

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

**Investigation into a complaint against
Royal Borough of Kensington & Chelsea
(reference number: 18 002 277)**

5 March 2019

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
Officer A	Homelessness Assessment Officer
Officer B	Accommodation Officer
Officer C	Housing & Homelessness Assessment Officer
Officer D	Housing & Homelessness Assessment Officer

Report summary

Housing – homelessness

Miss X complained about the way the Council dealt with her homelessness application. It arranged unsuitable accommodation while it considered her application and review requests. It took too long to make a final decision and it did not follow the correct process for carrying out a review. Overall the Council took 55 weeks from the time she first applied to reach its final decision to accept the main housing duty.

Finding

Fault causing injustice and recommendations made.

Recommendations

Within three months of the date of this report the Council should:

- arrange for a senior officer to write to Miss X to apologise for its poor handling of her case; and
- pay £3,500 to recognise the hardship caused by her 14 months stay in unsuitable accommodation (£250 for each month).

The Council should also take the following action to improve the service for homeless applicants.

- Ask applicants to read the suitability of accommodation assessment form and sign to indicate their agreement. If there is a dispute about the applicant's needs, to record that on the form and refer it to a manager for a decision.
- Produce a briefing note to remind officers of the duty to keep the suitability of interim accommodation under review and to respond promptly if they receive information that indicates a person's accommodation may not be suitable for their needs.
- Overhaul its process for dealing with homelessness reviews to eliminate delays and ensure the Review Officer reviews the whole decision afresh by considering all relevant criteria, including any new material or facts that have come to light since the original decision, within a single review.

The complaint

1. Miss X complains that the Council:
 - a) did not carry out a homelessness investigation when she first approached it for assistance in June 2016;
 - b) did not make adequate enquiries, and made errors in interpreting the law and evidence, when it decided she was not homeless in March 2017 and later decided she was homeless but not in priority need in September 2017;
 - c) placed her in unsuitable interim accommodation which did not meet her mobility needs;
 - d) took too long to make decisions on her homelessness application and requests for reviews; and
 - e) later moved her to unsuitable temporary accommodation.
2. Miss X was left in a state of uncertainty for more than a year while she challenged decisions and waited to find out if the Council would accept the main housing duty. She also lived in unsuitable bed and breakfast (B&B) accommodation which did not meet her mobility needs and she had no right to use the statutory review procedure.

What I have investigated

3. We have investigated parts c) and d) of the complaint. We did not investigate parts a), b), and e) for the reasons given in paragraphs 77 to 82.

The law relevant to this complaint

The homelessness duties - making enquiries and arranging accommodation for certain homeless applicants

4. All the events in this complaint happened before 3 April 2018 when the Homelessness Reduction Act 2017 and a new statutory Code of Guidance came into force. In this report we therefore refer to the law and Code of Guidance as it stood at the relevant time.
5. When someone applies to a council for accommodation and it has reason to believe they may be homeless or threatened with homelessness, several duties arise, including:
 - to make enquiries;
 - to secure suitable interim accommodation for applicants who may be eligible for assistance and in “priority need” pending the outcome of enquiries; and
 - to notify the applicant of the decision in writing and the right to request a review of the decision. (*Housing Act 1996, sections 184 and 188(as amended)*)
6. There are four tests councils apply when deciding what, if any, duty is owed to a homeless applicant. Councils will make enquiries to find out if a person:
 - is homeless or threatened with homelessness;
 - is eligible for assistance;

- has a priority need (e.g. whether someone is vulnerable or has dependent children);
 - has not made themselves intentionally homeless.
7. If a council is satisfied a person passes all four tests, then it owes them the main housing duty. The duty is usually discharged by a council providing temporary accommodation until the person can be made a suitable offer of social or private rented sector housing. Councils may also consider whether the person has a local connection to the area. It may decide to refer the duty to another council if the person has a connection to the other council's area and is not at risk of violence there.
 8. The law says councils must ensure all accommodation it secures for homeless applicants is suitable for the needs of the applicant and members of his or her household. This duty applies equally to accommodation arranged under any of the duties and powers in Part 7 of the Act. (*Housing Act 1996, section 206 and Homelessness Code of Guidance 17.2*)
 9. What duty, if any, the council owes will depend on the findings it makes on priority need and intentionality. Enquiries must be made into both priority need **and** intentional homelessness because a council cannot decide what duty it owes the applicant unless it has investigated both issues.

The homelessness decision and the right to a review

10. There is no statutory time limit for completing homelessness enquiries. However, the statutory Homelessness Code of Guidance recommends councils should aim to complete their enquiries within 33 working days. The Code adds "*in many cases it should be possible for authorities to complete the enquiries significantly earlier*".
11. After completing its enquiries, the Council must send the applicant a written notice of its decision about whether they are eligible for assistance and, if so, whether it owes them any duty under Part of the Housing Act 1996.
12. Homeless applicants have the right to request a review of a council's decision on the homelessness application within 21 days of being notified of the decision. They may also request a review of the suitability of any temporary accommodation provided but only **after** the Council has accepted the main housing duty. (*Housing Act 1996, section 202*)
13. The review must be carried out by someone who was not involved in the original decision and who is senior to the original decision maker. The courts have said the original decision maker may assist the Review Officer by making further enquiries during the review. However, the review decision must be made by the Review Officer who considers the whole application afresh and takes account of any new material or facts that have come to light since the original decision. (*Allocation of Housing and Homelessness (Review Procedures) Regulations 1999 and Butler v Fareham Borough Council [2000] 6 WLUK 664*)
14. Councils must complete the review within eight weeks of receiving the review request. This period can be extended but only with the applicant's written agreement. 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 to the County Court on a point of law. (*Housing Act 1996, sections 203 and 204 and the Allocation of Housing and Homelessness (Review Procedures) Regulations 1999*).

The role of the Ombudsman

15. 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*)
16. We cannot investigate late complaints unless we decide there are good reasons to do so. A complaint is late when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)

How we considered this complaint

17. We produced this report after examining relevant documents and speaking to the complainant.
18. We gave the complainant and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

Investigation

19. Miss X is a single woman. She applied to the Council for housing assistance when she was homeless and sleeping at an airport.
20. Miss X had a stroke some years ago and has been diagnosed with severe tinnitus and arthritis. These conditions have left Miss X with chronic balance problems and dizziness which cause her to be unsteady and prone to falls. She also suffers from depression and anxiety.
21. Our investigation is about the handling of the homelessness application she made in March 2017.

What happened

22. In early March 2017 a charity which works with rough sleepers met Miss X when she was bedding down at an airport. It helped her contact the Council’s Out of Hours service which arranged emergency accommodation for one night.

The homelessness application

23. On 6 March a Homelessness Assessment Officer, whom we shall call Officer A, interviewed Miss X. She noted Miss X had suffered a stroke in 2011 and still had problems with her balance. Officer A made some enquiries to a London council where Miss X had previously made an unsuccessful application for homelessness assistance in 2016. The information provided by that council referred to Miss X’s ownership of a property abroad.
24. Miss X says she told Officer A in the interview that the property abroad had been sold in May 2016. She did not have the sale agreement with her at the time. Officer A recorded in the case notes that Miss X had failed to disclose this information in the interview. The Council later accepted this statement is incorrect.
25. On 8 March Officer A made a homelessness decision. The decision letter does not say whether Miss X was eligible for assistance. It said Miss X was “*not homeless or alternatively you have made yourself homeless intentionally*”

because there was no information to confirm she no longer owned a property abroad. She sent the letter by email to Miss X.

26. The decision letter also stated *“even if I were satisfied that you were homeless or threatened with homelessness within 28 days you would not be considered to be in priority need. Whilst I acknowledge that I had informed you a decision concerning your priority need would be made in writing, after further consideration and until we are aware of any verifiable information to the contrary, this authority has no reason to believe that you do not have accommodation available for your occupation in the United Kingdom or elsewhere”*.
27. Miss X slept rough for another eight nights.

The first review request – March 2017

28. On 16 March Miss X requested a review of the decision that she was not homeless and provided evidence that the property abroad had been sold. The Council then used its power to accommodate Miss X pending the outcome of the review. Miss X was placed in a room in a bed and breakfast (B&B) hotel in another London borough.

The suitability assessment

29. Before making the B&B placement, an officer in the Temporary Accommodation team, “Officer B”, interviewed Miss X. He asked questions about Miss X’s needs to help him assess a suitable accommodation placement. The information is recorded on a form.
30. Officer B noted details of Miss X’s medical conditions on the form. In terms of the impact these had on her daily life, he said:

“symptoms of dizziness, nausea, weakness of legs and arms and problems with balancing...”

He noted Miss X had difficulty walking indoors and outdoors. He ticked a box to say she could manage:

“three flights of stairs or more (36 steps or more)”.

31. We asked Miss X what she remembered about this interview with Officer B. She says she told him she was recovering from a stroke. He had asked how many floors she could manage. She told him no more than two floors because of her poor balance. Miss X says Officer B asked if she would accept a room on the third floor. Miss X says she told him that would be a struggle unless there was a lift.
32. Miss X did not know Officer B had ticked a box on the form to say she could manage 36 steps or more. She was not asked to read or sign it at the end of the interview. She saw it for the first time when we sent her a copy during the investigation. She does not understand why Officer B put she could use London Underground because she told him she always travelled by bus because she could not manage many steps.
33. Miss X says Officer B did not ask how many steps or stairs she could manage and only asked her about floor levels.
34. The Council says the Property team’s records showed the room it allocated to Miss X at the B&B hotel was on the second floor with 30 steps. It later discovered this information was wrong.

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35. Miss X says Officer B told her the only available room was on the second floor at the B&B hotel. He said she could accept this offer or she would have to make her own arrangements or return to the streets.
 36. Miss X felt she had no choice but to accept the room because she could not continue to sleep rough. She signed the accommodation agreement and went to the B&B hotel on 16 March. The Council's letter to the hotel manager confirmed Miss X could only be placed in that room.
 37. Miss X says she called Officer B on 17 March to tell him the room was on the fourth floor not the second floor. She said it was difficult to climb all the stairs and there were some unoccupied rooms on lower floors. She had asked the hotel manager if she could move to one of these but he told her the Council had to authorise that. Miss X says Officer B told her she could not move. She could not return to the streets so she had to stay in the B&B and cope as best she could.
 38. Miss X says she made several more calls to the Temporary Accommodation team to complain that the room was not suitable. She did not make a note of these calls and she did not send any emails. The Council has no records that Miss X contacted the Placement team to ask to be moved to a room on a lower floor. It sent us one email and a case note of a call from September 2017. On these occasions Miss X had contacted the team to tell them she would be temporarily absent from the hotel due to an emergency.

The first review decision – August 2017

39. On 3 August 2017 the Review Officer overturned the “not homeless” decision. This decision was made 20 weeks after Miss X made the review request. The Review Officer passed the case to a different Assessment Officer, Officer C, to make enquiries to decide whether Miss X was in priority need, unintentionally homeless and whether she had a local connection to the area.
40. On 4 August 2017 Miss X's GP wrote to the Council to highlight the difficulties caused by Miss X's placement at the B&B hotel. She explained:

“She has been housed temporarily in mixed accommodation and is living on the fourth floor. This is a problem for many reasons. Firstly, she has arthritis and severe balance problems and having to travel to the fourth floor each time is proving very difficult and dangerous and she has had some falls [...]

She feels her health has significantly deteriorated over the past 3 months and this has largely been exacerbated by her living conditions. She informs me she has brought this to your attention and so far nothing has been done to help her [...]
41. On 29 August Officer C sent a medical questionnaire to Ms X's GP to get more information about her medical conditions and the impact these had on her daily life. She collected the completed questionnaire from the GP surgery on 11 September 2017. She also considered the GP's letter of 4 August.
42. The Council did not act on the GP's comments about the unsuitability of Miss X's accommodation in view of her medical condition and falls. It seems this information was not shared with the Placement team so the Council did not consider the suitability of the accommodation.
43. On 19 September Officer C sent Miss X a homelessness decision. She said the Council was satisfied Miss X was eligible for assistance and homeless. But it did not owe her the main housing duty because she was not in priority need. The

letter referred to the medical evidence and gave reasons for the decision. The Assessment Officer did not make a decision on intentional homelessness.

The second review request – September 2017

44. On 24 September Miss X requested a review of the decision that she was not in priority need. She also instructed solicitors to make written representations on her behalf. The solicitor contacted the Review Officer on 29 September 2017 to ask for Miss X's housing file.
45. On 20 October the solicitor asked for an extension until 16 November to send her representations. Miss X had recently registered with a new GP and the solicitor was waiting for a medical report to support the review request. Both parties agreed a new deadline of 11 December for the Council to make the review decision.
46. On 15 November the solicitor asked for a further week's extension because she was still waiting for the GP's report. She needed time to consider it and prepare written representations. Both parties agreed to extend the deadline by a further week until 18 December.
47. The solicitor sent her detailed written representations and new medical evidence to the Review Officer on 21 November 2017. She included the following information in her letter:

“Our client is dizzy and nauseous from the minute she wakes up and this lasts all day every day. When she is walking on the street she has to walk next to buildings in case she loses her balance as then she can lean against the walls to try and prevent herself from falling.

[...]

In her accommodation, which is on the 4th floor, she has fallen a few times on the stairs due to losing her balance”.

This information did not prompt the Council to review the suitability of the B&B accommodation.

The second review decision – December 2017

48. On 20 December the Review Officer notified Miss X and her solicitor of the review decision. He had overturned the original decision that Miss X was not in priority need. He said the case had been passed to another Assessment Officer, Officer D, to complete the enquiries and decide what duty, if any, the Council owed Miss X.
49. On the same day Miss X contacted Officer D to ask how long it would take to complete these enquiries. He said it would usually take six to eight weeks but the service was dealing with more homelessness applications than usual in the wake of the Grenfell Tower fire. He confirmed Miss X could remain in the B&B accommodation.
50. On 28 December Miss X complained about the further delay. Miss X says Officer D did not interview her or contact her to request any further information after 20 December. The Council says the Assessment Officer was waiting for Miss X and her solicitors to provide further information about her address history. It believes he received this information around 8 March.

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51. Miss X continued to express concerns about the suitability of her room and the accommodation when she took a complaint through the Council's three stage complaints procedure between December 2017 and April 2018.

The decision to accept the main housing duty – March 2018

52. On 29 March 2018 Officer D wrote to Miss X to say the Council accepted it owed her the main housing duty as a homeless person in priority need. The letter explained the Council would now arrange temporary accommodation for her. It explained her right to request a statutory review of the suitability of the temporary accommodation.
53. In April 2018 Miss X called the Temporary Accommodation team to request a medical assessment. The Temporary Accommodation referred her case to the Council's Medical Adviser who recommended she should be allocated temporary accommodation no higher than the first floor. At this point the Council also contacted the hotel management who said Miss X's room was on the third floor.
54. Miss X occupied the same room in the B&B hotel for 14 months while the Council considered her application, the two review requests and remitted the case to officers to make further enquiries.
55. In its final response to Miss X's complaint the Council explained Officer A had understood the room was on the second floor based on the information held by the Property team. After contacting the hotel manager, he confirmed there were 45 steps from the ground floor to Miss X's room. The Council considers this is equivalent to four floors.
56. After the Council accepted the main housing duty, it offered Miss X self-contained temporary accommodation. This was a first floor flat in a leased property in East London. Miss X accepted the accommodation and moved in on 17 May 2018. At the same time, she asked for a review of its suitability. The Review Officer decided in July 2018 that this accommodation was unsuitable (for reasons other than the floor level). Miss X is still waiting for a transfer to alternative temporary accommodation.

The time taken to make decisions and consider review requests

57. Overall it was 55 weeks from the date Miss X made the application in March 2017 until the Council accepted the main housing duty in March 2018. In that time the Council issued three homelessness decision letters and carried out two reviews. The first review overturned the decision she was not homeless. The second overturned the decision she was not in priority need. Three different Assessment Officers handled the case and the Review Officer remitted it twice for officers to make further enquiries.
58. In September 2015 we issued a public interest report [13014921](#) following the investigation of a complaint against another London council. In that report, we said:
- “Once the Council's Review Officer found Ms X was in priority need he should have gone on to decide what duty the Council owed (i.e whether Ms X was unintentionally homeless). The practice of overturning decisions in respect of isolated issues, and returning the application to the original decision-maker to address other issues, causes delay in a process that is intended to ensure decisions are made relatively quickly.”*

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59. We asked the Council to consider our findings in that report. It does not consider there were unreasonable delays in the decision-making process. It says when Review Officers overturn a decision on review, they will refer the case back to an Assessment Officer if further enquiries are needed to decide what duty the Council owes the applicant. It argues that if the Review Officer were to conduct these further enquiries, and then make a new adverse homelessness decision, there would be no officer senior to the Review Officer to consider any later review request.
60. We have considered the Council's response but we do not agree with it. The Council's position is based on the assumption that a decision on each criterion (homelessness, priority need, intentionality) are separate decisions which attract a statutory review in their own right. But section 202 of the Act says the applicant may request a review of the Council's decision on what duty, if any, it owes to someone who is found to be homeless or threatened with homelessness. To decide what duty, if any, it owes, the Council must make inquiries into all the relevant criteria. The Courts have confirmed that a request to review one of the criteria, such as priority need, is a request to review the whole decision on what duty is owed to the applicant. (*R (on the application of Smaljaj) v London Borough of Waltham Forest* [2016] EWHC 1240 (Admin) and *Temur v Hackney London Borough Council* [2014] EWCA Civ 877).
61. The Review Officer may ask an assessment officer to assist by making any further enquiries that may be necessary and then, when all the relevant information is available, form a view on all the relevant matters to establish what duty is owed in the review decision. As there is a single stage in the statutory review procedure, we do not consider the Council's concerns about the practical implications of finding officers of increasing seniority to handle multiple reviews are well-founded.

Conclusions

62. The first homelessness decision was made within two days of the interview with Miss X. There was no delay at this stage. However, it seems Miss X was not given the opportunity to comment on information the Council obtained from the other council, or given a reasonable time to produce evidence about the sale of the property abroad, before Officer A made this decision. That was fault.
63. The Council then took 20 weeks to make a review decision. We have not seen any evidence that the Council asked Miss X to agree to an extension. It seems Miss X provided information about the sale of the property within a few days of getting the "not homeless" decision. So, on the evidence we have seen so far, we consider it was fault to take 20 weeks to make the review decision as it should have been made within eight weeks.
64. There was further fault when the Review Officer considered the single issue of whether Miss X was homeless. He did not make a decision on the other tests (priority need and intentionality). The Review Officer could have asked an Assessment Officer to assist him by making these further enquiries and then decided these issues. It was wrong to confine the review decision to the single issue of whether Miss X was homeless and then remit the case to the officer for further enquiries.
65. As a consequence, Miss X had to wait for Officer C to make a decision on the single issue of priority need. She then had to challenge Officer C's adverse decision by using the review procedure a second time. We accept Miss X's

solicitor asked for more time to make representations for that review and she agreed to extensions. The review decision was made two days after the extended deadline. That was fault but we do not consider this minor delay caused a significant injustice.

66. After the priority need decision was overturned on review on 20 December 2017, it took Officer D a further 14 weeks to complete enquiries and issue a decision accepting the full housing duty. I have seen no evidence that any significant enquiries were made in that time so there seems to be no justification for this further delay.
67. Apart from one week in March 2017 when Miss X was homeless, the Council exercised its power to accommodate Miss X in a B&B hotel while she challenged the series of adverse decisions.
68. Miss X could not use the statutory review procedure to challenge the suitability of the interim B&B accommodation. But the Council still had a legal duty under section 206 of the Act to ensure the accommodation was suitable and met her needs from the time it first placed her in the hotel.
69. We are not satisfied the Council properly considered Miss X's mobility needs when it recorded the maximum floor level on the suitability form on 16 March 2017. Although there is no supporting evidence in the Council's records, we accept Miss X's statement that she did call the placement team to raise concerns about the floor level when she moved in and found the room was not on the second floor. The GP wrote to the Council in early August 2017 to explain in very clear terms why the room was completely unsuitable for Miss X. The solicitor's letter of 21 November 2017 raised similar concerns and said Miss X had fallen on the stairs.
70. Despite being presented with this compelling evidence, the Council did not then consider whether the allocated room was suitable for Miss X because of her mobility problems. It is significant that the medical assessment in April 2018 recommended accommodation should not be above the first floor.
71. For these reasons, the Council was at fault. If it had considered the evidence in a timely way, it is likely to have approved a move to accommodation on a lower floor level much sooner. That is what happened when it considered the medical advice in April 2018.
72. The failure to reach a decision on all the issues in the first review, and the failure to act on information that the B&B room was unsuitable, caused Miss X a serious injustice. Her stay in unsuitable B&B accommodation, where she struggled to climb the stairs and had falls, was unduly prolonged. Her move to self-contained temporary accommodation was also delayed because there was a series of reviews and the time taken to accept the main housing duty. Miss X was put to the inconvenience and trouble of requesting two reviews. The uncertainty about whether the Council would accept the main housing duty increased her anxiety at an already difficult time in her life.

Recommendations

73. Within three months of the date of this report the Council should:
 - arrange for a senior officer to write to Miss X to apologise for its poor handling of her case; and

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- pay her £3,500 to recognise the hardship caused by her 14 months stay in unsuitable accommodation (£250 per month). This figure is based on our published [Guidance on Remedies](#).
74. The Council should also take the following action to improve the service for homeless applicants.
- Ask applicants to read the suitability of accommodation assessment form and sign to indicate their agreement. If there is a disagreement about the applicant's needs, to record that on the form and refer it to a manager for a decision.
 - Produce a briefing note to remind officers of the duty to keep the suitability of interim accommodation under review and to respond promptly if they receive information that indicates a person's accommodation may be unsuitable for their needs.
 - Overhaul its process for dealing with homelessness reviews to eliminate delays and ensure the Review Officer reviews the whole decision afresh by considering all relevant criteria, including any new material or facts that have come to light since the original decision, within a single review.
75. The Council must consider the report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

76. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Miss X. The Council should take the action identified in paragraphs 73 and 74 to remedy that injustice.

Parts of the complaint that I did not investigate

Complaint a)

77. Miss X first approached the Council for housing assistance in June 2016. This happened more than 12 months before she complained to us in May 2018. So this part of the complaint is late.
78. We considered whether to exercise discretion to investigate this late complaint. Miss X told us she did not make the complaint sooner because she did not know about the existence of our service until April 2018.
79. We considered Miss X's circumstances and the reasons she gave for not making the complaint sooner. However, we do not consider a lack of knowledge about our service is a sufficiently compelling reason to set aside the time restriction on our work.

Complaints b) and e)

80. Miss X used the statutory review procedure to successfully challenge the first two homelessness decisions.
81. She also used the review procedure (after the Council had accepted the main housing duty in March 2018) to challenge the suitability of her new temporary accommodation.

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82. We did not investigate Miss X's complaints about the merits of these decisions because she challenged them by using the statutory review procedure.