

Croydon Council

REPORT TO:	CABINET 7 December 2022
SUBJECT:	Local Government & Social Care Ombudsman Report under section 30(1) of the Local Government Act 1974 and Report by the Monitoring Officer under section 5A of the Local Government and Housing Act 1989 Finding of Fault with Maladministration and Injustice
LEAD OFFICER:	Susmita Sen, Corporate Director of Housing Hamid Khan, Head of Service, Housing and Stephen Lawrence-Orumwence Director of Legal Services and Monitoring Officer
CABINET MEMBER:	Councillor Lynn Hale
WARDS:	All
FINANCIAL IMPACT: Total of £5,000 in compensation. This is broken down as follows: a payment of £300 a month for the period between January 2021 and April 2022 in recognition of the distress caused by living in overcrowded accommodation. Total - £4,800 a payment of £200 for the time and trouble of having to complain to both the Council and the Ombudsman	

1. **RECOMMENDATIONS**

The Executive Mayor in Cabinet is asked to:

- 1.1. Consider the public interest report dated 23 June 2022 and the recommendations made by the Local Government & Social Care Ombudsman (LGSCO) in relation to Croydon Council set out in Appendix 1.

The full list of recommendations can be found in section 6 of this report.

- 1.2. Accept the findings and agree the recommendations set out in the public interest report;
- 1.3. Endorse the actions taken by the Council and note the steps, progress and timeline to implement the recommendations set out in section 7 of this report.

- 1.4. Adopt the report as the Council's formal response under section 31 of the Local Government Act 1974 to be communicated to the Ombudsman; and
- 1.5. Adopt the report as the Executive's formal response as required by section 5A of the Local Government and Housing Act 1989 for distribution to all members and the Monitoring Officer.

2. EXECUTIVE SUMMARY

- 1.1. On 19th April 2022 the LGSCO wrote to the Chief Executive Katherine Kerswell to confirm that after consideration of a complaint they had received, they decided to issue their findings as a public interest report.
- 1.2. The LGSCO consider six criteria when deciding whether to issue a public interest report, these are:
 - Recurrent faults (for example, the organisation keeps making similar mistakes)
 - Significant fault, injustice or remedy (by scale or the number of people affected)
 - Non-compliance with an Ombudsman's recommendation (it has not agreed or has not carried out their recommendations)
 - A high volume of complaints about on subject
 - A significant topical issue
 - Systemic problems and/or wider lessons (for example, problems with how the organisation does things that if not put right are likely to affect others, and this is an opportunity for others to learn).
- 1.3. In this case the reasons for issuing the report are:
 - The significance of the fault, injustice or remedy
 - A significant topical issue
 - Systemic problems and/or wider lessons (for example, problems with how the organisation does things that if not put right are likely to affect others, and this is an opportunity for others to learn).
- 1.4. This report also contains the statutory report of the Council's Monitoring Officer which is triggered as a result of the contents of the LGSCO report and outlines the Council's statutory response required.

3. BACKGROUND

- 3.1. The complainants who shall be referred to as Miss X complained the Council failed to provide her with suitable accommodation after it accepted a duty to house her in 2014 and has not given her the correct priority under its housing allocation scheme. Miss X said that the Council should have found permanent

accommodation for her by now and that the temporary accommodation it has provided is not suitable. As a result, she said she is living in overcrowded housing and this is affecting her mental health. Miss X wanted the Council to provide her with suitable accommodation.

3.2 The LGSCO report confirmed that the following failings had been identified:

- The Council failed to properly review the suitability of the temporary accommodation it provided for Miss X after she told it her circumstances had changed;
- The Council failed to consider referring Miss X to its Children's Services team for support; and
- The Council failed to consider whether the overcrowding in Miss X's property was an environmental health risk to Miss X or her children.

3.3 As a result of the failings identified Miss X and her children have been living in unsuitable, overcrowded temporary accommodation since January 2021. This has caused them significant stress and impacted their wellbeing.

4 CHRONOLOGY OF THE COMPLAINT

1.5. What follows is a brief case chronology. It does not contain all the information reviewed during the investigation.

1.6. Miss X applied to the Council as homeless in 2013. At the time she applied, Miss X was a single person with no children. The Council accepted it owed Miss X the main housing duty and placed her in a studio flat as temporary accommodation in early 2014. Miss X also joined the Council's choice based letting scheme and the Council placed her in band 3.

1.7. Between 2014 and 2017, Miss X had two children. With the help of a housing adviser, she asked the Council to review the suitability of the temporary accommodation in 2017. The Council decided the accommodation was still suitable, and there is no evidence Miss X used her right to appeal this decision in court.

1.8. Between 2017 and 2021, Miss X had two further children. She complained to the Council in early 2021 that:

- it had not yet given her a permanent home;
- the temporary accommodation was too small for her and her four children; and
- she should have higher priority under the Council's choice based letting scheme.

1.9. In her complaint, Miss X set out the difficulties sharing a single room with four children was causing both her and the children. She and her four children, including her new-born child, were all having to live and sleep in a single room.

1.10. Miss X asked the Council to provide her with suitable accommodation. In its response to her complaint, the Council told Miss X that she had the correct

banding under its choice based letting scheme and that she should continue to bid on properties to find a permanent home. It also offered to help Miss X find private rented accommodation if she wished to consider this alternative.

- 1.11. Miss X was not satisfied with the Council's response, so she complained to us in July 2021.

2. CONCLUSIONS

- 2.1. What follows is a summary of the Ombudsman conclusions from the Final Decision report:
- 2.2. The evidence shows the Council has correctly applied its allocations policy and has offered Miss X other options for permanent housing, which it says she has declined. We are satisfied there is no fault with how the Council has supported Miss X to find a permanent home.
- 2.3. There is no evidence the Council ignored any relevant information about Miss X's circumstances, and it has explained the reasons for its decision. Therefore, we are satisfied the Council has correctly applied its policy when deciding Miss X's priority should be band 3.
- 2.4. Given the changes reported by Miss X, and the significant effect her current accommodation was having on her and her family, the Council should have reviewed the suitability of the temporary accommodation. However, the Council has not provided any evidence it did so or that it asked Miss X for any further information or evidence about the impact her current accommodation was having.
- 2.5. The Council has also not provided any evidence it considered the effect of living in the accommodation on Miss X's children, considered whether it should refer Miss X to its Children's Services team for other support or whether the overcrowding in the property represented an environmental health risk to Miss X and her family.
- 2.6. In its response to our enquiries, the Council said it still considers the temporary accommodation to be suitable. However, it has not explained why it considers a one-bedroom studio flat to be suitable in light of its May 2021 decision that Miss X needs three bedrooms or that it has considered the other factors it should have done, such as whether Miss X's home was legally overcrowded. In the absence of a proper decision-making process, we can decide what would have happened if a decision was made properly.
- 2.7. On the balance of probabilities we are satisfied that, had the Council properly reviewed the suitability of Miss X's temporary accommodation, it would have concluded that the accommodation was unsuitable. Miss X lives with four children in a single living space and has told the Council about the significant impact that this was having on her and her children's welfare. According to the legal test Miss X's property is overcrowded and the law requires the Council to consider this when deciding whether accommodation is suitable.

3. RECOMMENDATIONS

- 3.1. To remedy the injustice caused, the Ombudsman recommend the Councils take the following actions.
- 3.2. Within one month of the date of this report to:
- 3.3. Apologise to Miss X;
- 3.4. Arrange suitable alternative temporary accommodation for Miss X;
- 3.5. Pay Miss X £300 a month for the period between January 2021 and when it makes her an offer of suitable alternative temporary accommodation to recognise the distress caused by having to live in overcrowded accommodation
- 3.6. Pay Miss X £200 for the time and trouble of having to complain to both the Council and Ombudsman
- 3.7. Refer Miss X to its Children's Services team to establish what additional support it can provide for Miss X and her children.
- 3.8. Review its procedures for keeping the suitability of temporary accommodation under review to ensure it properly reviews suitability where there are relevant changes of circumstances; and
- 3.9. Reviews its policy for referrals between its housing, children's services and environmental health teams to ensure that it makes appropriate referrals where families with children may need support or are living in overcrowded accommodation.

4. ACTIONS TAKEN BY CROYDON COUNCIL

- 4.1. The council has accepted and acted on all recommendations.
- 4.2. An apology has been issued
- 4.3. The compensation payment of £5,000 has been made
- 4.4. Miss X has been moved to alternative and more suitable accommodation
- 4.5. A review of procedures for temporary housing reviews and joint working between services is being undertaken.

5. LESSONS LEARNT, IMPROVEMENT AND PREVENTION

- 5.1. Training to be provided to staff around suitability assessments. All LGO issues will be owned by the Head of Service.
- 5.2. Early intervention at complaints stage of suitability issues, to stop them escalating.

10. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 10.1. The financial recommendations made by the LGSCO were:
£5,000 in respect of compensation.

10.2. This payment has been made in full.

Approved by: Matthew Davis, Interim Director of Finance

11. LEGAL CONSIDERATIONS

- 11.1. Under the Local Government Act 1974 (the Act), the LGSCO has the power to investigate the complaint and to issue a report where there has been maladministration causing injustice; a failure to provide a service that it was the Council's function to provide; and a total failure to provide such service. The LGSCO has the power to make recommendations to the Council on how to improve its services and to put things right for the complainant. However, these recommendations are not mandatory and the Council does not have to accept or follow them.
- 11.2. Within 2 weeks of receiving the LGSCO's report, the Council is required to give public notice by advertisements in newspapers stating that copies of the report will be available to inspect by the public at the Council's offices for a period of three weeks (s.30 of the Government Act 1974).
- 11.3. The Act provides that the report shall be laid before the "authority" for consideration. In the case of a local authority operating executive arrangements, "the authority" includes the executive which under current governance arrangements means the Directly Elected Mayor and Cabinet (s.25 (4) and (4ZA) Local Government Act 1974).
- 11.4. Where a finding of 'maladministration' is made the Council's Monitoring Officer is obliged to prepare a report for the Executive following the LGSCO findings and to consult with the Head of Paid Service and Chief Finance Officer for this purpose. This report must also be sent to each member of the Council and the Executive must meet within 21 days thereafter. The implementation of the proposal or decision must be suspended until after the report has been considered by the Executive (s.5A Local Government and Housing Act 1989). The Executive is required to consider this Monitoring Officer report on the findings of and response to the LGSCO's report.
- 11.5. Where the Executive considers a LGSCO's report and it is considered that a payment should be made or other benefit given to a person who has suffered injustice, such expenditure may be incurred as appears appropriate (s.31(3) Local Government Act 1974)
- 11.6. Within 3 months of receiving the LGSCO's report or such longer period as may be agreed in writing with the LGSCO, the Council must notify the LGSCO of the action which the Council have taken or propose to take (s.31(2) Local Government Act 1974). If the LGSCO is not satisfied with the action which the Council has taken or propose to take, the LGSCO shall make a further report. The LGSCO can also require the Council to make a public statement in any two editions of a newspaper circulating the area within a fortnight (s.31(2A) and (2D) Local Government Act 1974).
- 11.7. An Ombudsman's report should not normally name or identify any person (s.30 Local Government Act 1974). Therefore, the complainant should be referred to as 'Mr X' and officers are not identified.

Approved by: Sandra Herbert, Head of Litigation and Corporate Law for and on behalf of the Council's Director of Legal Services and Monitoring Officer Stephen Lawrence-Orumwence.

12. HUMAN RESOURCES IMPACT

12.1. The recommendations in this report do not have any human resources implications. Following the completion of recommendations, the learning from the case will be fed back to practitioners and managers through existing learning and development activities within the department.

13. EQUALITIES IMPACT

13.1. The Council should pay due regard to section 149 of the Equality Act 2010 when exercising their functions. This includes having due regard to the Public Sector Equality Duty as detailed:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.(section 149(1)(a))
- Advance equality of opportunity between people who share a protected characteristic and those who do not. (section 149(1)(b))
- Foster good relations between people who share a protected characteristic and those who do not. (section 149(1)(c))

1.1. Section 149 involves the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. This requires organisations to undertake the following:

- Remove or minimise disadvantages suffered by people due to their protected characteristics.
- Take steps to meet the needs of people from protected groups where these are different from the needs of other people.

12.3 Compliance with the equality duty may involve treating some people more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under the Equality Act 2010. This may be particularly important with Disabled people or parents of Disabled children.

12.4 It would be useful for the department to seek clarity if a resident declares that they are experiencing mental health challenges. It would be necessary to determine whether the resident is disabled under Equality Act 2010.

Approved by: Denise McCausland – Equality Programme Manager

14. ENVIRONMENTAL IMPACT

14.1. There are no environmental impacts arising from this report

Approved by: Steve Iles, Director of Sustainable Communities

15. CRIME AND DISORDER REDUCTION IMPACT

15.1. I can confirm there are no community safety / crime and disorder comments needed for this report.

Approved by: Kristian Aspinall, Director of Culture and Community Safety

16. DATA PROTECTION IMPLICATIONS

16.1. WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

NO

15.1 HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

NO

To comply with data protection requirements all personal details have been removed from the published report.

CONTACT OFFICER:

Susmita Sen, Corporate Director of Housing
Kim Hyland, Complaints Resolutions
Manager

APPENDICES TO THIS REPORT:

Appendix 1 – Full LGSCO Report

BACKGROUND DOCUMENTS:

None