

Local Government &
Social Care
OMBUDSMAN

Unsuitable temporary accommodation



*Guide for
practitioners*

May 2023

Introduction

We are issuing this guide to local housing authorities (councils with housing responsibilities) about unsuitable temporary accommodation. It relates specifically to cases where homeless applicants, who are owed the main housing duty, are occupying temporary accommodation which the council accepts is unsuitable. The guide follows recent court decisions on the subject and an increase in the number of complaints we have received.

We set out:

- > relevant law and guidance about temporary accommodation;
- > the role of the Ombudsman;
- > what we expect to see;
- > our approach to complaints – including the difference between maladministration and service failure; and
- > how we remedy injustice when we find fault.

Throughout, we have included case studies from our investigations which illustrate the learning points we want local housing authorities to take from this guide.

Relevant law and guidance about temporary accommodation

Part 7 of the Housing Act 1996 and the Homelessness Code of Guidance for Local Authorities (the Code) set out councils' powers and duties to people who are homeless or threatened with homelessness.

If a council is satisfied an applicant is homeless, eligible for assistance, and has a priority need, it has a duty to secure that accommodation is available for their occupation. This is called the main housing duty. (***Housing Act 1996, section 193***)

Temporary accommodation is accommodation provided to homeless applicants as part of a council's main housing duty.

Councils must ensure all accommodation provided to homeless applicants is suitable for the needs of the applicant and members of their household. (***Housing Act 1996, section 206 and Homelessness Code of Guidance 17.2***)

Councils must assess whether accommodation is suitable for each household individually. Whether accommodation is suitable will depend on the relevant needs, requirements and circumstances of the homeless person and their household. (***Homelessness Code of Guidance 17.4 & 17.9***)

The duty to provide suitable accommodation is immediate, non-deferrable, and unqualified. ***Elkundi, R (On the Application Of) v Birmingham City Council [2022] EWCA Civ 601***



Certain decisions councils make about homelessness carry a statutory right of review. The review decision then carries a right of appeal to court on a point of law. Homeless applicants have a right to ask for a review of the suitability of temporary accommodation provided under the main housing duty. We refer to these rights as s202 reviews. (*Housing Act 1996, s202*)

Homeless applicants must request a review within 21 days of the decision. However, applicants can ask a council to reconsider its decision about the suitability of temporary accommodation at any time. This might be necessary, for example, if there is a change in the applicant's circumstances. This new decision is open to review under s202, with a new 21 day timescale. *R(B) v Redbridge LBC [2019] EWHC 250 (Admin)*

The role of the Ombudsman

We will not usually investigate complaints about temporary accommodation where the complainant has a statutory right of review and subsequent appeal to court on a point of law. We may decide to investigate if there was a good reason the complainant could not do so.

We are more likely to investigate a complaint if the council has not informed the applicant of their review rights.

Where a council decides that temporary accommodation is unsuitable, at first instance or following a review under s202, we do not expect complainants to use their s204 right of appeal to court or to judicially review the council. Complainants should therefore be signposted to the council's complaint procedure and then the Ombudsman.



What we expect to see

Suitability decisions and reviews

Councils must keep the suitability of temporary accommodation under review. This is particularly the case when an applicant reports a change in circumstances which might affect the suitability of their accommodation. (*Homelessness Code of Guidance 17.8*)

What we expect to see in such cases:

- > a record of a new decision about the suitability of the accommodation or a record of why, in the circumstances, it was not necessary to make a new decision; and
- > communication with the applicant setting out the council's new decision about suitability and providing details of the s202 right to review this decision within 21 days.



Review rights

Case ref: [21 002 539](#)

Hema's story

Hema was homeless and owed the main housing duty. She and her children lived in temporary accommodation provided by the council to meet its duty. Hema told the council about a change in her circumstances. One of her children had been diagnosed with a disability. She asked the council to review the suitability of her temporary accommodation.

The council completed what it called an "informal review". It decided the accommodation was suitable.

We found the council at fault. Hema asked the council to reconsider its decision that the property was suitable, which it did. But when the council wrote to Hema with its new decision, it should have told her that she could ask for a review under s202 of the Housing Act within 21 days.

Putting it right

The council agreed to carry out a s202 review of the suitability of Hema's accommodation.

The council also agreed to amend its "informal review" process to reflect that these new decisions about suitability carry a right of review, and to update any template letters and provide staff training as necessary.



Reports from applicants of significant disrepair in temporary accommodation should prompt councils to consider the suitability of the accommodation. Councils should consider whether an inspection by Environmental Health under the Housing Health and Safety Rating System is required.

If it is decided, despite any disrepair, that the accommodation remains suitable, that decision should be communicated in writing and the statutory right to review the decision explained.



Disrepair

Case ref: [21 014 566](#)

Liz's story

The council accepted the main housing duty to Liz. Two years later, she moved to new temporary accommodation because the location of the previous property put her at risk of domestic abuse.

Liz reported extensive disrepair at the property, including security risks posed by poorly functioning doors and windows, an unusable fire escape and damp and mould. In several of her reports to the council, Liz said she thought the property was unsuitable.

We found the council should have made a new decision about suitability. In a letter, the council had described the property as "fit for purpose". We said that, if this was intended to be a decision about suitability, it failed to set out Liz's statutory right to review the decision.

Putting it right

In addition to a personal remedy for Liz, the council agreed to issue guidance to its staff to remind them that decisions about suitability should explain the statutory right to review.



Cases where the accommodation is unsuitable

We recognise the reality that a shortage of available accommodation means councils are not always able to fulfil their “immediate, non-deferrable, and unqualified” duty to provide suitable temporary accommodation.

In these cases, we expect to see evidence of councils making efforts to fulfil their duties, at both the individual and strategic level. We also expect to see councils considering whether there are steps that can be taken to reduce the impact of the unsuitable accommodation on the household.

This might include, but is not limited to:

- > evidence of approaching housing providers;
- > considering using the council’s own housing stock or arrangements with Registered Providers to use available stock ;
- > increasing priority on the housing register for people in unsuitable temporary accommodation;
- > considering temporary aids, adaptations, or support which might reduce the impact of the unsuitable accommodation on disabled household members in the meantime;
- > providing additional security measures or referring to relevant support services; and
- > procurement plans or other strategic action to tackle the shortfall in available accommodation.



Efforts to provide suitable accommodation

Case ref: [21 011 447](#)

Geoff’s story

Geoff has disabilities and lived in temporary accommodation which the council had acknowledged was unsuitable.

Our investigation found some faults with how the council considered Geoff’s individual needs and delay in taking action. We also found the council’s allocations scheme, which awarded significant extra priority to applicants in unsuitable accommodation, provided a suitable alternative to using its own housing stock as temporary accommodation.

Our view

The council’s approach allows homeless applicants in unsuitable accommodation the best opportunity to secure housing that is not only suitable, but also permanent.





Missed opportunities to limit the injustice (Case not published)

Millie's story

The council failed to consider appropriate security measures in Millie's temporary accommodation despite agreeing to do so.

Millie's child was at risk of Child Sexual Exploitation and the family needed to move to protect them.

The security measures were intended to make the family safer while the council looked for suitable accommodation. This was a missed opportunity to limit the injustice to the family of living in unsuitable accommodation, where they were at risk.

Transfer Lists

Simply adding the applicant to a 'Transfer List' or similar, and waiting for a suitable property to become available will not meet our expectations for how a council should demonstrate its efforts to meet its duty.

This is in line with the court's decision that "putting applicants who are owed the section 193(2) duty, and who are in unsuitable accommodation, on a waiting list for temporary accommodation is not a lawful means of fulfilling the unqualified and immediate duty to secure suitable accommodation for their occupation." (*Elkundi & Ors, R (On the Application Of) v Birmingham City Council [2021] EWHC 1024 (Admin) 308*)

We recognise that to keep track of applicants who need to move and their needs, a list or database is useful. However, we may be critical of councils who prioritise applicants for rehousing by time spent on such a list without regard to the specifics of their case. Furthermore, any such list should take care to distinguish between those in accommodation that is unsuitable now and applicants whom the council considers will need to move in the short or medium term.

We encourage councils to maintain a policy or procedure setting out how they allocate temporary accommodation. Any such policy should demonstrate the council has had due regard to its Public Sector Equality Duty under s149 of the Equality Act 2010.



Our approach to complaints

Service failure

The law says we can investigate complaints about maladministration and service failure. Generally, we refer to these collectively as ‘fault’.

In the complaints we investigate about unsuitable temporary accommodation we often see council complaint responses which do not uphold the complaint. In such cases, the council accepts the complainant needs to move, and has not, but says there has been no fault by the council. This approach to complaints fails to consider the concept of ‘service failure’.

Service failure is a straightforward, objective, and factual test of what happened in any particular set of circumstances, independent of any judgement about a council’s intentions.

We may still conclude that service failure has occurred and caused a significant injustice to the complainant despite the absence of specific flaws in policy or process.

Therefore, we may make a finding of service failure if a council has been unable to meet its statutory duty to provide suitable accommodation, despite its best efforts. In these cases, we will explain the council’s inability to meet its legal duty is largely due to matters outside its control. Nevertheless, it will still be a finding of fault.

We expect councils to take this approach in dealing with complaints.





Service failure

Case ref: [20 006 055](#)

Afiwa's story

Afiwa was homeless and owed the main housing duty. The council decided the temporary accommodation she lived in was not suitable. Afiwa needed a property with at least four bedrooms which was wheelchair accessible.

Our investigation found the council had tried to find alternative accommodation to meet its statutory duty by:

- > awarding emergency medical priority on its housing register;
- > allowing Afiwa to bid for properties with four or five bedrooms;
- > regularly contacting housing providers to ask about available properties; and
- > prioritising Afiwa for a direct let.

The council was unable to meet its statutory duty to provide Afiwa with suitable accommodation but it was not from a lack of trying. Nevertheless, this service failure was fault.

The injustice to Afiwa and her children was significant. Afiwa had to sleep in the living room because she could not use the stairs without two people to help her. An Occupational Therapist recommended specialist equipment for Afiwa's disabled children, including hoists, but there was not enough room in the property for the equipment. The bathroom was too narrow for wheelchair access so two carers had to carry Afiwa's disabled child into the bathroom in an undignified and potentially dangerous way.

Putting it right

The council agreed to pay Afiwa £200 for each month she had been in unsuitable temporary accommodation. This was £3,000. It would also continue to pay her £200 a month until it offered suitable accommodation or otherwise ended its duty.

The council also agreed to liaise with Afiwa and the children's care and support teams to identify if any aids and adaptations could be provided in the meantime.



Remedying injustice

When we find fault, either through maladministration or service failure, we consider if it has caused the complainant injustice. In most cases, the fact of being in unsuitable accommodation will itself be an injustice. The specific circumstances of an individual case will determine the extent of that injustice.

With our recommendations to remedy injustice, we try to put complainants in the position they would have been, were it not for the fault. We may therefore recommend councils:

- > make a new decision about suitability and give the complainant their statutory review rights;
- > take steps to improve the chances of being able to suitably accommodate the complainant; and
- > limit the impact of the unsuitable accommodation on disabled household members in the short term by providing aids, adaptations, security measures etc.

These actions may not, however, be sufficient to remedy the injustice caused by living in unsuitable accommodation. Therefore, we may also recommend a payment in line with our Guidance on Remedies. Where the council has taken steps to reduce the impact of the unsuitable accommodation, this may mitigate the injustice and reduce any recommended payment accordingly.

If the complainant is still in the unsuitable accommodation when we issue our decision, and so the injustice is ongoing, we may recommend a continuing monthly payment until the council either makes an offer of suitable temporary accommodation or ends its duty, whichever is sooner.

We may also recommend the council deals with any similar complaints in line with our approach.

As well as remedying injustice to the complainant, we can also recommend actions for councils to improve their services. These recommendations might include:

- > reviewing, amending, or creating a policy for allocating temporary accommodation;
- > improving how the council keeps track of homeless households in temporary accommodation who need to move;
- > developing action plans or other strategic measures to increase the supply of temporary accommodation; and
- > establishing oversight from the appropriate Cabinet Member or scrutiny committee.



Summary of learning points

The duty to provide suitable accommodation to households owed the main housing duty is immediate, non-deferrable, and unqualified.

Councils should:

- > keep the suitability of temporary accommodation under review, particularly following reports of disrepair or a change in circumstances;
- > ensure decisions that a property is suitable are communicated in writing and set out the statutory right to request a review under s202 of the Housing Act 1996;
- > be able to evidence the efforts made to secure suitable alternative accommodation, at both the individual and strategic level;
- > consider steps to limit the impact of the unsuitable accommodation on households waiting to move;
- > ensure any Transfer List or similar is supported by a written policy or procedure;
- > make sure Transfer Lists differentiate between situations where the council is in breach of its statutory duty to provide suitable accommodation and those where the council considers a move in the short or medium-term is necessary;
- > have regard to the specifics of individual cases and needs, when prioritising applicants for a move;
- > investigate complaints about delays providing suitable accommodation and consider both maladministration and service failure; and
- > remedy any injustice caused by fault in line with our guidance.



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