

Report

on an investigation into
complaint numbers 12 009 140 & 12 013 552
against
Westminster City Council

13 September 2013

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

Key to names used

Ms A – the complainant (complaint number 12009140)
Ms B – the complainant (complaint number 12013552)

Report summary

Subject

Ms A and Ms B complained that the Council housed them in Bed and Breakfast accommodation (B&B) for longer than six weeks. The law says that when families apply as homeless councils should avoid using B&B. If there is no alternative, councils should use it for no longer than six weeks. Ms A spent seven months and Ms B stayed for five months in B&B. Both report that they, and their children, found the time stressful, difficult and unpleasant.

The Council has stated that changes to the Housing Benefit system, and the financial downturn, have contributed to more people applying as homeless. It says it did not have enough emergency accommodation to avoid using B&B, or to move people to self-contained accommodation within six weeks.

The Council implemented various strategies which it says aimed to prevent homelessness and to increase its supply of self-contained accommodation. By July 2013 there were no families who had been in B&B for more than six weeks.

However, for Ms A and Ms B, and for many other families, the Council failed to provide self-contained accommodation as required by the law.

Finding

Maladministration causing injustice.

Recommended remedy

I accept that the payments offered by the Council provide sufficient redress for the injustice caused:

- to pay £500 to Ms A and Ms B to acknowledge that it was unable to provide self-contained accommodation after the initial six-week period. And to pay an extra £500 for each additional six-week period;
- to provide a similar remedy to the other 38 people who have complained to me that they have suffered the same injustice.

Introduction

1. Ms A and Ms B applied to Westminster City Council as homeless. They are both single parents with young children. The Council housed them in bed and breakfast (B&B) accommodation while it considered their applications.
2. Government guidance says that B&B is generally not suitable for families and councils should only use it if there is no other accommodation available. Councils should ensure that no family spends more than six weeks in B&B.
3. Ms A stayed in B&B from March to October 2012. Ms B stayed in B&B from February until August 2012. For the whole time they were sharing kitchen and bathroom facilities with other people.
4. The Council agrees it sometimes houses families in B&B for more than six weeks. It says it has worked hard to try to prevent people staying in B&B for a long time. It says the situation is largely the result of factors which are beyond its control. In particular, it says the reduction in Housing Benefit, and increasing homelessness, have had a significant impact.
5. The Council has stressed this is a London-wide and national issue. Figures from the Department for Communities and Local Government show that in March 2012 there were more than 700 families who had been in B&B for more than six weeks, in 125 different councils. The Council takes the view that as the Government's Welfare Reform programme continues to be rolled out, councils will have to assist increasing numbers of people applying as homeless while there is a shortage of emergency and long-term social housing.
6. An investigator has corresponded with the Council and interviewed five officers.
7. Since starting this investigation we have received 38 other complaints from people who have spent longer than six weeks in B&B in Westminster. All these complaints have been considered by the Council. The Council agreed it had not provided suitable accommodation within six weeks but said it was due to factors beyond its control. The Council did not offer a remedy in response to any of the complaints prior to our involvement.
8. The Council, and Ms A and Ms B, were given a confidential draft of this report and invited to comment. Their comments were taken into account before the report was finalised.

Legal and administrative background

Homelessness law and guidance

9. Councils have a duty to provide permanent housing for homeless people who are in priority need¹. If a person appears to be homeless and in priority need, for example has dependent children, the council must provide interim accommodation while it assesses the homelessness application. Government guidance recommends councils make a decision on homelessness applications within 33 working days if possible². This guidance is not legally binding but councils are required to have regard to it.
10. In 2004 the Government introduced an order which said it would not be suitable to house homeless families in B&B for longer than six weeks.³ The Code of Guidance says:

“Housing authorities should avoid using Bed and Breakfast (B&B) accommodation wherever possible. Where B&B accommodation has been used in an emergency situation, applicants should be moved to more suitable accommodation as soon as possible. The Homelessness (Suitability of Accommodation) (England) Order 2003 provides that B&B accommodation is not suitable accommodation for families with children and households that include a pregnant woman unless there is no alternative accommodation and then only for a maximum of six weeks.”⁴
11. The Code also says that when a council has accepted someone as homeless it should avoid using B&B to discharge that duty.
12. After a council has accepted someone as homeless it must provide accommodation. This may be in temporary accommodation until it can offer a secure tenancy or, from November 2012, by offering certain tenancies in the private sector. The temporary accommodation must be suitable. An applicant can ask for a review, then appeal to the courts, if they do not think an offer of temporary accommodation is suitable. However, while interim accommodation must also be suitable (that is, accommodation the council provides while it is considering a homelessness application) people cannot ask for a review if they think it is unsuitable. They can, however, apply for a Judicial Review.

1 s193 Housing Act 1996

2 Homelessness Code of Guidance (July 2006)

3 The Homelessness (Suitability of Accommodation) (England) Order 2003

4 Homelessness Code of Guidance para 7.6

13. The then housing minister wrote to some councils, including Westminster, in April 2012 reminding them of the 2004 Homelessness Suitability Order and pointing out that a small number of authorities were breaching the order. He said his department would offer help and support in reducing levels of B&B use. The minister wrote that he was “determined that we will have no return to the situation where thousands of homeless families were living in poor quality B&B accommodation long term”. In response the Council met the minister and stressed its commitment to reducing the number of people in B&B. According to the Council, at the same meeting officers from other London boroughs reported increased levels of homelessness. Officers attributed this to Housing Benefit changes and the disproportionate impact in London. Officers told the minister they were using all the resources the Government had provided to try to prevent homelessness and the use of B&B accommodation.

What happened

Ms A’s story

14. Ms A is a single parent with two young children. She applied to the Council as homeless in March 2012. A fear of violence from a former partner contributed to her homelessness. While it was considering her application the Council placed her in a B&B. She had to share kitchen, bathroom and toilet facilities.
15. Ms A has experienced domestic violence in the past and found it difficult living in a B&B which mainly housed men. She did not feel safe. Her young son would not go to the toilet on his own and she had to go with him. He started to misbehave at school and Ms A referred herself to social services. Ms A says she would spend as much time as possible out of the B&B and spent her days wandering the streets or in the park. When she returned to the B&B she could not heat any bottles for her child because staff locked the kitchen at 9pm. She also believes her post was tampered with although the Council says it has no records of Ms A complaining about this.
16. Ms A complained to the Council in May 2012 because she had found out councils should not keep families in B&B for longer than six weeks. The Council agreed it should have provided her with self-contained accommodation within six weeks. However, the Council stated that an increase in people applying as homeless, combined with hotel owners withdrawing accommodation from council use, meant that the Council did not have enough self-contained accommodation to move everyone within six weeks. The Council told Ms A officers were trying to get new properties but for the time being supply was simply not meeting demand.
17. The Council accepted Ms A as homeless in July 2012. It wrote to say it had a duty to house her and it would provide temporary accommodation until she got a permanent home. The Council decided Ms A should remain in the B&B. The homelessness acceptance letter did not explain that Ms A would have to remain

in the B&B and it did not explain she could ask for a review if she thought the B&B was unsuitable temporary accommodation.

18. Ms A complained to the Council again in July. This time she also complained about the condition of the hotel. In reply the Council said there was little it could add to the previous response. It did not accept the conditions were poor and says it works hard to ensure that each B&B is a good standard and that responding to complaints from residents is a priority. An officer had inspected her room in April and found it to be in a good condition. The notes from the inspection show there was no mould or damp, and the bedroom and kitchen were properly ventilated. On the day of inspection the standard of cleaning was satisfactory and the kitchen facilities were in a satisfactory state of repair. Hotel staff had arranged for pest control to visit following complaints about cockroaches.
19. Ms A reports that the fridge in her room did not work. She says the shared washing machine never worked and she had to go to a launderette at least twice a week. Ms A also says that nobody came to clean her room during the period she was there.
20. In October 2012 Ms A moved to self-contained temporary accommodation. She had lived in the B&B, sharing facilities, from March to October 2012.

Ms B's story

21. Ms B was a private tenant in Westminster until she was evicted in February 2012. She has a young child who has speech problems. He attended medical appointments and a nursery in Westminster. Ms B was doing a work placement in Westminster.
22. Ms B made a homelessness application. The Council placed her in a B&B in Middlesex while it considered her case. The Council arranged to store her possessions, including clothes, in Essex. Ms B spent about £40 a week travelling to her commitments in Westminster. Ms B got into arrears with the hotel service charge, partly because of her travel costs.
23. In March 2012 the Council accepted Ms B as homeless. It told her it would provide self-contained temporary accommodation within six weeks. The letter said she could ask for a review although it did not explain she could seek a review about remaining in the B&B.
24. Ms B remained in the B&B for longer than six weeks. During the summer she approached the Council and said she needed her summer clothes which were in storage. The Council told her she would have to travel to Essex and pay £40 to access her belongings. Ms B says officers suggested she could buy some cheap clothes instead. The Council says the storage company charges £40 for people to access belongings.

25. Ms B had a sink and a hob in her room; but she says the hob never worked and she always had to cook in the shared kitchen. She says her room was damp because the shower in the adjacent bathroom leaked water into her room. At one point her carpet became wet and her son's toys were damaged. Ms B says she found mice in her room and mouse droppings in the supplied bedding. There was also a wasp nest in the air vent near her room which meant Ms B could not open the window in hot weather. Ms B became depressed and was prescribed anti-depressants. In addition, her son got bored as he had nowhere to play and his behaviour deteriorated. His speech problems were not helped by the isolation they experienced in the B&B.
26. The Council says that officers inspected the B&B in April and found it to be in a good condition. According to the Council, pest control visited in April following a complaint and did a block treatment. It says someone reported a leak from the bathroom in May and a contractor repaired it on the same day.
27. Ms B complained about cockroaches in July and pest control did another block treatment that month. Pest control officers found the property to be clear of cockroaches in August. The wasp nest was reported in August and a pest control officer started a treatment immediately; the officer removed the nest four days later.
28. In July Ms B's solicitor sent a letter to the Council warning that Ms B intended to start legal action. The solicitor said the Council had failed to provide Ms B with suitable accommodation. The solicitor said he would apply for a Judicial Review if the Council did not provide her with suitable accommodation.
29. The next day the Council offered Ms B a self-contained hotel room in Brent. In this hotel she would not have to share any facilities. Ms B rejected the offer because it was too far from Westminster. Two days later, in early August, the Council offered Ms B a flat in Westminster which she accepted. Ms B stayed in a B&B, sharing facilities, from March to August 2012.
30. Later in August Ms B's solicitor complained to the Council about its delay in providing Ms B with suitable accommodation. He explained she had got into debt with her service charges because of her travel costs and because she had to buy new summer clothes. The solicitor asked the Council to apologise and to pay compensation due to its breach of the legislation and guidance.
31. In response the Council apologised for not moving Ms B from the B&B within six weeks. It stated that it was unable to move her more quickly because it does not have enough properties to meet demand. It referred to Housing Benefit reductions leading to more families applying to the Council as homeless. It also said that the Council had had problems getting more self-contained accommodation. The Council said it would not pay compensation to Ms B because the lack of suitable homes was due to factors beyond its control. The Council explained that while the B&B was out of the borough it is not required to

house everyone within Westminster. The Council did not accept the Middlesex location was unsuitable.

32. The solicitor was dissatisfied with the response and made a stage two complaint in September. He disagreed with the Council's decision not to pay compensation. He said the 22 weeks Ms B spent in the B&B caused her a financial loss, inconvenience, distress and discomfort. The solicitor also complained that once he threatened Judicial Review, the Council quickly offered Ms B two properties, even though it had been saying it had no available properties. The solicitor said the Council had suddenly offered accommodation to two other clients after he sent a pre-action letter. The solicitor suggested the Council does have enough temporary housing stock but gives it to people who get legal advice.
33. In its response the Council refused to compensate Ms B. The Council agreed she had spent more than six weeks in a B&B but did not consider this was due to fault by the Council. The Council explained that while Ms B was waiting there were properties it could have offered to her. But, the Council did not do this because there were other people who had either been waiting for longer or had a more urgent need to move.

The Council's view – use of B&B accommodation

34. The Council accepts it should not house families and pregnant women in B&B for more than six weeks. It says its use of B&B peaked at 170 in February 2013 but by July it had no families who had been in a B&B for more than six weeks. It has provided the following detailed information to suggest why it could not avoid using B&B.

Housing Benefit

35. The Council claims that there are factors beyond its control. It says the changes to Housing Benefit in 2008 increased the number of private tenants in Westminster claiming benefit from about 2000 to over 6000. The changes also meant people could receive high amounts of Housing Benefit.
36. From April 2011 the Government introduced a Housing Benefit 'cap' and restricted the Housing Benefit private tenants could receive. For example, a private tenant could not receive more than £250 a week in Housing Benefit for a one bedroom flat. If their rent was more than £250 the tenant had to pay the difference. Alternatively, government guidance suggested tenants could try to negotiate lower rents with their landlords.
37. Westminster has a large proportion of private tenants. There are about 55,000 privately rented properties in the borough. In March 2011 more than 5000 private tenants in Westminster, who were getting Housing Benefit, had rents above the level of the cap. During 2012 the number of households affected by the cap increased to more than 5200. Data provided by the Council shows that 601

households had their Housing Benefit reduced by between £201 and £250 per week. And 88 households lost between £501 and £750 a week.

38. In 2011 the Government gave the Council a grant to help it deal with the impact of the Housing Benefit cap. The Council asked for a grant of £1.6m and received £900,000. Examples of how the Council used the grant include:

- negotiating lower rents with landlords so people do not have to move;
- providing financial advice to private tenants;
- helping with removal costs;
- supporting vulnerable people likely to be affected by the changes;
- paying additional Temporary Accommodation procurement costs;
- paying 'out of borough' resettlement costs.

Homelessness applications

39. The Council says the Housing Benefit cap caused an increase in people making homelessness applications. Officers explained that tenants can sometimes persuade landlords to accept a small decrease in rent but most will not accept a reduction of hundreds of pounds. The Council says it has seen many families, with complex needs, who were previously managing private tenancies, but have become homeless since the Government introduced the cap.

40. The Council provided the following statistics:

Date	31.3.08	31.3.09	31.3.10	31.3.11	31.3.12	31.3.13
Homelessness applications	1380	1153	1125	1170	1445	1742
Homelessness acceptances	522	446	378	430	539	815

41. The increase in homelessness applications means there are more people requiring interim, temporary and permanent accommodation. In March 2013 the Council received 122 homelessness applications and accepted 78 applicants as homeless.

Funding arrangements for temporary accommodation

42. The Council says the funding arrangements, set by the Department for Work and Pensions, make it difficult to obtain and keep temporary accommodation (this includes interim accommodation). The Government encourages councils to use private sector accommodation to provide temporary accommodation. The usual

model is for the council to lease a property from a landlord. The council then sub-lets the property to the homeless applicant.

43. The Homeless Code of Guidance says:

“Accommodation leased from a private landlord can provide housing authorities with a source of good quality, self-contained accommodation which can be let to applicants. Where there is a need for temporary accommodation, housing authorities are encouraged to maximise their use of this type of leasing, in so far as they can secure cost-effective arrangements with landlords”⁵.

44. In 2002 the Government provided extra funding to authorities in the form of a Housing Benefit subsidy. Its purpose was to encourage councils to use privately leased accommodation instead of B&B. In short, the Department for Work and Pensions paid councils a subsidy to cover what the council paid in Housing Benefit to tenants staying in temporary accommodation. Most people in temporary accommodation claim Housing Benefit.
45. Since April 2010 the Government has limited the subsidy it will pay. The current subsidy is based on the Housing Benefit rates of January 2011. This is 90% of the amount private tenants can receive in Housing Benefit plus a management fee of £40 per week. The maximum the Council can receive under the subsidy is £500 per week. This arrangement was due to end in March 2013 but in February the Department for Work and Pensions said the arrangement would continue until the introduction of Universal Credit later in 2013.
46. The Council says that what this means in practice is that it can only charge tenants, in temporary accommodation, 90% of the Housing Benefit cap plus a management fee of £40. And, it cannot charge more than £500. The Council states that if it leases property from a private landlord, and the rent is more than the subsidy, then the Council has to fund the shortfall. So, if the Council leases a property from a private landlord for £800 per week, it will receive only £500 in subsidy and will have to fund the shortfall of £300.
47. The Council says it has over 1100 leased properties in the borough and, despite the subsidy changes, it has been able to keep most of this existing stock as well as finding additional properties. But, it states that it has not been able to find sufficient additional properties to meet the extra demand. The Council says, “In practice the pool of accommodation available for Temporary Accommodation within subsidy limits is limited and landlords with properties that might previously been used for Temporary Accommodation have been able to move into other markets (sic)”.

48. The Council says the uncertainty over the subsidy arrangements from April 2013 has made it difficult to negotiate with some landlords because the Council did not know, until February 2013, what the funding arrangements would be after March. One source of new accommodation is for the Council to work with companies who raise private finance from the money markets to buy properties for specific schemes. However, such deals require contracts of between seven to fifteen years in order to secure the interest rates needed to make the scheme sustainable. The Council says, "... the uncertainty over current subsidy levels and future reductions means that it is difficult for Councils to provide such long-term guarantees without going into deficit".

Amount of temporary accommodation

49. In 2005 the Government introduced a five year target to halve the number of people living in temporary accommodation. The Council says it was committed to meeting that requirement. It points out that between 2005 and 2010 the number of people living in temporary accommodation in Westminster fell from over 3100 to 1700. In conjunction with this the Council stopped procuring temporary accommodation.
50. The Council says that as the number of people making homelessness applications started to increase, it found it did not have enough temporary accommodation. In the year ending March 2013 the Council accepted 800 households as homeless and estimates that the number of people living in temporary accommodation will increase to 2800.

The Council's view – what it has done in response to the problem

51. The Council says that when the Government introduced the Housing Benefit cap, and when the impact of the financial downturn became apparent, it took the following steps to manage the situation.

Temporary accommodation strategy

52. About three years ago the Council developed a Temporary Accommodation Strategy. Part of the strategy was to estimate supply and demand and to take steps to maintain the current stock and get new stock. The Council has a temporary accommodation steering group. This used to meet every month but since early 2013 has met every two weeks.
53. The Council says that as part of the Temporary Accommodation Strategy it put more resources into trying to keep its existing stock and to acquire new stock. It is particularly keen to lease more self-contained accommodation. This may still be in a hotel but people do not have to share any facilities. There are no restrictions on how long people can remain in self-contained accommodation.

54. The Council has set up a temporary Procurement Board specifically to address the need to acquire more temporary accommodation and to facilitate a fast track decision making process. So far, the Procurement Board has considered nine schemes, involving about 700 new properties.
55. During 2012/13 the Council increased the number of contracts it had to provide more leased accommodation and expanded the capacity of its current contracts. It also made use of its links to housing charities to purchase additional properties. Later in 2013 it put arrangements in place with another 13 providers to increase the amount of self-contained properties for short-term use.
56. Over the next year the Council says it will borrow money so it can buy new properties to use for temporary accommodation. It will also enter into leasing agreements to secure more family sized temporary accommodation and buy four pieces of land to build new housing which would be available as temporary accommodation.
57. The Council uses its own empty properties to provide self-contained accommodation. These are usually properties on estates which are due to be regenerated and cannot be used for long term housing. The Council has been using 38 such properties and says another 23 are likely to become available over the next few months.
58. The Council says that its Members are very aware of the B&B problem and receive monthly reports. Officers provide the Leader of the Council and the Cabinet Member for Housing with weekly updates about B&B numbers and homelessness applications and acceptances. The Council states that it is treating the shortage of temporary accommodation as a priority and Members have been considering different strategies.
59. Since 2010 the Council has leased properties above the £500 subsidy limit. However, although officers have been authorised to do this they say they have found it difficult to persuade landlords to lease properties. For example, the Council started negotiations with a leasing company for 250 properties. However, by the middle of 2012 the Council had only been able to secure five of them. Further, in late 2011, estate agents told the Council that while a two bedroom property would cost up to £850 a month none of their landlords would rent properties to people getting Housing Benefit. The Council states that when the benefit caps were introduced, the strength of the private sector generally meant that landlords had alternative markets that offered higher rents.
60. Most of the Council's self-contained accommodation is within the borough and it says it is committed to retaining it. It also has temporary accommodation outside the borough, mainly in East London. In order to get more accommodation, it has acquired a small percentage of properties outside London. This includes accommodation in Southend, Gravesend and Milton Keynes. The accommodation outside London tends to be cheaper and larger properties are

easier to find. However, the Council says that people are often reluctant to move out of London and the Government has been critical of London councils who house people outside the capital.

61. The Council states that it is aware that for some families it is simply not possible to move them outside Westminster. The Council has received more homeless applications from families with complex needs. For example, it has received more applications from families who need adaptations or families who receive support within the borough. The Council has Social Services teams who provide support to people staying in B&B. Sometimes Social Services say it would be better for families to stay in the hotel where they have continuity of support and access to services. Further, landlords are often reluctant to adapt their properties. For families who need adaptations, hotel accommodation is often the only viable option until the Council can offer long-term accommodation.
62. However, despite the steps taken by the Council, it states that it has not been able to get as much new accommodation as it needs. At the end of January 2013 there were 170 families who had been in B&B accommodation for more than six weeks. By late April the numbers had fallen to 100 families. Of these, 30 families had been in a B&B for more than 26 weeks and other complaints we have received show that five families stayed in a B&B for more than a year. However, the numbers have continued to fall and by July 2013 the Council did not have any households who had been housed in a B&B for more than six weeks. The Council says this proves the steps it has taken have been successful despite the fact that, on average, it continues to place 16 families a week in B&B.

Increased homelessness prevention work

63. Once officers estimated the number of people who were going to be affected by the Housing Benefit cap, they considered it would lead to an increase in homelessness. The Council restructured its Housing Options service to put more emphasis on preventing homelessness. Since then the Council has worked with 1639 households to try to prevent homelessness. During 2012/13 officers prevented 735 people from becoming homeless.
64. The Council says that officers have negotiated directly with landlords and persuaded them, in some cases, not to evict someone. Usually the homelessness team only works with people who are homeless or threatened with homelessness within 28 days. However, as part of the strategy, officers have been helping people who are not yet within 28 days of losing their home. The Council has arranged for officers to provide advice to private tenants in court to help them defend possession proceedings by private landlords. The Tenancy Relations Officers have been involved by, for example, checking the validity of notices issued by landlords.
65. In addition, the Government increased the money available for Discretionary Housing Payments to £2.5 million. The Council developed an accelerated

Discretionary Housing Payment process which has created a fast track application process to help avoid eviction. Tenants can use a Discretionary Housing Payment to help meet the shortfall between their rent and their Housing Benefit. Officers have persuaded landlords to stop eviction proceedings because the Council was able to give the tenant a Discretionary Housing Payment. During 2012/13 the Council awarded 1238 Discretionary Housing Payments to help people remain in their homes.

The Council's view – issues raised in the complaints

Delay

66. The Council did not make a decision on Ms A's homelessness application within 33 working days. She applied in March and the Council accepted her as homeless in July. The Council agrees there were delays during 2012 and states this was caused by the increase in homelessness applications combined with caseworkers leaving. The Council also introduced a new IT system which it says initially caused some delay. In October 2012 the team had a caseload of about 450 cases. By February 2013 this had fallen to about 370. An officer explained that the delays are now decreasing helped by better monitoring and a full complement of staff.

Judicial Review

67. Ms B's solicitor alleges the Council does have available properties but it gives them to people who threaten legal action. He says the Council should treat everyone fairly and should have a policy to prioritise who it offers properties to.
68. Officers stated that if someone starts legal action because their family have been in B&B for more than six weeks, then it knows it would lose the case. It believes that it is likely the court would order the Council to move the family to self-contained accommodation and it would incur legal costs. Officers stated that if, after it has explained the reasons for the lack of accommodation, the applicant still starts legal action, the Council will usually offer an alternative before it incurs any costs. This may mean the Council moves someone from B&B ahead of someone else who may have more priority.
69. After it received the threat of legal action from Ms B's solicitor it offered her a self-contained room in a hostel. She refused it due to its location. The Council then offered a self-contained flat and somebody else took the hostel place. The Council says the other person may have been waiting for longer than Ms B.
70. The Council refutes the allegation that it keeps some accommodation vacant so it can offer it if someone makes a legal challenge. It says there is a constant, but changing, demand for temporary accommodation from people with a wide range of needs. The Council says it is constantly juggling available properties with the

waiting lists and prioritises people who have been in B&B for longer than six weeks. The Council says that, within that group, it has to consider what property will be most suited to each individual. If a family needs a ground floor flat, and one becomes available, then the Council will offer it to that family in preference to another family who has been waiting longer but does not need ground floor accommodation. Officers said they try to match properties to need and there is no point in trying to move someone to a property which is clearly unsuitable.

Review rights and temporary accommodation

71. The Council wrote to Ms A in July 2012 to say it had accepted her as homeless and it would provide her with permanent accommodation. However, the Council also told her that she had to remain in the B&B. The letter mentioned that Ms A had review and appeal rights. But the Council did not tell her that she could ask for a review if she did not think it was suitable that she should remain in the hotel. The letter should have fully explained her appeal rights.
72. During the investigation I asked the Council to revise the letter. The Council has now revised it so applicants know they can ask for a review if the Council wants them to remain in B&B after it has accepted them as homeless.

Additional comments

73. The Council does not accept that it could have done more to stop people remaining in B&B. It states that it has always been committed to avoiding using B&B and accepts that it is not suitable for families. It believes the situation that has arisen is part of a national problem which is strongly linked to national policies and is due to factors beyond its control.
74. The Council recognises the distress caused to Ms A and Ms B through staying in B&B for more than six weeks. It offers to pay £500 because it was unable to provide Ms A and Ms B with self-contained accommodation after six weeks. And it offers to pay another £500 for each six week period this was exceeded.
75. The Council also agrees that it will need to take a similar approach to other people who have suffered an injustice as a result of being accommodated in B&B for more than six weeks.

Conclusion

76. It is not the Ombudsman's role to make findings of law. That is for the courts. But I am clear there has been fault causing injustice, not just to Ms A and Ms B, but also to many others.
77. It is not in dispute that B&B is unsuitable for families. The need to share facilities, the impact on family life and the uncertainty and insecurity of the accommodation,

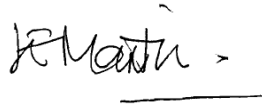
combine to create a significant injustice for any family forced to remain in B&B for more than six weeks

78. I am in no doubt that the Council has taken seriously its obligations to the homeless. It has described a range of measures it has explored in order to increase the supply of housing and to prevent homelessness arising.
79. The effect of the Housing Benefit cap has been acute in Westminster. And uncertainties over the subsidy have made it difficult to procure accommodation from the private sector.
80. However, the Council has not complied with its statutory duties. Its failure to avoid the use of B&B for families in excess of six weeks has caused injustice to those families. The families concerned have been deprived of self-contained accommodation. Ms A has explained the impact the B&B had on her son and how she felt unsafe being surrounded by men following her previous experience of domestic violence. And Ms B has explained how unpleasant she found the B&B and the impact it had on her health and on her son.
81. I have noted the concerns raised by Ms B's solicitor regarding the Council's response to his threat of legal action. While the Council's approach may be understandable, it is a response to an unsatisfactory situation arising from the fault I have found.
82. The Council took too long to make a decision on Ms A's homelessness application. The decision letter failed to tell applicants that they could ask for a review if they disagreed with the decision that they had to remain in B&B after being accepted as homeless. I am pleased to note that the Council has now revised the letter so people are aware of their appeal rights. Officers have also explained the steps taken to reduce the delays and the number of cases taking more than 33 working days to decide is falling.
83. Ms B stressed the difficulties and expense of staying in a B&B outside the borough. However, the Council is not required to provide interim or temporary accommodation in the borough so there is no fault in its decision to house Ms B outside Westminster.

Remedy

84. I am pleased that as a result of our investigation the Council has accepted the distress caused to both complainants and has offered to remedy the situation. I accept that the payments offered, as set out in paragraph 74, provide sufficient redress for the injustice caused. I also welcome the Council's recognition of the need to make similar payments to the other 38 people who complained to me that they had been treated in the same way.

85. I therefore recommend that the Council makes all such payments within three months of the date of this report and confirms to me the action taken.

Handwritten signature of Jane Martin, consisting of the letters 'J Martin' in a cursive style, with a horizontal line underneath.

**Dr Jane Martin
Local Government Ombudsman
The Oaks No 2
Westwood Way
Westwood Business Park
Coventry
CV4 8JB**

13 September 2013