



# **AUDIT & STANDARDS COMMITTEE ADDENDUM**

**4.00PM, TUESDAY, 24 JULY 2018**

**COUNCIL CHAMBER, HOVE TOWN HALL**



## ADDENDUM

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| <i>Contact Officer:</i> <b>Brian Foley</b>                       | <i>Tel:</i> 01273 291229 |
| <i>Ward Affected:</i> <b>All Wards</b>                           |                          |



**WRITTEN QUESTIONS**

A period of not more than fifteen minutes shall be allowed at each ordinary meeting for questions submitted by a member of the public.

The question will be answered without discussion. The person who asked the question may ask one relevant supplementary question, which shall be put and answered without discussion. The person to whom a question, or supplementary question, has been put may decline to answer it.

The following written questions have been received from members of the public.

**(i) Member Complaints- Greg Hadfield**

*"I have been concerned by recent reports of an apparent increase in disrespectful behaviour that a minority of councillors have allegedly shown towards ordinary citizens. Could you tell me how many formal complaints under the Code of Conduct have been received by the Monitoring Officer since the beginning of 2017?"*



|                          |   |   |                          |
|--------------------------|---|---|--------------------------|
| <b>Subject:</b>          | <b>Local Government and Social Care Ombudsman Report</b>      |   |                          |
| <b>Date of Meeting:</b>  | <b>24 July 2018</b>   |   |                          |
| <b>Report of:</b>        | <b>Executive Lead Officer - Strategy Governance &amp; Law</b> |   |                          |
| <b>Contact Officer:</b>  | <b>Name:</b>  | <b>Brian Foley</b>                      | <b>Tel: 01273 293109</b> |
|                          | <b>Email:</b>   | <b>Brian.foley@brighton-hove.gov.uk</b> |                          |
| <b>Ward(s) affected:</b> | <b>All</b>  |   |                          |

**FOR GENERAL RELEASE**

The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that this report is embargoed by the Local Government and Social Care Ombudsman until 18 July 2018 on which date the Report is formally published and no longer subject to a press embargo

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The Audit & Standards Committee has a role to provide independent scrutiny of the way the authority discharges its powers and duties. As a part of this role the Committee may be asked to consider public Reports issued by the Local Government and Social Care Ombudsman (LGSCO).
- 1.2 This paper provides the Committee with a public Report issued and published by the LGSCO on 18 July 2018, in which the Ombudsman has made a finding of fault on the part of the Council causing injustice.
- 1.3 When a Report of this type is issued, the local authority concerned is under a duty to consider it pursuant to the Local Government Act 1974 and to notify the LGSCO of decisions taken in relation to it.
- 1.4 This paper provides details of the complaint, the findings and recommendations of the Ombudsman, and the service improvements identified by the Head of Housing Needs as a result of the Report, and in doing so meets the requirement indicated at para 1.3.

**2. RECOMMENDATIONS:**

- 2.1 That the Committee consider the Ombudsman's Report as provided in Appendix 1 and note that the recommendations arising from it which are listed below have been carried out:
  - a. apologise to Miss X;

- b. pay £750 to recognise the injustice caused by its decision to leave her and her son Z in unsuitable temporary accommodation between July and September 2016;
- c. pay £100 for the six months it took to reimburse storage charges;
- d. pay £150 to recognise the time and trouble caused by its delay and poor handling of her complaint;

2.2 That the Committee approve the following steps:

- A formal written response be sent to the Ombudsman explaining the steps taken to comply with the recommendations in his Report.
- That the Council will place two public notice announcements in local newspaper or newspaper websites within two weeks of receiving the report.
- That the Council will make copies of the report available free of charge at Hove Town Hall for a period of three weeks.
- That this report be put before the Council's Housing and New Homes Committee, for noting.

### 3. **CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The Ombudsman's Report concerns a complaint regarding events which took place between June and September 2016 which demonstrated a failure to satisfactorily discharge the statutory duties the Council owed a homeless person and her disabled son.
- 3.2 The council had been given notice on 180 properties during 2016 and were under extreme pressure to provide suitable temporary accommodation for the families which had to be moved.
- 3.3 Miss X referred her complaint to the Ombudsman in March 2017. There were five elements to the complaint. Miss X complained that the council:
- made her unsuitable offers of accommodation when she was homeless;
  - did not reimburse her within a reasonable time for storage charges she paid while she was homeless and living in temporary accommodation;
  - took too long to consider and reply to her complaints;
  - did not fully address her complaints that some officers made unprofessional comments in its reply to the Stage Two complaint;
  - wrongly told her she was ranked first on the shortlist for a property which would be ready in September 2016. She therefore stopped bidding for other suitable properties advertised on the Home Move scheme for two months.



## **The Ombudsman's findings**

### **Offer of unsuitable accommodation**

- 3.4 The Ombudsman accepted that the Council faced considerable difficulties and was working against the clock to find temporary accommodation in a suitable location that would meet Z's needs.
- 3.5 The Ombudsman acknowledges that the Council faced a significant reduction in the supply of leased properties at this time.
- 3.6 The Ombudsman said that on 5 July the Council decided the property was "clearly unsuitable" for Miss X and that she had little choice but to accept the property as, if she had refused, the Council would have ended its housing duty.
- 3.7 The Ombudsman accepts there was evidence that the Council had no alternative temporary accommodation for Miss X in the month leading up to the offer of the property.
- 3.8 Furthermore, he accepts that the decision to place Miss X in this flat was made in extremely difficult circumstances.
- 3.9 He said that the Council knew from the outset that the new temporary accommodation was unsuitable for Miss X and Z's needs because of the noise being caused by the person living in the flat above which was witnessed at the time of the viewing by Miss X and the Housing Officer.
- 3.10 The Ombudsman concluded the Council should have done more to investigate the issues of anti-social behaviour from the neighbour and to find more suitable temporary accommodation for Miss X before September 2016.
- 3.11 The Ombudsman stated he has not seen any evidence that the Housing Needs Service had due regard to its legal duty to safeguard and promote Z's welfare.
- 3.12 The Ombudsman reported that the Council has a legal duty to ensure any offer of accommodation is suitable for the needs of the applicant and household members.
- 3.13 He said the Council cannot circumvent that duty by telling applicants to move into unsuitable accommodation and then request a suitability review.
- 3.14 Miss X and her son lived in this accommodation for almost two and a half months. During that time they were exposed to noise and were threatened by the neighbour. Her son was not able to use his sensory equipment, which he required to meet his needs. They stayed with Miss X's mother some of the time because of concerns for their safety.
- 3.15 The Ombudsman found that Miss X and her son suffered a serious injustice due to service delivery failure on the part of the Council.

### **Reimbursement of storage charges**

- 3.16 The Council took six months to reimburse Miss X's storage charges. It lost her receipts and took far too long to ask her for copies.
- 3.17 Miss X is on a low income and it caused her some financial hardship to wait so long for this payment.
- 3.18 She paid the storage charges by borrowing money from family and friends. She did not take out a commercial loan so she did not incur any interest charges.
- 3.19 The Council recognises the delay was unacceptable.

### **Responding to Miss X's complaints**

- 3.20 There was an unacceptable delay in dealing with the complaint Miss X's friend made on her behalf to Housing Needs on 5 September 2016. The Council did not keep Miss X informed about the reasons for the delay. Miss X and her friend spent time chasing replies. This added to Miss X's distress and frustration.
- 3.21 The Council accepts the complaint Miss X made to the Housing Needs service in September 2016 was handled poorly.

### **Failure to address unprofessional comments in its reply to the Stage Two complaint**

- 3.22 Miss X complains that officers spoke to her in an insensitive and inappropriate way. But she cannot identify two of the officers or give dates for the telephone calls.
- 3.23 The Ombudsman said it is not possible to carry out any further investigation about this issue and there was insufficient evidence for them to reach a finding on this complaint.

### **Shortlist ranking for a property**

- 3.24 The Ombudsman found there was evidence to suggest Miss X and her legal adviser were told by at least one officer that she was ranked first for one of the properties she bid for in early June.
- 3.25 The Council accepts Miss X should not have been given information about her position on the shortlist. It says the officer was trying to be helpful.
- 3.26 The Ombudsman said it was fault to give out this information before the shortlisting process had been completed and formal offers were made.
- 3.27 Overall, this fault did not cause Miss X any significant injustice.

## **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 Not applicable

## **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 Not applicable

## **6. CONCLUSION**

- 6.1 That the Council accepts the decision and recommendations of the Local Government Ombudsman.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 7.1 The financial impact of failing to provide services in line with legislation or good practice procedures will be met directly by the services involved. In this case this will include the £1,000 payments shown in paragraph 2.1 and the costs of Public Notice announcements. It should also be acknowledged that such failure can cause reputational damage for the council.
- 7.2 It is essential that any service improvements that are identified through complaint investigations are implemented without delay and that managers are proactive in reminding and updating their teams on revisions to their procedures and practice.

*Finance Officer Consulted: Name James Hengeveld Date: 09/07/18*

### Legal Implications:

- 7.3 Where the Local Government and Social Care Ombudsman investigates a complaint and finds that there has been a failure in a service which it was the function of a local authority to provide, then it may make a report pursuant to Part III of the Local Government Act 1974. Where a finding of fault is made, such reports may find that the fault has caused injustice to affected persons and may make relevant recommendations.
- 7.1 The requirement in section 31(2) of the 1974 Act that any such report be laid before the authority with 3 months of the date they received it may be discharged by the Audit and Standards Committee, which has delegated powers to consider the report of the LGSCO and to determine actions to be taken by the authority in view of any recommendations. It will be noted that the LGSCO's recommendations that payment in the sums specified be made to the complainant in recognition of the faults which occurred have already been followed. This action has been taken by the Council using the powers available to it pursuant to Section 92 of the Local Government Act 2000.
- 7.2 The proposed recommendations in this report outline the steps which the authority is required to take following receipt of the Ombudsman's report in order to achieve compliance with the requirements of Part III of the Local Government Act 1974.

*Lawyer Consulted: Victoria Simpson*

*Date: 27.06.18*

Equalities Implications:

- 7.3 No Equality Impact Assessment has been carried out.

Sustainability Implications:

- 7.4 There are no sustainability impacts.

**SUPPORTING DOCUMENTATION**

**Appendices:**

1. Report by the Local Government and Social Care Ombudsman. Investigation into a complaint against Brighton & Hove City Council (reference number: 16017200)
2. Information issued by the Ombudsman regarding issuing public reports for Bodies in Jurisdiction

**Documents in Members' Rooms**

1. None

**Background Documents**

1. None

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

**Investigation into a complaint against  
Brighton & Hove City Council  
(reference number: 16 017 200)**

**10 May 2018**

# The Ombudsman's role

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

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

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

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

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

## Key to names used

|           |  |
|-----------|--|
| Miss X    | The complainant                                |
| Z         | Her son  |
| Officer A | A manager in the Housing Needs service         |
| Officer B | An officer in the Temporary Accommodation team |
| Officer C | An officer in the Property Acquisitions team   |
| Council Y | another Council                                |

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## Report summary

### Homelessness

Miss X complains that the Council:

- made her unsuitable offers of accommodation when she was homeless;
- did not reimburse her within a reasonable time for storage charges she paid while she was homeless and living in temporary accommodation;
- took too long to consider and reply to her complaints;
- did not fully address her complaints that some officers made unprofessional comments in its reply to the Stage Two complaint;
- wrongly told her she was ranked first on the shortlist for a property which would be ready in September 2016. She therefore stopped bidding for other suitable properties advertised on the Home Move scheme for two months.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

To remedy the injustice caused, we recommend the Council should:

- apologise to Miss X;
- pay £750 to recognise the injustice caused by its decision to leave her and Z in unsuitable temporary accommodation between July and September 2016;
- pay £100 for the six months it took to reimburse storage charges;
- pay £150 to recognise the time and trouble caused by its delay and poor handling of her complaint;

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*)

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## The complaint

1. The complainant, whom I shall refer to as Miss X, complains that the Council:
  - made her unsuitable offers of accommodation when she was homeless;
  - did not reimburse her within a reasonable time for storage charges she paid while she was homeless and living in temporary accommodation;
  - took too long to consider and reply to her complaints;
  - did not fully address her complaints that some officers made unprofessional comments in its reply to the Stage Two complaint;
  - wrongly told her she was ranked first on the shortlist for a property which would be ready in September 2016. She therefore stopped bidding for other suitable properties advertised on the Home Move scheme for two months.

## Relevant law and guidance

### The Ombudsman's role

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. 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*)

### Homelessness duties

3. If a council is satisfied someone is eligible, homeless, in priority need and unintentionally homeless it will owe them the main housing duty. Generally, the Council carries out this duty by arranging temporary accommodation until it makes a suitable offer of social housing or private rented accommodation. (*Housing Act 1996, section 193*)

### Suitability of accommodation

4. Councils must ensure that all accommodation arranged for homeless applicants is suitable for the needs of the applicant and household members. This duty applies to interim accommodation and accommodation provided under the main housing duty. (*Housing Act 1996, section 206*)
5. Councils must consider whether the location of accommodation 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;
  - the proximity and accessibility to local services, amenities and transport.(*Homelessness (Suitability of Accommodation) Order 2012*)
6. Councils must have regard to advice in the statutory Homelessness Code of Guidance. It says:



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*“Housing authorities will need to consider carefully the suitability of accommodation for applicants whose household has particular medical and/or physical needs.”*

7. The Supreme Court has issued a judgment which says councils have a duty under section 11 of the Children Act 2004 to consider the need to safeguard and promote the welfare of a child when they decide whether accommodation is suitable. (*Nzolameso v City of Westminster [2015] UKSC 22*)

### **Review rights**

8. Homeless applicants may request a review within 21 days of being notified of the decision on their homelessness application. There is also a right to request a review of the suitability of temporary accommodation provided once the council has accepted the main homelessness duty. (*Housing Act 1996, section 202*)
9. Councils must complete the review within eight weeks of receiving the review request. This period can be extended but only if the applicant agrees in writing. If the applicant wishes to challenge the review decision, or if a council takes more than eight weeks to complete the review, they may appeal on a point of law to the County Court. (*Housing Act 1996, sections 202 and 204*)

### **How we considered this complaint**

10. We have produced this report following the examination of relevant records and a telephone interview with the complainant.
11. 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**

#### **The background**

12. Miss X lives with her young son, “Z” who is severely autistic. He has an Education, Health and Care Plan and attends a special school in the Council’s area. Due to his disability, Z experiences acute anxiety and stress when he is exposed to noise and loud music. He also suffers from disrupted sleep patterns and cannot get back to sleep if he wakes in the night. He does not cope well with change and needs a calm, structured and safe environment. The Council has received many reports from educational and health professionals which explain Z’s specific needs since Miss X first applied for housing assistance in 2014.
13. In October 2014 the Council decided it owed Miss X the main housing duty as a homeless person in priority need who was unintentionally homeless.

The Council placed Miss X and her son in self-contained temporary accommodation. The Council leased the house from a private landlord. It was suitable for Miss X’s needs because it was close to Z’s school.

#### **Offers of unsuitable accommodation**

14. In November 2015 the Council awarded Miss X Band A priority on the Housing Register when the owner of her temporary accommodation gave notice to terminate the lease on 1 June 2016. A case note made at the time says, “suitable for a 2 bed house only”. Band A is the highest priority band in the Council’s allocations scheme. This improved Miss X’s prospects of making a successful bid for social housing through the Home Move choice-based lettings scheme. The

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Council also started looking for alternative temporary accommodation in case she did not successfully bid for social housing.

15. In December Miss X reminded the Council she needed accommodation close to Z's school. She said it would be disruptive and harmful to Z's education and wellbeing to expect him to change schools if they were moved to a different area. She delivered a letter of support from the school.
16. Between December 2015 and May 2016 Miss X bid for two properties advertised on the Home Move scheme but she did not have sufficient priority to be shortlisted. The Council offered Ms X three temporary accommodation properties. It withdrew two of these offers because of the distance from Z's school. It withdrew the third offer because Z could potentially make noise that would disturb elderly neighbours.
17. Miss X was still in the temporary accommodation when the lease expired on 1 June. The Council was then under considerable pressure to move Miss X so it could hand the property back to the owner. The Council says it had to hand back about 180 temporary accommodation units to landlords in 2016. Landlords wanted to sell their properties due to the buoyant housing market. This put the Council in a very difficult position because it had to find alternative accommodation for so many households.
18. On 22 June 2016 Miss X viewed a temporary accommodation property with Officer B from the Temporary Accommodation team. It was a ground floor flat in a purpose-built block owned by a neighbouring Council (Council Y). The Council had leased the ground floor flat from the leaseholder. Miss X was the first person to be offered this accommodation.
19. When she viewed the property Miss X knew it would not be suitable. She heard a lot of noise from the occupiers of the flat above. She said Officer B witnessed this noise too. The occupier of the flat above is a tenant of Council Y.
20. When she returned to the office, Officer B sent an email marked urgent to several colleagues. She told them she had heard very loud music, banging sounds and children running around in the flat above during the viewing. She said there seemed to be poor sound insulation between the flats. She said anyone moving into the flat would be very badly affected. She referred to reports from Z's school and his Occupational Therapist that stated a flat would not be suitable because the noise would cause problems for Z. He also sometimes made noise due to the nature of his disability.
21. Officer C, who works in the Property Acquisitions team, replied to Officer B's email. He said the landlord had leased 10 properties to the Council and he did not believe she would have concealed any information if she had known about noise problems. He said he was not sure if the Council could access any information held by Council Y about previous noise complaints.
22. The Council decided to proceed with the offer. Miss X says the Council told her it would end its housing duty if she did not accept the accommodation. She was told she could move in to the property and then request a review of its suitability. The Council says the only alternative to offering Miss X this property would have been to place her in emergency bed and breakfast accommodation which would have been even less suitable for her and Z.
23. Miss X contacted a local advice centre to ask for help with making a review request. A legal adviser contacted the Council on 1 July. He explained Miss X had accepted the offer reluctantly to prevent the Council ending the housing duty. He

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- said Miss X had expressed concerns about noise levels and loud music from the flat above during the viewing with Officer B on 22 June. He said the property was not suitable because external noise has a negative impact on Z's behaviour and wellbeing. Z also had disrupted sleep patterns and needed a quiet environment. He referred to evidence in two supporting letters from Z's school about his needs. He said he would submit medical evidence.
24. The Council says it carried out a suitability assessment and decided the property was not suitable for Miss X's needs. It decided there was no need to do a suitability review. It allowed Miss X to keep Band A priority so she could continue to bid for suitable social housing.
25. Miss X and her son moved in to the flat on 4 July 2016. She says the tenant in the flat directly above swore all the time and made a lot of noise. She played loud music and her children ran around the flat. She says the noise had a noticeable impact on Z. In addition to the noise, Miss X says there was no room in the flat for Z's sensory equipment so she had to put it into storage.
26. Miss X says Officer B told her she had contacted Council Y to ask if it had received any noise complaints about the tenant of the flat upstairs. Miss X says Officer B then called her to say it had not received any complaints. There is no evidence in the records we have seen that the Council contacted Council Y until September 2016.
27. On 4 July Officer B sent another email to colleagues expressing concern about the suitability of the accommodation following contact from Miss X. She said there was a nine year history of anti-social behaviour and noise nuisance from the occupiers of the flat above. She said Council Y had issued three Anti-Social Behaviour Orders. She gave the name of the officer at Council Y who was responsible for the anti-social behaviour investigation.
28. Officer C then contacted the owner of Miss X's flat to get more information. She had purchased the flat 18 months earlier. She told Officer C that Council Y had informed her that a "noise order" had been served on the tenant of the upstairs flat but it had expired before she purchased the flat. She said the former tenants of Miss X's flat got on well with the tenant of the flat above. Officer C relayed this information to Officer B. The Council did not make any enquiries to Council Y at this stage to check this information.
29. On 5 July Officer B discussed the email sent by Miss X's legal adviser with a senior officer. A note in the case records says:
- "In summary, the TA that [Miss X] has been allocated and which she has been moved into is clearly unsuitable given the severity of Miss X's son's autism and how this impacts on his ability to cope. [Officer B] states that we should not have allocated a property such as this as it would appear to have been clear that the noise and ASB issues were ongoing."*
30. The senior officer noted Miss X had been ranked in first and second place for some new build properties she bid for in early June. The Rehousing Manager hoped these properties would be completed by mid-August but she did not know exactly when. Officer B telephoned Miss X following her discussion with the senior officer to tell her the Council had decided Miss X could remain in the temporary accommodation until the other properties were ready.
31. On 8 July the legal adviser contacted Officer B and the senior officer again. He said Z had gone to stay with his grandmother because of the noise levels from the flat above. Miss X said the neighbour used a washing machine late at night and

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- played loud music at 6:00 a.m. He said Miss X had been told by another neighbour that several complaints about noise nuisance and anti-social behaviour had been made to Council Y. He told Miss X that Council Y had taken legal proceedings against the neighbour. Miss X contacted an officer at Council Y who confirmed it had taken legal proceedings against the neighbour under anti-social behaviour legislation. The legal adviser gave Officer B the name and telephone number of the officer dealing with the case at Council Y.
32. On 11 August Miss X attended an interview with a duty housing officer. She said the neighbour in the flat upstairs had threatened to stab her and kill her son the previous evening. She had reported this to the police and gave the officer the crime reference number. She said Council Y had asked her and other neighbours to keep a record of anti-social behaviour incidents as evidence because it was seeking to evict the tenant. She did not feel it was safe to return to the flat so she went to stay temporarily with her mother. At this point the Council started to look for alternative temporary accommodation for Miss X.
33. On 31 August the legal adviser sent an email to the senior manager to ask if the Council had completed its enquiries and reached a decision on Miss X's request for a review of the suitability of her temporary accommodation.
34. On 1 September Miss X's legal adviser said it would be too disruptive for Miss X to move again to short-term temporary accommodation and then to permanent accommodation.
35. An entry made in the case notes on 2 September shows the Council made Miss X an offer of alternative temporary accommodation in her preferred area. Miss X declined the offer as by then she had been offered permanent accommodation. The Council therefore withdrew the offer of temporary accommodation.
36. On 5 September Miss X sent a letter of complaint to the senior manager in the Housing Service. In the letter she said Z was constantly anxious and wetting himself. His behaviour had become more difficult to manage in recent months and he was self-harming by hitting and biting. The Council says Miss X did not inform Z's school, or the Children's Disability Service who were providing Early Help support, about these concerns at the time.
37. On 6 September the legal adviser sent Miss X his comments on her draft letter of complaint to the Council. He told her the Council had not yet confirmed in writing that the temporary accommodation was not suitable for her.
38. On 8 September 2016 a housing officer from Council Y wrote to Miss X about the history of anti-social behaviour. The letter states:
- Miss X's neighbour and her visitors had started to engage in anti-social behaviour soon after her tenancy began in March 2014;
  - the County Court had issued three Anti-Social Behaviour injunctions (ASBI);
  - the last ASBI expired in April 2016 and the tenant then resumed anti-social behaviour so an order for possession was now being sought;
  - the Council had not contacted Council Y before Miss X's tenancy started to ask if there were any problems with ASB.
39. On 15 September Officer C contacted the officer at Council Y for the first time to enquire about the history of anti-social behaviour (ASB). The officer at Council Y said he had discussed the ASB with the owner of Miss X's flat in May 2016. Council Y was getting witness statements in order to prosecute the tenant for

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breaching the terms of a noise abatement notice it had served in July 2016. It had also gone to Court three times to seek ASB injunctions. It intended to seek an order for possession of the flat.

40. On 16 September Officer C informed the owner that the Housing Management team could not let the property again due to the ongoing ASB. He said he would be giving 28 days' notice to terminate the lease for this reason. The owner responded that she had not been aware there were any ongoing problems.
41. The Council did not send a written review decision to Miss X's legal adviser. It accepts it should have contacted the legal adviser to explain that it had carried out a suitability assessment instead.
42. On 15 September the Council offered Miss X one of the new build properties which she had bid for in June 2016. She accepted the offer and moved in on 19 September 2016.
43. When he replied to Miss X's Stage Two complaint, the investigating officer in the Customer Feedback team apologised and expressed regret that she was offered the temporary accommodation in view of the impact the neighbour's behaviour had on her and Z.

### **Reimbursement of storage charges**

44. Miss X asked Officer A for assistance with paying charges to store her belongings when she met him on 8 September 2016. On 7 October her friend sent him receipts from the storage company.
45. The Council agreed she was entitled to financial assistance under its Referral for Property Protection scheme because she is homeless and receives benefits.
46. Officer A sought authorisation to pay the storage charges. But Miss X's receipts were then mislaid or lost. The Council did not ask her to provide a copy of the receipts until late January 2017 when it completed the Stage 2 complaint investigation.
47. Miss X sent a copy of the receipts to the Council on 3 February 2017. The Council sent her a cheque for £1,171.82 on 6 March 2017. This covered all the storage charges she paid between June and September 2016. She waited six months after she first sent the receipts to be reimbursed.

### **Responding to Miss X's complaints**

48. The Council's complaints procedure says the service should try to resolve complaints as quickly as possible in the first instance. If it is not possible to resolve the complaint informally, it should be registered as a formal complaint at Stage One of the complaints procedure. The Customer Feedback team oversees the complaints process. At Stage One, the complaint is handled by the service which aims to reply within 10 working days. If there is likely to be a delay, the service should contact the complainant to explain the reasons and give a timescale for the response.
49. At Stage Two, the Customer Feedback team deals with the complaint. If it decides to carry out a formal investigation, it aims to complete it within 20 working days.
50. Miss X is dyslexic and finds it difficult to deal with written communications. She asked a friend to help her make a complaint to the Council.
51. On 5 September 2016 Miss X's friend sent a letter of complaint by email direct to a senior manager in the housing service. It was not registered as a Stage One

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complaint. The service should have tried to resolve Miss X's complaint as quickly as possible and informed her how to make a formal complaint if she was not satisfied with its response.

52. Following an exchange of correspondence, the Customer Feedback team registered Miss X's complaint at Stage One on 21 October. It said it aimed to reply in 10 working days. On 4 November the Housing Options Manager sent a holding reply. He explained he would make some further enquiries and ask two other officers to investigate some parts of her complaint. He said he would reply by 11 November.
53. On 8 November 2016 the Housing Options Manager replied to two parts of Miss X's complaint. This was the Stage One reply. He apologised for the earlier delay and for the difficulties Miss X had in contacting the senior manager. He apologised that the Council had not been able to meet all Miss X's needs when it made offers of accommodation and for the distress this had caused.
54. On 18 November 2016 Miss X asked for her complaint to move to Stage Two of the complaints procedure. The Customer Feedback team acknowledged her request on 21 November 2016. It said it would try to contact her again within 10 working days.
55. Miss X received further holding replies on 16 December and 23 December. She received the Stage Two reply on 27 January 2017. The investigating officer apologised for the time it had taken to reply to her complaint.

#### **Failure to address unprofessional comments in its reply to the Stage Two complaint**

56. Miss X says she spoke on the telephone to a housing officer sometime in 2016 to explain her son's complex needs. She claims the officer said "no property would cure her son". Miss X says she was horrified by this inappropriate comment. She also says the officer said she would have to get rid of her dog if she was offered a property where pets are not allowed.
57. Miss X does not remember the officer's name and she cannot pinpoint the date of the telephone conversation. The Council does not record telephone calls and we did not find anything relevant in the housing records.
58. Miss X also complained about comments allegedly made by a named officer who was involved in making her an offer of temporary accommodation in late January 2016. Miss X says the officer said her mother and sister should move to be closer to Miss X and her son would have to move to a new school.
59. There is no record of this telephone conversation. After it considered Miss X's concerns about suitability, the Council withdrew this offer. We asked for this officer's comments on Miss X's complaint. The officer says she did not suggest Miss X's family should move closer to her. She remembers having a discussion with her about public transport links to the property. She believes Miss X may have misconstrued her comments.

#### **Miss X's position on the shortlist for a property**

60. Miss X says Officer B telephoned her on 28 June to say she had "won" one of the properties which she had bid for on 9 June. Miss X then stopped bidding for other advertised properties.
61. There is no record of this telephone conversation. Officer B says she was speaking to Miss X almost every day. She says it was Miss X who told her she was ranked first for a property.

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62. On 6 July Miss X's legal adviser spoke to a housing officer. He said he and Miss X were both told she was ranked first for one of the properties she bid for on 9 June. According to the case notes, the officer made no comment then on Miss X's bid position. She did not know when the new build properties would be ready. She also said Miss X could continue with the review process.
63. During an interview with a duty officer on 11 August Miss X says she was shown her ranked position on the computer screen. She said this showed she was in first position for one of the properties she had bid for in June.
64. On 31 August 2016 Miss X spoke to two officers in the Home Move team about her bids. She was then told she was in second place. An Assessment Officer said officers should not give applicants information about their bidding position because it can change before the bidding cycle ends or when further checks are made at the shortlisting stage.
65. Miss X says she was given misleading information about her position on the shortlist by Officer B in June and again by the duty officer on 11 August. She says she stopped making bids for other properties on Home Move because she understood she was highly placed.

### **The Council's comments**

66. In response to the first draft of this report, the Council said it:
- will apologise to Miss X for the quality of the temporary accommodation it provided;
  - has already changed the way it administers payments so invoices are now processed by one support team to ensure timely payments are made;
  - is willing to make a payment to Miss X for the unnecessary delay in reimbursing her storage charges and for its poor handling of her initial complaint to the Housing Needs service;
  - has improved its performance in responding to complaints made to the Housing Needs service and it is now meeting the relevant timescales;
  - has reminded staff in Housing Needs to refer complaints to the Customer Feedback team if they cannot be resolved within three days at the informal stage;
  - will remind officers in the Housing Needs service not to tell applicants their position on the bidding list;
  - will apologise to Miss X's legal adviser and clarify the way it handles suitability assessments and reviews. Officers will also be reminded in team meetings and supervision sessions;
  - has a dedicated social worker post in the Housing Needs service to provide appropriate support to families and other people with complex needs who are in housing crisis.
67. The Council did not accept it was fault to proceed with this offer of temporary accommodation and expect Miss X to move in and request a review of its suitability. It referred to caselaw which established the applicant could challenge the suitability of accommodation by using the review process. It is also concerned that paying a financial remedy to a homeless applicant for unsuitable temporary accommodation will create a precedent in future cases where it cannot fully meet a household's specific needs because of a shortage of temporary accommodation.

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68. The Council also provided evidence about the supply and type of temporary accommodation available for homeless families in the month of June 2016. Miss X needed a two bedroom property. Only two such properties were available in June 2016 and both were flats. The flat allocated to Miss X was closer to her son's school than the other flat. The other flat would not allow the occupier to keep a dog.

## Conclusions

### Offers of unsuitable accommodation

69. The Council had ample evidence about Miss X's son's specific needs as a young child with severe autism. The reports from professionals explained his sensitivity to noise and the impact it had on him. It knew the temporary accommodation had to be within a reasonable travelling distance of Z's special school to prevent any disruption to his education. The Council also had to take into account:
- Miss X's need for a car parking space;
  - Miss X's need for a property where she could keep her dog; and
  - Z's disability sometimes caused him to make noise which could disturb neighbours.
70. We do not underestimate the difficulties the Council faced in finding temporary accommodation in a suitable location that would meet Z's needs. It was working against the clock to find a property before the lease expired. The family had complex needs. The Council was also seeking accommodation at a time when it faced a significant reduction in the supply of leased properties.
71. We would not expect the Council to have made enquiries to Council Y before it acquired the temporary accommodation to find out if there was a history of noise nuisance or anti-social behaviour. But Officer B witnessed significant noise from the flat above on the day she and Miss X viewed the flat. She immediately expressed serious concerns about the suitability of the flat in view of Z's specific needs as a severely autistic child. She referred to the supporting professional evidence. On 5 July the Council decided the property was "clearly unsuitable" for Miss X. Miss X had little choice but to accept the property as, if she had refused, the Council would have ended its housing duty.
72. The Council has sent evidence that it had no alternative temporary accommodation for Miss X in the month leading up to the offer of this flat. As the lease had expired on her accommodation, the decision to place Miss X in this flat was made in extremely difficult circumstances. But the Council knew from the outset that the new temporary accommodation was unsuitable for Miss X and Z's needs. The Council relied on the property owner's assurance there were no current problems with ASB or noise. Despite the serious concerns Officer B expressed in her email, it did not contact Council Y to enquire about the history of ASB and noise nuisance complaints until September 2016. It should have done more to investigate these issues and to find more suitable temporary accommodation for Miss X before September 2016. We have not seen any evidence that the Housing Needs Service had due regard to its legal duty to safeguard and promote Z's welfare.
73. The Council did not respond in writing to the legal adviser's request for a review of the suitability of the accommodation. The Council accepts it should have informed the legal adviser of its decision that the property was not suitable. As the



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legal adviser had submitted a statutory review request, the Council had a legal duty to send a written response. Its failure to do so was fault.

74. The Council is not responsible for the neighbour's conduct. The neighbour had a record of repeated and serious anti-social behaviour that led Council Y to seek injunctions and start possession proceedings. But if the Council had followed up Officer B's serious concerns about the unsuitability of the property, and made enquiries to Council Y shortly after the viewing in June 2017, we consider Miss X and her son would not have been put in this situation. The Council has a legal duty to ensure any offer of accommodation is suitable for the needs of the applicant and household members. It cannot circumvent that duty by telling applicants to move into unsuitable accommodation and then request a suitability review.
75. Miss X and Z suffered a serious injustice due to the Council's faults. They lived in this accommodation for almost two and a half months. During that time Miss X and her son were exposed to noise and they were threatened by the neighbour. Z was not able to use his sensory equipment, which he required to meet his needs. They stayed with Miss X's mother some of the time because of concerns for their safety. We took into account the Council's offer to move Miss X to alternative temporary accommodation on 2 September following the threats made by her neighbour. But by then Miss X knew she would shortly be offered a social housing property so it was not unreasonable for her to refuse a short-term move.

#### **Reimbursement of storage charges**

76. The Council took six months to reimburse Miss X's storage charges. It lost her receipts and took far too long to ask her for copies. Miss X is on a low income and it caused her some financial hardship to wait so long for this payment.
77. Miss X says she paid the storage charges by borrowing money from her mother and using her Income Support and other benefits. She also borrowed money from a friend. She repaid these loans every fortnight. It caused her some financial hardship to use benefits to pay the charges. She did not take out a commercial loan so she did not incur any interest charges.
78. The Council recognises the delay was unacceptable. It says it was due to an error when the request was transferred between teams.

#### **Responding to Miss X's complaints**

79. There was an unacceptable delay in dealing with the complaint Miss X's friend made on her behalf on 5 September 2016. The Council did not keep Miss X informed about the reasons for the delay. Miss X and her friend spent time chasing replies. This added to Miss X's distress and frustration.
80. The Council accepts the complaint Miss X made to the Housing Needs service in September 2016 was handled poorly. It says the delay was partly caused by the unexpected absence of the service manager who was the person best placed to respond. It accepts it needs to monitor officers' emails when they are absent and tell people if there will be delays. In cases where a service cannot resolve a complaint quickly, it should inform the Customer Feedback team who will record it as a Stage One complaint and monitor its progress.

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### **Failure to address unprofessional comments in its reply to the Stage Two complaint**

81. Miss X complains that officers spoke to her in an insensitive and inappropriate way. But she cannot identify two of the officers or give dates for the telephone calls. So it is not possible to carry out any further investigation.
82. Miss X identified one officer. The officer has a different recollection of what she said during the conversation with Miss X. As the call was not recorded, we cannot establish exactly what was said.
83. There is insufficient evidence for us to reach a finding on this complaint.

### **Shortlist ranking for a property**

84. The evidence suggests Miss X and her legal adviser were told by at least one officer that she was ranked first for one of the properties she bid for in early June. It was a fault to give out this information before the shortlisting process had been completed and formal offers were made.
85. The Council accepts Miss X should not have been given information about her position on the shortlist. It says the officer was trying to be helpful. Miss X was in second position. But when the first ranked applicant later refused the accommodation, Miss X moved into first position. She was offered the property on 15 September. She viewed and accepted it on the same day.
86. The Council says the Home Move scheme allows applicants to continue bidding for properties until a formal offer of accommodation is made unless they are ranked in first position. So Miss X could have bid for other properties advertised between 9 June and 15 September.
87. The Council says only one potentially suitable property was advertised on Home Move in Miss X's preferred areas during that period. It was a two bedroom ground floor flat. But it is not clear whether Miss X would have bid for a ground floor flat because of her son's sensitivity to noise and her stated preference for a house.
88. Overall, this fault did not cause Miss X any significant injustice. She was later allocated one of the properties when the first ranked bidder rejected the offer. The Council says the only other two bedroomed property in Miss X's preferred areas advertised between June and September was a ground floor flat. Miss X had stated a clear preference for a house because of the increased risk of noise transmission between flats. On the balance of probabilities, it seems likely Miss X would not have bid for a ground floor flat.

### **Recommendations**

89. To remedy the injustice identified in this report we recommend the Council should:
  - apologise to Miss X;
  - pay £750 to recognise the injustice caused to Miss X and Z by leaving them in temporary accommodation which it knew was not suitable for their needs between July and September 2016;
  - pay £100 for the six months delay in reimbursing the storage charges;
  - pay £150 to recognise the time and trouble caused by its delay and poor handling of her complaint;

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90. 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*)

## **Decision**

91. We have completed our investigation into this complaint and upheld three complaints. We did not uphold two complaints. There was fault by the Council which caused injustice to Miss X. The Council should take the action identified in paragraph 89 to remedy that injustice.



## **Information about issuing public reports for Bodies in Jurisdiction**

### **Public reports**

All our investigation decisions are published on our website, except where we decide publishing is not in the interests of the people involved in the complaint. In some cases we will publish a detailed report of the investigation. We will promote these cases in the media and require the organisation involved to make a public announcement. Reports and decisions do not name the people involved but do name the organisation investigated.

### **Why do we issue public reports?**

There are many reasons why we might issue a public report. The main reason is because we believe it is in the public interest to highlight particular issues or problems. We might also issue a public report because what went wrong is significant or because the impact on the person complaining is significant. We will always issue a public interest report if an organisation does not agree with our findings or recommendations, or put things right to our satisfaction.

Public reports are not intended as a way of sanctioning an organisation and we can issue a report even where we have found no fault. Reports are a vital tool in helping to ensure councils, and other organisations providing public services, remain accountable to people who use those services. By highlighting the learning from complaints we help to improve services for others. Our reports will acknowledge if an organisation has accepted our recommendations and any positive action taken in response to our findings.

### **What happens when we decide to issue a public report?**

Before the report is issued, all parties involved in the complaint have the opportunity to see a draft version of the report and comment on it. We will usually give each party three weeks to provide any comments. We will consider giving a short extension in exceptional circumstances. If we do not receive a response we will proceed with issuing the report so it is important comments are received within the timescales given.

Once we have received all the comments and we have finalised the report, we will send it to the complainant and the organisation subject to the complaint at the same time. We anonymise reports so they do not include the complainant's details or the details of any officers, staff or anyone else involved in the events. We will generally use job titles to refer to senior council officers. However, there may be exceptional circumstances where we decide to name a third party if it is in the public interest to do so (e.g. a care home, care provider or contractor).

### **What happens when the final report is issued?**

Our findings in the report are binding and can only be challenged by judicial review. This is not an appeal and the most a court can do, if successful, is to quash the Ombudsman's decision. The narrow grounds of challenge include illegality, irrationality or procedural flaws.

The organisation has three months from the date of the report to formally consider our findings and any recommendations we have made. Where a complaint is about a council, the report should be submitted to the full council (or committee if the council has delegated the authority to that committee). We may ask for evidence to show you have done this.

The organisation should send a formal written response to us explaining what steps it has taken or will take to comply with the recommendations in the report.

When we are satisfied with the actions an organisation has taken following a report, we will send a letter of satisfaction to you and the organisation explaining this. We then update our website to show we are satisfied with the outcome of the report.

### **What happens if an organisation does not comply with the recommendations?**

Most organisations agree to our recommendations, often before we issue a report. However, if an organisation does not, we can issue a further report. A further report will explain that an organisation has not complied with our recommendations.

The organisation can also add its comments to the further report explaining why it decided not to comply. The organisation has three months to formally respond to the further report.

In the rare cases where an organisation fails to respond within the prescribed time or refuses to comply with recommendations in a further report we will ask the organisation to issue a statement of non-compliance. If an organisation does not agree to do so we can publish it on its behalf.

This statement explains why we are not satisfied with how an organisation has responded to a report or that it has refused to comply with our recommendations. The organisation can add a statement explaining why it has not complied, and the same rules apply about the press.

### **How is the report published?**

Reports are published on our website. We will advise organisations of the earliest date the report will be published. This will be at least six working days after we send the final report to you and the organisation. You can find recent reports on our website in the “News” section.

We will usually send a copy of the report with a press release to the media. We often send out the press release in advance of the publishing date under an embargo. This means the media should withhold writing or broadcasting anything until after we have published the report.

The media will often ask to speak to complainants. We usually pass on details of interested media organisations to the complainants. We would not usually be directly involved in media contact between the complainant and a media organisation.

There are times when we cannot publish public reports (e.g. during an election period). We ask complainants not to speak to the media until we have published a final report.

If an organisation has any questions regarding how we deal with the media when a report is published it may contact the Investigator who can put it in contact with our policy and communications team.

**How does the organisation publicise the report?**

The organisation complained about must place two public notice announcements in local newspapers/ newspaper websites within two weeks of receiving the report. The organisation should also make copies of the report available free of charge at one or more of its offices.

If there is no local newspaper we would expect an organisation to place a public notice in newspapers available in its area.

