

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

**Investigation into a complaint against
London Borough of Merton
(reference number: 18 019 031)**

7 August 2020

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 X The complainant

Report summary

Housing – Homelessness

Mr X complains the Council placed him in temporary accommodation outside its area when he became homeless. Mr X says this meant he had to give up one of his jobs as he was unable to travel back to the area for work.

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 the requirements set out above the Council has agreed to take the following action to remedy the injustice caused to Mr X.

- Write to Mr X to apologise for failing to consider his employment status when it placed him in accommodation in Birmingham.
- Pay Mr X £1,768 to recognise the distress caused as a result of being placed in unsuitable accommodation for six months (£1,200) and additional costs incurred in getting to his place of employment (£418). This also includes £150 to recognise the unnecessary time and trouble Mr X was put to pursuing his complaint.

The Council should also take the following action to improve its services to homeless applicants as a result of the fault we have identified.

- Remind relevant staff of the need to consider the Council's policies when placing a homeless person or family in accommodation. Staff should be reminded of the need to make clear notes setting out reasons for their decisions.
- Review its placement policy to set out what factors the Council will consider when placing a self-employed person in interim or temporary accommodation.

The Council has accepted our findings and recommendations.

The complaint

1. Mr X complains the Council placed him in temporary accommodation outside its area when he became homeless. Mr X says this meant he had to give up one of his jobs as he was unable to travel back to the area for work.
2. Mr X also complains the Council allocated him private rented accommodation outside its area to discharge its housing duty towards him. Mr X says the Council failed to take account of his personal circumstances when it reached its decision to discharge its duty.
3. Mr X says this has caused him distress and time and trouble pursuing his complaints and appeals.

The law relevant to this complaint

The law and the Ombudsman

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. The law says we cannot normally investigate a complaint when someone could take the matter to court. However, we may decide to investigate if we consider it would be unreasonable to expect the person to go to court. (*Local Government Act 1974, section 26(6)(c), as amended*)
6. We cannot investigate a complaint if someone has started court action about the matter. (*Local Government Act 1974, section 26(6)(c), as amended*)

Homelessness law

7. The Housing Act 1996 was amended by the Homelessness Reduction Act 2017. This came into force on 3 April 2018. The events of this complaint took place before the Homelessness Reduction Act 2017 came into force.
8. 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*)
9. Examples of applicants in priority need are:
 - people with dependent children;
 - pregnant women;
 - people who are vulnerable due to serious health problems, disability or old age.
10. If a council accepts a person is homeless, eligible, in priority need and unintentionally homeless it will owe them the “full housing duty”. This requires councils to ensure that accommodation remains available. In most cases councils will provide or continue to provide temporary accommodation.
11. To end the duty councils will usually make an offer of suitable permanent accommodation. This can be private rented accommodation.

Right to request a review

12. The 1996 Housing Act gives homeless applicants rights to request a review of various decisions made by councils on their case. This includes the suitability of accommodation offered to discharge the full housing duty. If a person is unhappy with the outcome of the review decision, they may appeal to County Court on a point of law.
13. Homeless applicants have the right to request a review of suitability of temporary accommodation but do not have a right to request a review of interim accommodation. This is accommodation provided whilst a council considers what duty it owes.

The Council's policy on placing homeless applicants out of area

14. The Council has a policy which sets out how it decides which homeless households to place within its area and which to place outside its area. This is because the Council cannot secure enough interim and temporary accommodation in its own area.
15. The policy prioritises certain households for accommodation in the Council's area. This includes *"applicants, where one or (more) is in permanent settled employment (for at least six months prior to the date of their homeless application) to reach their normal workplace from the accommodation... secured"*.
16. The policy also prioritises other households for accommodation within 90 minutes travel of the Council's area. This includes applicants who *"have been continuously employed within 90 minutes travelling distance of [the Council's area] for 16 hours or more per week in a role which cannot be transferred to another area. Applicants must have employed [sic] for at least six months prior to the date of homelessness application"*.
17. If a household does not fit the criteria to be placed in the Council's area or within 90 minutes of the Council's area the Council will place them wherever accommodation can be secured.

How we considered this complaint

18. We produced this report after examining relevant documents and interviewing the complainant.
19. 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

20. Mr X approached the Council as homeless in October 2017. The Council placed Mr X and his family in temporary accommodation in Birmingham. This was approximately three hours travelling distance from the Council's area.
21. When Mr X approached the Council in October 2017 he had two jobs. Both were permanent contracts. Mr X was unable to transfer either job to another area. Mr X says he had to give up one position due to the distance he had to travel but he was able to keep the other position on in the hope he would be able to return to live in the London area. The Council says it was not aware that Mr X was employed.

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22. The Council's records of its interview with Mr X in October 2017 state that he was "not working" was "not on benefits" and had made a claim for Universal Credit. Mr X says he told the Council he was employed but was not working at that time. Mr X says he made a claim for Universal Credit to supplement his income. Mr X says he told two senior Council officers he was employed when it offered him accommodation in Birmingham. The Council says it has no records of these discussions with Mr X.
 23. Mr X wrote to the Council on 22 November 2017. He explained he had two jobs and was also self-employed. Mr X said he was losing his employment as a result of being placed in Birmingham.
 24. The Council did not respond directly to Mr X. The Council was also in correspondence with Mr X's MP at this time. In its response to our enquiries the Council said it responded to Mr X's concerns in an e-mail to his MP on 1 December 2017. This was in response to the MP's e-mail of 17 November 2017. In this e-mail the Council said it was "sorry to hear of [Mr X's] difficulties and I do understand that he is finding it difficult in Birmingham".
 25. The Council accepted it owed Mr X a full duty on 28 April 2018.
 26. The Council offered Mr X permanent housing in a private rented property in Wolverhampton. Mr X accepted the offer and the Council ended its duty to him in August 2018.
 27. Mr X asked the Council for a review of its decision to end its duty towards him. Mr X said the offer of accommodation was not suitable as it was outside London. Mr X said he would be isolated and unable to attend his university course or easily obtain a job.
 28. On 4 September 2018 the Council wrote to Mr X to say it had not upheld his review. The Council said Mr X could appeal to County Court if he was unhappy with the Council's decision.
 29. Mr X appealed to the County Court and the Court ordered that the Council's decision of 4 September 2018 should be withdrawn. The Council then carried out a further review of its decision to end its duty to Mr X.
 30. The Council wrote to Mr X on 22 February 2019 with a second review decision. The Council upheld its decision to end its duty to Mr X and said the offer of private rented accommodation was suitable. The Council said it would be willing to pay Mr X one month's rent "up to the local housing allowance" as a deposit and "the same again in rent in advance" to assist him finding his own accommodation in his area of choice.
 31. The Council said Mr X could appeal to County Court if he was unhappy with its decision.
 32. Mr X has now found private rented accommodation in London. The Council assisted him with a deposit.

Conclusions

Provision of temporary accommodation outside the Council's area

33. The Council failed to take account of Mr X's employment when he advised it that he had two jobs in November 2017. Although there is no evidence Mr X had informed the Council of this previously, it should have contacted him to ask for further details. Had it done so the Council would have realised his employment in

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- both jobs predated his approach to the Council as homeless. The Council's failure to investigate Mr X's employment status is fault.
34. Mr X has provided us with evidence he was employed in the form of payslips and P60s from the time. Mr X has also provided us with evidence to show he was unable to transfer one job to another area with the same employer.
 35. If the Council had properly considered Mr X's circumstances it seems likely it would have, at the very least, moved Mr X to interim accommodation within 90 minutes of its area. Instead Mr X was placed in accommodation which was three hours from his place of employment. This is double the travel time Mr X should have experienced under the Council's policy.
 36. The Council says it would not normally have accepted the evidence Mr X provided to us as proof of income. However, it has conceded that it failed to ask for evidence of his employment at the time and has accepted our findings.
 37. As a result of the Council's failure to properly consider Mr X's employment in line with its policies, Mr X was not able to continue in one role as he could not transfer his employment to the Birmingham area. Mr X maintained his other role due to the nature of employment and hours involved. However, he faced increased costs in having to travel to his place of work.
 38. Although Mr X was unable to transfer one of his roles to the Birmingham area there was nothing to prevent him from gaining employment more locally in a similar role. We have taken this into account when considering the extent of the injustice Mr X was caused as a result of fault by the Council.
 39. Mr X also says he was unable to maintain his own business during this period. There is nothing within the Council's accommodation placement policy which addresses self-employment. We have no doubt Mr X would have been inconvenienced in having to establish business contacts in Birmingham and moving away from his established contacts. However, there was nothing to prevent Mr X from running his business in another area and trying to make new contacts. The Council says it was not aware Mr X was self-employed but accepts its policy on out of area placements does not cover this and has agreed to review it in line with our recommendations.
 40. We have considered the injustice to Mr X between 22 November 2017 (the date Mr X told the Council he was employed) to 3 June 2018 when Mr X moved to alternative accommodation. From this point Mr X had a right to request a review of the suitability of the accommodation the Council offered and a subsequent right of appeal to court.
 41. In reaching a decision on an appropriate remedy we have considered the additional costs Mr X incurred in getting to and from his place of work as well as a monthly amount for being placed in unsuitable accommodation for seven months. This takes account of the inconvenience Mr X would have been caused in securing employment in the Birmingham area. We have also considered the time and trouble Mr X has been put to pursuing his complaint.

Council's decisions on Mr X's homelessness

42. We are not able to continue investigating the Council's decision to end its duty to Mr X with an offer of permanent private rented accommodation. This is because Mr X had a right to review the Council's decision to end its duty to him. Mr X exercised his right to review the Council's decision and then appealed to Court.

As Mr X has taken the Council to court we cannot continue to investigate this part of his complaint.

43. We cannot continue to investigate Mr X's complaint about the Council's decisions on his homelessness. This is because Mr X asked the Council for a review of the decision and it accepted a full duty towards him in April 2018. Mr X has been able to secure a solicitor to represent him, so we consider it was reasonable for him to have gone to Court if he wished to do so.
44. The Council subsequently withdrew its decision to end its duty to Mr X as a result of a court order. However, it later issued a new decision saying it upheld its decision to end its duty towards him and his family. The Council advised Mr X he could appeal its decision in County Court. Mr X has been able to take the Council to court in the past so we consider it reasonable for him to do so again if he disagrees with the Council's decision.

Recommended action

45. 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*)
46. In addition to the requirements set out above the Council has agreed to take the following action to remedy the injustice caused to Mr X.
 - Write to Mr X to apologise for failing to consider his employment status when it placed him in accommodation in Birmingham.
 - Pay Mr X £1768 to recognise the distress caused as a result of being placed in unsuitable accommodation for six months (£1,200) and additional costs incurred in getting to his place of employment (£418). This also includes £150 to recognise the unnecessary time and trouble Mr X was put to pursuing his complaint.
47. The Council should also take the following action to improve its services to homeless applicants as a result of the fault we have identified.
 - Remind relevant staff of the need to consider the Council's policies when placing a homeless person or family in accommodation. Staff should be reminded of the need to make clear notes setting out reasons for their decisions.
 - Review its placement policy to set out what factors the Council will consider when placing a self-employed person in interim or temporary accommodation.
48. We welcome the Council's decision to accept our findings and recommendations.

Decision

49. We have completed our investigation into the suitability of the interim and temporary accommodation provided to Mr X. There was fault causing injustice and the action we have recommended is a suitable way to remedy this.
50. We are not able to continue to investigate Mr X's other complaints as he has a statutory right of appeal to court if he is unhappy with the Council's decision. Mr X has exercised that right in the past and we consider it reasonable to expect him to do so again.