

# Report by the Local Government Ombudsman

## Investigation into a complaint against London Borough of Barnet (reference number: 16 002 971)

**08 March 2017**

## 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.

# Investigation into complaint number 16 002 971 against London Borough of Barnet

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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 A the complainant

Ms A the complainant's daughter

## Report summary

### Housing: homelessness

Mr A complains on his daughter's behalf that she was homeless after her landlord evicted her. She approached the Council for help five times between January 2015 and March 2016. Each approach triggered a duty on the Council to take an application and investigate whether it should provide accommodation. The Council failed to issue a written decision on each application although legally required to do so.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

Since receiving a draft of this report, the Council has apologised to Mr and Ms A and has offered Ms A temporary accommodation and specialist support. This is a partial remedy.

In addition, we recommend the Council:

- provide Ms A with a written decision on her homeless application;
- pay £200 to Mr A to reflect his avoidable time and trouble in complaining. This is in line with our published [Guidance on Remedies](#);
- pay £300 to Ms A to reflect her avoidable frustration, and for the lost review and appeal rights. This is in line with our published [Guidance on Remedies](#);
- review this report and ensures that in future homeless applications are taken and decision letters are issued in all appropriate cases.

## Introduction

1. Mr A complains for his daughter Ms A that London Borough of Barnet (the Council) refused to help her with housing or social care and instead referred her to other agencies which did not help.

## Legal and administrative background

2. The Ombudsman investigates 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)*)
3. The Ombudsman investigates complaints about councils and certain other bodies. Where an individual, organisation or private company provides services on behalf of a council, the Ombudsman can investigate complaints about the action of these providers. (*Local Government Act 1974, section 25(7)*)
4. If a council has reason to believe someone may be homeless or threatened with homelessness, it must take a homelessness application and make enquiries. The threshold for taking an application is low. The person does not have to complete a specific form or approach a particular council department. (*Housing Act 1996, section 184 and Homelessness Code of Guidance paragraphs 6.2 and 6.6*)
5. A council applies four tests to decide what, if any, duty it owes to a homeless applicant. Its enquiries are to determine whether the applicant is:
  - eligible for assistance;
  - homeless or threatened with homelessness;
  - in priority need;
  - not intentionally homeless.
6. 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.
7. A council must provide interim accommodation while it considers a homelessness application if it has reason to believe the applicant may be homeless, eligible for assistance and in priority need. (*Housing Act 1996, section 188 and Homelessness Code of Guidance for Local Authorities, paragraph 6.5*)
8. If a council is satisfied someone is eligible, homeless, in priority need and unintentionally homeless it will owe them the main homelessness duty. Councils usually carry out the duty by arranging temporary accommodation until making a suitable offer of social housing or private rented accommodation. (*Housing Act 1996, section 193*)

9. After completing enquiries, the applicant must receive a decision in writing. If it is an adverse decision, the letter must fully explain the reasons. All letters must include information about the right to request a review and the timescale for doing so. (*Housing Act 1996, section 184*)
10. An applicant may request a review within 21 days of being notified of the decision on their homelessness application. 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*)
11. The Council, along with other councils in England following guidance from the government in 2010, provides temporary housing to rough sleepers where the temperature is below zero for three days under the Severe Weather Emergency Protocol (SWEP). The aim is to prevent deaths on the streets in cold weather. People do not have to be owed a statutory duty under the Housing Act 1996 to access accommodation under SWEP.
12. In 2011, we published a [focus report on inappropriate gatekeeping](#). Gatekeeping is a term coined by other organisations to describe where, for no legitimate reason, councils refuse to accept or delay an application for help with a homeless problem.

## How we considered this complaint

13. This report has been produced following the examination of relevant files and documents.
14. The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before the report was finalised.

## Investigation

15. Barnet Homes delivers the homelessness service on behalf of the Council. The Council retains responsibility for the service. In this report, we refer to the Council, rather than to Barnet Homes. This is because the Council is accountable for any failings in the service.
16. Ms A approached the Council for help with housing in January 2015 after her private landlord evicted her. The Council provided her with a place in a hostel for three nights.
17. The housing needs officer wrote to Ms A. The letter says:  
  
*“You have been given a decision on your homelessness which advises you we do not have a duty to assist you. However, Barnet has decided to use its discretion to accommodate you under the SWEP .... Please note you will only be made one offer of temporary accommodation which could be located anywhere”.*
18. Ms A approached the Council again in April. Notes from the Housing Options Team say:

*“Client has come in as homeless, has been staying with a friend, she is UK national, non-priority, advised client to go to [a homeless charity] for assistance”.*

19. Ms A approached the Council again in September. The notes say:

*“Client came in seeking housing assistance but has no priority need. Client came in with a medical report from the hospital but it stated the only medical issue the client had was acute asthma. Client said they will approach [a homeless charity]”.*

20. Mr A spoke to the Council’s social care direct team in October. He said he wanted someone to support his daughter to find housing. A duty officer wrote to him with general advice. Mr A said Ms A was low in mood and he was concerned about her asthma. The Council’s advice was there were no social care needs in terms of personal care, meal preparation, going to the toilet and so on. Mr A’s main concern was finding housing for Ms A, so the letter gave details of an outreach service Ms A could self-refer to.

21. Ms A approached the Council again in November. The notes say:

*“Client not priority as per comments previously. Client has been given list of DSS websites and information for housing benefit as requested. Client has previously been to [two homeless charities]”.*

22. Mr A complained to the Council in February 2016. He said he had paid for his daughter to stay in a hotel for a few nights over Christmas. He explained Ms A could not stay with him because his landlord did not allow overnight guests. He considered the Council (either social services or the housing department) should be helping her to find housing. Mr A said his daughter’s health was suffering as she was out on the streets. She had been in hospital for 10 days due to a severe asthma attack.

23. The Council referred Ms A to a charity. That charity said it was not able to help, as Ms A was not on any welfare benefits.

24. On 15 March, Ms A attended the Council’s offices asking for advice as she could not find housing. The notes say:

*“Client did not want appointment as we are currently booking for over a month away. Advised that she needs to get her 184 decision so to approach as emergency. Gave documents list and advised about what to provide for full assessment”.*

25. The Council’s first complaint response gave details of projects helping single homeless people and useful websites and said:

- it provided emergency housing for a week in January under the SWEP;
- Ms A approached the Council in April, September and November and was advised each time she was homeless. On each occasion, she was considered eligible for assistance and homeless but did not meet the criteria for priority need;
- the Council did not have resources to help everyone.

26. On 24 March Mr A phoned the Housing Options Manager in response to the complaint response. The Housing Options Manager said she:

*“advised [him] that Ms A had come in and that she needed to provide documents. He wanted to know if we would provide Bed & Breakfast. Advised not unless she had full assessment and was in priority need”.*

27. The second complaint response said Ms A had contacted a homeless charity last in June 2015 but they could not help her as she did not have the right documents. Ms A needed to claim benefits. The response said:

*“Ideally we would want to give written decisions to all those who seek our assistance but due to the level of staff resources and high numbers of people approaching our service this is not possible”.*

28. Mr A also complained to the Council's adult social care department. Its response was that the housing department was responsible for arranging housing and if Ms A wanted a social care assessment, the Council would do one. But it would not just allocate her a social worker to help her to access housing.

29. The Council told us it:

*“fully understands its duties in relation to the Housing Act 1996 and will always issue decisions when requested ..... The Housing Options Service sees in excess of 1,000 customers each month who are seeking advice and assistance ..... frontline Housing Options officers are not generic customer service officers and are trained in homelessness and housing advice and they are experienced in being able to determine whether a customer is likely to be in priority need. Ms A was assessed by a Housing Options officer as she was not going to be in priority need and she was given advice on her options and that she did not meet the statutory criteria for housing assistance.*

*If we were to issue formal decisions to all those seeking housing assistance, there would be significant challenges with the number of Housing Needs officers being required to conduct such a high volume of assessments and write the subsequent decision letters”.*

30. Since Mr A's complaint to us, the Council has apologised in writing to Mr A and offered Ms A accommodation and has also referred Ms A to a charity which specialises in supporting street homeless people. Ms A has refused accommodation, according to the Council, because she did not want to sign some forms. Mr A told us he continues to try and persuade Ms A to attend the Council's offices and to engage with help offered but, he says, she has lost trust in the Council due to the poor service she has received in the past. Ms A has lost faith in the ability of public services to help her.

31. Commenting on a draft of this report, which had concluded the Council was at fault and that the injustice caused warranted a remedy, the Council said:

- It funded a homeless charity to provide advice and assistance to people who were not owed the full homeless duty. The charity housed 156 people in the private sector



in 2015/16. Ms A did not want to claim welfare benefits which would have enabled her to access housing through the rent deposit scheme. (A rent deposit scheme is where a council, or here the charity acting on its behalf, provides or guarantees a deposit to a private landlord.)

- Ms A had not lost appeal rights, they were delayed by the failure to issue a written decision. It is unlikely that she would have been offered interim accommodation.
- The figures we had recommended as a financial remedy were too high when the Council did offer a referral to a homeless charity which would have been able to house Ms A had she applied for benefits.
- The Council had commissioned an independent review of its housing options service including a review of the triage service (the first point of contact service to people who approach the Council for advice). The Council was looking to pilot changes over the next six months to increase capacity for more tailored advice and delivering written homeless decisions where appropriate.

## Conclusions

32. When Ms A approached the Council in January, April, September and November 2015 and in February 2016 and explained her housing situation, this triggered a duty for the Council to investigate. The Council should have carried out enquiries to decide whether it owed any duty to provide her with accommodation. When its enquiries were complete, and ideally within 33 working days, the Council should have issued a written decision.
33. In this case, the Council considered Ms A's case on at least five occasions and made provisional decisions, which were not in writing, that it did not owe her any duty to provide accommodation. The Council should have issued a written decision and the failure to do so is fault. If the Council had issued a written decision, Ms A would have had the right to seek an internal review and a right of appeal to the County Court. The failure to issue a decision in writing means Ms A could not exercise these rights.
34. When Ms A asked for emergency Bed & Breakfast accommodation, officers wrongly said she needed to have a written decision before the Council would consider providing this. The Council is required to offer interim accommodation whilst conducting enquiries if it has reason to believe the applicant is homeless and may be in priority need. Interim accommodation is provided in cases where a council does not have enough information to make an immediate decision on a homeless application. The threshold for interim accommodation is a low one.
35. Information from the Council shows the failure to issue a decision in writing is not a one-off failure. The Council says it does not have enough staff resources to issue written decisions in all cases. The Council is aware this is failing to meet a statutory duty. We published a focus report on this issue in 2011. It is of concern that the practice of refusing to take and decide homeless applications for no legitimate reason continues.

36. We are satisfied with the social care team's response to Mr and Ms A. Generally, social services do not have to provide housing to people where this is the only need. The social care team gave appropriate advice to Mr A.

### **Injustice**

37. Mr A told us Ms A has been sleeping on night buses and occasionally with friends. She has lost faith in the Council and is frustrated at being turned away and sent to different agencies. He fears she may not engage with the Council again.
38. Ms A lost out on her statutory rights of review and appeal. And she may have missed out on the opportunity to have interim accommodation if, at the times she approached the Council, it could not issue a written decision immediately.

### **Decision**

39. Ms A was homeless and so approached the Council for help. This triggered a duty to investigate whether it should provide accommodation. The Council provided some advice and referrals to a charity which could have housed Ms A in the private sector and a hostel place under the SWEP. But it failed to issue a written decision although legally required to do so. This is fault. As a consequence, Ms A was denied review and appeal rights to which she was legally entitled. She potentially lost out on interim accommodation.

### **Recommendations**

40. Since receiving a draft of this report, the Council has apologised to Mr and Ms A and has offered Ms A temporary accommodation and specialist support. This is a partial remedy.
41. In addition, we recommend the Council:
- provide Ms A with a written decision on her homeless application;
  - pay £200 to Mr A to reflect his avoidable time and trouble in complaining. This is in line with our published [Guidance on Remedies](#);
  - pays £300 to Ms A to reflect her avoidable frustration, and for the lost review and appeal rights. This is in line with our published [Guidance on Remedies](#);
  - reviews this report and ensures that in future homeless applications are taken and decision letters are issued in all appropriate cases.