant needs, requirements and circumstances of the homeless person and their household. (Homelessness Code of Guidance 17.4 & 17.9)
 14. Councils must consider the location of accommodation when they consider if it is suitable for the applicant and members of their household. If a council places an applicant outside its district, it must consider, among other matters:
 - the distance of the accommodation from the “home” district;
 - the significance of any disruption to the education of members of the applicant’s household; and
 - the proximity and accessibility to local services, amenities and transport. (Homelessness (Suitability of Accommodation) Order 2012)
 15. The duty to provide suitable accommodation is immediate, non-deferable, and unqualified. (Elkundi, R (On the Application Of) v Birmingham City Council [2022] EWCA Civ 601)
 16. Certain decisions councils make about homelessness carry a statutory right of review. The review decision then carries a right of appeal to court on a point of law. Homeless applicants have a right to review the suitability of temporary accommodation provided under the main homelessness duty. (Housing Act 1996, s202)

Housing allocations

17. Every local housing authority must publish an allocations scheme that sets out how it prioritises housing applicants, and its procedures for allocating

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- properties. All allocations must be made in strict accordance with the published scheme. (Housing Act 1996, section 166A(1) & (14))
18. The Council places applicants who qualify to join its housing register into priority bands from Band 1A (highest priority) to Band 3 (lowest priority).
 19. So far as is relevant to this complaint, the Council awards Band 2A to homeless applicants who are in priority need and have three years continuous residence in the Council's area.
 20. So far as is relevant to this complaint, the Council awards Band 2B to homeless households who do not have three years residence in the Council's area.
 21. The scheme makes an exception for applicants owed a homeless duty because they have fled domestic abuse who have not lived in the area for three years. Such applicants are awarded Band 2A.

How we considered this complaint

22. We considered the complaint and the information Ms X provided.
23. We made written enquiries of the Council and considered its response along with relevant law and guidance.
24. We referred to our Guidance on Remedies, which can be found on our website.
25. We gave Ms X 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

26. In early 2022, Ms X came to the Council's area from another part of the UK. She was fleeing domestic abuse from her ex-partner. She came to Tower Hamlets because she had family there. Ms X lived in a refuge at first.
27. In early August, Ms X approached the Council as homeless. Her licence at the refuge was due to end in mid-September. The Council did a homelessness assessment by telephone 10 days later. The records show Ms X provided details of the domestic abuse and its impact on her and her children, and her eldest child, Y, in particular.
28. A few days later, the Council accepted the relief duty to Ms X and issued a personalised housing plan.
29. In September, three days before Ms X's licence ended, the Council told Ms X it would look for interim accommodation for her from the day she had to leave the refuge. The Council completed a suitability and risk assessment form. This included details of Ms X and Y's physical and mental health issues. It did not include details of the children's schools or whether mixed-sex accommodation with shared facilities would be suitable.
30. The records show Ms X expressed concern that the Council would place them outside the area. She said Y had recently returned to school for the first time in three years. Y has complex post-traumatic stress disorder (PTSD) and a physical health condition which affects mobility. Y experiences incontinence when distressed. Ms X told the Council she worried that the further away from the school they lived, the more stressful Y would find the travel. She worried Y would

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- lose the progress they had made. The Council told Ms X there was nothing available in the borough and the family would have to use public transport to get to school.
31. On the day Ms X's licence ended, the Council's records say the "booking did not go ahead due to lack of available accommodation". The only accommodation available was in Kent. Ms X arranged to stay with her sibling for 10 days. She then moved into a B&B outside the Council's area in late September.
 32. In October, Ms X contacted the Council to say that living in the B&B was negatively affecting Y's mental health. Y was anxious about using the shared facilities and there was nowhere for the children to do their homework. The Council told Ms X there was nothing else available. It said its bookings team would contact her "in due course" to arrange a move to self-contained accommodation but there was no way to "fast track" this to move sooner than the six-week limit.
 33. In November, the Council accepted the main housing duty to Ms X. Ms X complained that she had been in B&B for more than six weeks. She said the B&B was unsuitable for them. She said Y was soiling themselves because they were so afraid to use the communal bathrooms. Ms X also complained that she was in Band 2B on the housing register. She said her priority should be Band 2A, because of the exception for people fleeing domestic abuse. A social worker from a different borough wrote to the Council to say the placement in the B&B was not suitable "given the family's vulnerability". They said living in a mixed gender B&B was "detrimental to their mental and physical health".
 34. At the beginning of December, the Council provided Ms X with self-contained temporary accommodation. This was a one-bedroom flat outside the Council's area.
 35. In December, the Council responded to Ms X's complaint. It agreed she was in the wrong priority band. It said it would update her priority to Band 2A with the same effective date. It said there were no single-sex hostels available when Ms X needed accommodation. It apologised it "took longer than expected" to move her and for the issues Ms X and the children "may have experienced at the B&B".
 36. In March 2023, Ms X complained to the Council again. She said the temporary accommodation was overcrowded and it had no, or inadequate, heating and hot water. Ms X said the Council had not taken their health issues into account.
 37. In response, the Council said Ms X was not overcrowded because the living room could be used as a bedroom. It said Ms X could ask for a review of the suitability. Ms X asked for a review the next day.
 38. The Council acknowledged Ms X's review request two weeks later.
 39. In October, Ms X complained to the Council. She said she had asked for a suitability review but had not heard anything. The Council responded in late November. It apologised for the delay in the review.
 40. Ms X chased the Council for updates on the review in December and January.
 41. The Council completed the suitability review in February 2024. This found the property was unsuitable for Ms X and her children.
 42. The Council provided alternative temporary accommodation in June. Ms X has a right to review its suitability.

Our findings

43. We will set out our findings on the complaint in the order they appear in paragraph one.

Gatekeeping

44. Ms X says the Council tried to discourage her from continuing a homeless application and said she should approach a different Council. The Council says it did not “gatekeep” Ms X’s application. It says it tried to manage Ms X’s expectations about the demand for and cost of housing in its area. It says it properly advised Ms X that she may find housing more quickly in another area. But it did not prevent Ms X from continuing an application and it did not delay progressing this.
45. There is no evidence of delay in the Council’s handling of Ms X’s homelessness. It arranged an assessment within two weeks of her approach and before she had to leave the refuge. The Council was not at fault.
46. There is no evidence the Council tried to “gatekeep” Ms X’s application by refusing to take an application or putting her off to a later date. However, Ms X perceived the Council’s warnings about the difficulty securing housing in its area as an attempt to put her off continuing her application. We recognise the Council tries to manage applicant expectations at the earliest opportunity. It is not fault for it to do so. How an applicant understands this information, however, will be affected by more than the words themselves. Body language, tone, context, and the applicant’s own circumstances will influence what an applicant understands. The Council could consider providing training or guidance to its staff to ensure they can manage expectations appropriately without unintentionally gatekeeping.

Interim accommodation

47. In response to our enquiries, the Council said it did not delay providing interim accommodation. It said it offered Ms X accommodation on the day her licence ended but Ms X refused this and went to stay with her sibling instead. This accommodation was in Kent. It said “[t]here is not enough accommodation in central London to meet homelessness pressures which means that initial placements are often in a B&B setting outside the borough.” The Council said its risk assessment did not say that mixed-sex accommodation would be unsuitable.
48. The Council’s records are not clear about whether the Council offered Ms X the property in Kent or not. It says it did not provide accommodation to Ms X because of a “lack of available accommodation”. The note continues that the team advised Ms X the only available accommodation was in Kent. This could be understood in multiple ways. It might mean that Ms X was offered, and refused, accommodation in Kent. It might mean the officer considered the only available accommodation was not suitable for Ms X because of its location and so did not offer it. Ms X’s recollection was that the Council told her it had no accommodation immediately available so she should find somewhere else to stay. Failure to keep sufficiently detailed records was fault. As a result, we cannot say, even on balance, whether the Council offered Ms X accommodation on the day she needed it.
49. In any event, there is no evidence the Council considered what the travel time would be from Kent to the children’s schools or the impact on Y of being so far away. On balance, we find that if it was offered, the accommodation in Kent was not suitable. Ms X had to stay with her sibling in significantly overcrowded conditions for 11 days. This is an injustice to Ms X.

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50. The Council then provided B&B accommodation outside its area (but closer than Kent). B&B should be a last resort for households with children and then should be for no more than six weeks. Ms X and her children lived in B&B for over nine weeks. This was fault.
 51. There is no evidence the Council considered whether the B&B was suitable nor that it reviewed this when Ms X raised concerns in October. This was fault. Ms X and her children were vulnerable because of their experience of domestic abuse. Both Ms X and Y have PTSD. The Council should have considered whether, in their circumstances, mixed-sex accommodation with shared facilities was suitable.
 52. On balance, the B&B was not suitable for more than the very short term. Ms X explained the impact on Y, including double incontinence from fear of using the shared bathrooms. For a child of Y's age, this would be particularly distressing. The social worker described the significant impact on the children's mental health of the mixed-sex accommodation and said it was inappropriate for them.
 53. Therefore, Ms X and her children spent nine weeks in unsuitable B&B. This caused significant and avoidable injustice, especially to Y.
 54. The Council's suitability and risk assessment form is not fit for purpose. Although it included details of Ms X and Y's health, it did not go on to consider what this meant they needed for accommodation to be suitable for them. In this case, this should have included whether mixed-sex shared facilities were appropriate. It did not contain any details about the children's schools to enable officers to consider the distance to school. Neither the suitability form nor the Council's assessment of needs and circumstances includes details of the family's housing needs. This means there is no record of the Council's consideration of the size and type of property the family need. This was fault.

Temporary accommodation

55. The Council accepts, following the suitability review, that Ms X's temporary accommodation is unsuitable.
56. As with the interim accommodation in the B&B, there is no evidence to show how the Council considered the property was suitable for Ms X and her children before offering it to them. The Council's suitability and risk assessment form states it is for interim accommodation only and so the Council should have reviewed suitability at the point it accepted the main housing duty. Failure to do so was fault.
57. There is no evidence the Council offered Ms X the accommodation in writing and explained her right to ask for a review. This was fault. It was only in response to Ms X's complaint that the Council told her she could ask for a review. This delayed Ms X's access to the review and caused avoidable uncertainty which is an injustice.
58. The property has one bedroom and a living room which the family use as a bedroom. Ms X's children are of an age where it is expected they each have their own bedroom (both being over 10 and of different genders). Both Ms X and Y have complex PTSD. The evidence from the specialist working with Y and Ms X's GP is that both experience regular and distressing nightmares and night terrors. Y could not, therefore, share a room with their sibling. Ms X said she tried to share a room with each child on alternating nights to minimise the impact on them of her nightmares. Ms X said she resorted to sleeping in the kitchen on the floor so both children could sleep in peace.

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59. Ms X provided evidence that Y's nightmares can result in bed-wetting. The property only has a bath with a shower attachment. Issues with the hot water meant the family could not fill the bath even half-full. Y's mobility issues mean they struggle to bend. Ms X therefore has to use a jug or bucket to help Y rinse clean. Ms X described how Y's mental health suffered further because of this indignity.
60. On balance, therefore, the property was always unsuitable for Ms X and her children. This means Ms X and her children have lived in unsuitable temporary accommodation for 18 months. This is a significant injustice.

Suitability review delay

61. The Council accepts it took too long to complete the suitability review. It says the delay was because of the "number and volume of review requests and resourcing issues".
62. The review process includes a right to escalate the matter to court if the Council does not respond within the timescale and no extension is agreed. There is no evidence the Council told Ms X about this right and so we do not consider it was reasonable for her to have used it.
63. Statutory reviews of suitability should take eight weeks, unless an extension is agreed in writing. Ms X asked for a review in March 2023. The Council should have completed the review by May. It did not do so until February 2024. It took the Council 47 weeks to complete the review. This delay of 39 weeks was fault.
64. This caused Ms X significant and avoidable distress and uncertainty. She went to significant time and trouble chasing the Council for updates. The review found the property to be unsuitable. But for the fault, the Council would have started looking for alternative accommodation 39 weeks earlier. In the context of the significant delays most London boroughs experience in sourcing alternative temporary accommodation, this avoidable further delay is a significant injustice to Ms X.

Allocations priority

65. Ms X complained the Council told her she would not qualify to join the Council's housing register. There is no evidence the Council said this and so we do not find fault. The Council did stress to Ms X that the wait for social housing would likely be more than a decade. It encouraged her to focus her efforts on finding an affordable property in the private rented sector. But this was not the same as saying Ms X could not join the housing register.
66. The Council did wrongly place Ms X into priority Band 2B at first, which was fault. However, it corrected this when Ms X complained. There is no unremedied injustice to Ms X from this fault.

Injustice to others

67. We can investigate matters coming to our attention during an investigation if we think there may be injustice to others who have not complained. The Council said it had a backlog of cases awaiting a review decision. We asked the Council to tell us about its outstanding review requests.
68. At the time of its response to our enquiries, the Council had 53 outstanding review requests. Of those, 27 were past the timescale for completing the review. Of those 27 cases, eight did not have an extension agreed in writing. The oldest outstanding review request is from February 2023, a delay of over one year.

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69. Delay completing a review where no extension is agreed is fault. Those eight applicants awaiting a review decision where no extension was agreed have experienced avoidable distress and uncertainty, which is an injustice.
70. The Council has now completed these reviews. Where those reviews found in the applicant's favour, as in three of the eight cases, there will likely be further injustice to them resulting from the delay starting the search for alternative accommodation. In three of the cases, the Council's delay meant the applicants had moved such that the review was academic. These applicants must live with uncertainty about whether their accommodation was unsuitable.
71. The Council says it has introduced new processes to improve monitoring of reviews and track performance. It has also sought more staff for the team. These are welcome steps to improve its service.

Conclusions

72. The Council was at fault for:
- failing to keep sufficiently detailed records of its offers of interim accommodation;
 - providing unsuitable interim accommodation in a B&B for longer than the six-week maximum;
 - failing to consider and record the family's housing needs, including whether mixed-sex B&B was suitable, the distance to the children's schools, and the implications of their medical needs on suitability;
 - providing unsuitable temporary accommodation and continuing to do so despite accepting it is unsuitable; and
 - delay completing Ms X's statutory suitability review.
73. These faults caused significant and avoidable distress to Ms X and her children at an already difficult time. They have lived in unsuitable interim and temporary accommodation for 20 months.
74. We found systemic delay conducting statutory reviews, causing injustice to others who have not complained.

Recommendations

75. 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 remedy the injustice to Ms X and Y from the faults identified, the Council has agreed to:

- apologise to Ms X in line with our guidance on [Making an effective apology](#);
- pay Ms X £100 a week for the nine weeks she spent in unsuitable B&B, a total of £900;
- pay Ms X £200 a month for the 18 months she spent in unsuitable temporary accommodation, a total of £3,600;

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- pay Ms X a further £500 to recognise her avoidable distress and uncertainty resulting from the failure to tell her about her review rights and delay completing the suitability review; and
 - pay Y £1,500 to recognise their significant and avoidable distress and loss of dignity.
76. To remedy the injustice to others who have not complained, the Council has agreed to:
- write to the eight other applicants identified whose reviews were delayed explaining our finding of fault and injustice;
 - apologise to those applicants in line with our guidance on [Making an effective apology](#);
 - make a symbolic payment of £200 to each applicant to recognise their avoidable distress and uncertainty; and
 - consider whether the outcome of the review means there is further injustice to the applicant because of the delay. Remedy any such injustice in line with our Guidance on Remedies.
77. The Council should also take the following action to improve its services.
- Share a summary of the learning from this decision, as well as the full report, with all officers who deal with homelessness applications to ensure lessons are learned from what went wrong in this case.
 - Ensure case notes or other records are clear about whether a property has been offered as interim accommodation and show consideration of its suitability for the applicant.
 - Amend the suitability and risk assessment form to include the location of children's schools and to enable officers to identify if there are any specific requirements for a property to be suitable.
 - Amend the housing circumstances and needs assessment to include details of housing needs. This should include the necessary size and type of accommodation as well as information about location, access, or other factors necessary for accommodation to be suitable for an applicant.
 - Ensure all offers of temporary accommodation are made in writing and set out the statutory right to request a suitability review.

Decision

78. We have completed our investigation. There was fault by the Council. The action we have recommended is a suitable remedy for the injustice caused.