

Section D: Housing

D1: Allocation

Offers made to applicants with fewer points than complainants – poor record keeping – need to demonstrate that system is fair

1. There were three complainants. Mrs McCarthy asked a council to allocate a council property to her. Mrs Auster and Mrs Tyler were existing council tenants who requested a transfer. They complained that there was maladministration in the way in which the council dealt with their applications. All three believed that they and their families had to live in unsuitable and overcrowded conditions for longer than should have been necessary.

the points scheme, or because the offer was made to an applicant to whom the council had decided to give overriding priority, such as a family who were seeking asylum, or a family affected by a decant programme. A considerable number of offers, however, were found to have been made to people with fewer points, but whose circumstances were already recognised fully by the council's points scheme.

Fairness

2. The Ombudsman commented:

"The demand for housing hugely outstrips the accommodation the council has available for allocation. The council faces a difficult and unenviable task in deciding between the competing demands of the many people with legitimate grounds for seeking housing or a transfer. Because not everyone's application can be satisfied, the council is open to allegations of unfairness. It is all the more important, therefore, that allocations should not only be made fairly but also be seen to be made fairly."

Points system

3. The council had a points system. In all three of these complaints, offers were made to people with fewer points than the complainants. On its own, the Ombudsman said, that was not proof of maladministration. For example, some of the offers might quite properly have been made to people with exceptionally urgent circumstances which could not be fully reflected by

Records

4. The Ombudsman was in no doubt about the commitment of the council's officers to acting fairly and properly in making allocations. But because of the way the council's records were kept at the time, the council could not demonstrate the reasons why some allocations were made to people with fewer points than the complainants. It was not possible to show that in each case there was a justifiable reason why the offer went to someone else; and it was not possible to prove that the complainants had not been unfairly bypassed. The Ombudsman found that the systems failure which made it impossible to make such judgements amounted to maladministration.

5. The Ombudsman welcomed the council's recognition of the problem and the action it was taking to improve record keeping and the monitoring of allocations with a view to making its decisions transparent and capable of being audited. That action, the Ombudsman said, should also help to ensure that officers in different neighbourhood housing offices could interpret and apply the council's policies consistently.

Injustice

6. By the time of the report, Mrs McCarthy had been rehoused. But the Ombudsman considered that all three complainants suffered an injustice because they would always feel that they might have been wrongly passed over for offers of housing which would have improved their conditions earlier.

Remedy

7. The Ombudsman recommended that the council should pay Mrs McCarthy £500. The Ombudsman recommended

that the council should pay Mrs Auster and Mrs Tyler £750 each, and carry out a detailed audit of all the properties allocated to people with less priority than those two applicants since their transfer applications were approved. If any of the properties would have met their needs, the council should make them the next suitable offer of accommodation. If not, the council should provide them with a clear explanation of their current points level and position on the housing register in relation to that of other applicants.

(Report 97/A/2919 et al)

D2: Allocation

Sheltered accommodation – owner occupiers – consideration of medical evidence – need for objective scheme

1. Mr Brook complained that there were failings in the way in which a council dealt with a housing application made by his parents, Mr and Mrs Park, and said that, as a result, the council denied them an offer of suitable accommodation.

What happened

2. Mr and Mrs Park were owner occupiers living in a bungalow. They asked to be considered for a warden-supervised sheltered flat or bungalow. They were in their mid-70s and both had significant health problems.
3. Mr and Mrs Park indicated that they were also interested in housing association accommodation. They did not secure rehousing by the council or nomination to a housing association.

Published arrangements

4. The council's published arrangements explained that applicants who were elderly would be offered accommodation in date order within two defined priority groups.
5. The council altered its allocation arrangements some 18 months before Mr and Mrs Park made their application. The new arrangement was that priority would be given to elderly applicants on the basis of need rather than by date order of application. However, the published scheme was not amended. That was contrary to law and despite the fact that Mr Brook brought the matter to the council's attention.

Allocation method

6. Allocations were made on the basis of the subjective judgement of two housing officers. The Government Regional Office had criticised the system for failing to be adequately transparent to applicants about how decisions were reached. The Ombudsman agreed with that criticism and said that the system could not be seen to be objectively fair and consistent.
7. The Ombudsman was pleased to note that the council intended to introduce a new scheme based on a points system.

Medical evidence

8. The Ombudsman was concerned that the council could not call on the services of a medical adviser to give guidance where necessary about the complex relationship between the medical condition of applicants and how that might be affected by their housing circumstances. It seemed to the Ombudsman that in the absence of such advice the council ran the risk of making ill-informed decisions.

Outcome

9. In the light of the records about the allocation of accommodation that would have been suitable for Mr and Mrs Park, the Ombudsman could not conclude that they clearly should have been rehoused before the applicants who were allocated the accommodation. So it did not appear that they had suffered injustice as a result of the council's maladministration.
10. But Mr Brook's attempts to find out why his parents were not rehoused were frustrated because it was not sufficiently clear how allocation decisions were reached. He was left with the understandable feeling that something had gone wrong and that his elderly parents might be suffering as a consequence.
11. The Ombudsman recommended that the council should pay Mr Brook £500 to remedy that injustice and as some compensation for the time and trouble to which he was put pursuing his complaint with the council and with the Ombudsman.

(Report 98/B/3172)

D3: Allocation

Rehousing for homeless family – complaint about temporary accommodation – policy affecting large families – faults by housing association acting on behalf of a council – poor records – delay in considering complaint under the council's own procedures

1. Mr Moore complained that a council took too long to rehouse him, his wife and their seven children, after they were accepted as homeless and in priority need.
2. Mr Moore also complained about the standard of the temporary accommodation in which the family lived for three years. That accommodation was managed on

the council's behalf by a housing association. When that property was inspected by the council's environmental health officer, he concluded that the premises constituted a statutory nuisance because they were prejudicial to health.

Faults by the council

3. The Ombudsman found the following faults by the council.
 - The council nominated the family to a housing trust for an offer of permanent housing in a house with five bedrooms, central heating and a garden. But the council gave the trust the wrong address and as a result Mr and Mrs Moore did not receive the offer. When the mistake was uncovered nine months later, the council did nothing to try to put things right.
 - There was confusion about the council's policy in respect of large families. One officer said that the council's policy was to split large households if it would be to the advantage of the council and the family, whereas another officer said that the council did not have a policy of splitting large households.
 - When the housing association told the council that the composition of Mr Moore's household had changed as some of the children had left, the council did not check to see whether the family's housing need should be reassessed.
 - There was unreasonable delay in dealing with Mr Moore's complaint under the council's complaints procedure.

Faults by the housing association

4. The Ombudsman found that there was fault by the housing association, which acted on behalf of the council.

- The association had no record of the general state of repair of the temporary accommodation at the time it was offered to Mr Moore and his family. The schedule of accommodation was incorrect: it recorded that there were five bedrooms, but an inspection by an environmental health officer established that one room was not suitable for habitation because of inadequate natural lighting and ventilation, and inadequate means of escape in case of fire. The Ombudsman was not satisfied that the accommodation was suitable for the family to occupy.
- A satisfactory electrical safety check was not carried out before the family moved into the accommodation. Mr Moore complained many times about defects in the property but his complaints were not recorded.
- The housing association had records of only three visits to the accommodation during the period of three years that the family lived there. The Ombudsman accepted the view of the council's deputy senior accommodation officer that the problems with the accommodation were fairly obvious and the housing association's officers could reasonably have been expected to notice them.

Outcome

5. The Ombudsman thought it likely that the family had to live in temporary accommodation for six years longer than they need have done, and that for three of those years their housing conditions were unsatisfactory.
6. The Ombudsman recommended that the council should:
 - pay Mr Moore £6,000; and
 - ensure that complaints were dealt with promptly under its own complaints procedure.

(Report 98/A/1857)

D4: Council housing improvement

Bedroom conversion scheme – delay

1. Mr Armstrong complained that a council delayed unnecessarily in providing funding for an extension to his home.

What happened

2. Mr Armstrong lived with his wife and three daughters in a council house which had two bedrooms.
3. The council operated an 'opportunity bedroom conversions scheme' to increase the bedroom capacity of council properties.
4. In the summer of 1996, Mr Armstrong asked for an extra bedroom to be added to his home under this scheme. He was told the request had gone forward with four others for consideration. No survey was carried out until March 1997, despite the fact that ample funds remained in the opportunity conversions budget for that year.
5. Mr Armstrong was told that there was no funding available in 1997/98. The extension was funded in the following year and completed in January 1999.

The Ombudsman's view

6. The Ombudsman said the council had shown no good reason why the extension should not have been funded in 1996/97. The council's accounts showed a very significant underspend on the 1996/97 programme and the Ombudsman considered that the failure to fund the extension in that year was maladministration by the council. The result was that the family lived in cramped conditions for two years longer than necessary.

Remedy

7. The Ombudsman recommended that the council should pay Mr Armstrong £2,000 as compensation for the delay, together with a further £250 to compensate him for his time and trouble spent pursuing his complaint with the council and with the Ombudsman.

(Report 98/B/3723)

D5: Council housing repairs

Safety – gas inspections – inadequate tests – delay

1. Mr Fitzalbert complained that a council failed to deal properly with his complaints about fumes in his council flat (Flat A) and delayed in repairing or replacing the central heating boiler in the flat to which he subsequently moved (Flat B). Both flats were managed on the council's behalf by a contractor.

Safety

2. The Ombudsman said that there were serious shortcomings in the way the council undertook its responsibilities under the Gas Safety Regulations. The purpose of those regulations was to protect tenants from the danger of

carbon monoxide poisoning caused by poorly installed or inadequately maintained gas appliances.

3. There was a 16-month delay in carrying out the first annual gas safety inspection at Flat A. The tests the council's contractor made on the gas installations in the flat before Mr Fitzalbert moved in were inadequate to ensure the safety of a future tenant. Mr Fitzalbert complained about leaking fumes but there was muddle and delay in dealing with his complaints.
4. Eventually the council agreed to transfer Mr Fitzalbert to Flat B because Flat A was not suitable for occupation as it needed major works, the chimney flue was not properly lined, and dangerous fumes were being discharged.
5. The council carried out a gas safety check at Flat B before Mr Fitzalbert moved in. The safety check certificate was missing.
6. The report of an inspection a year later was inadequate and did not conform to the regulations. Although the council established that the boiler was defective, there were then shortcomings in the way it organised further inspections and tests, and delays in repairing or replacing the boiler.

Access

7. The council blamed Mr Fitzalbert for contributing to the delays by refusing

access to its contractors. The council also said Mr Fitzalbert made no complaints about the gas installations. But it was clear from the records of his visits to the area office that he reported the problems to the council on a number of occasions. In the circumstances the Ombudsman thought it improbable that Mr Fitzalbert would refuse to allow access to operatives who called to remedy the reported defects which were causing him concern.

Injustice

8. Because of the council's maladministration Mr Fitzalbert could have been at risk of exposure to carbon monoxide. It was not possible for the Ombudsman to find, as a matter of fact, whether he was or was not exposed to poisonous fumes.
9. Mr Fitzalbert rarely stayed at Flat A, because of his concerns about his safety, over a period of 15 months and during that time he sometimes slept rough. He was without heating in Flat B for seven months and was also without a proper supply of hot water for four of those months.

Remedy

10. The Ombudsman recommended that the council should pay Mr Fitzalbert £1,000.

(Report 97/A/3015)

D6: Council housing repairs

Asbestos – temporary move – delay

1. A law centre complained on behalf of council tenants living in blocks of flats which were involved in a major asbestos stripping project.

What happened

2. The council moved the tenants temporarily to other flats. The council paid their removal costs; and electricity, water and gas charges at the temporary accommodation; and redecorated their own flats to a good standard using paper and paint of the tenants' choice. The council also made a disturbance payment of £100 to each tenant.
3. Because of poor supervision of the contract, and a breakdown of relationships between the council's contract services division and the housing department, there were excessive delays in completing work at some of the flats. As a result, some tenants had to live in temporary accommodation for longer than the council had predicted.

Outcome

4. The Ombudsman found that the tenants whose cases he had investigated had lived in temporary accommodation for four weeks longer than expected, and that this had caused them injustice.
5. The Ombudsman suggested that the council should make them *ex gratia* payments of £200 each, that was £50 for each extra week spent in temporary accommodation. The council agreed to do this.
6. The Ombudsman also suggested that the council should examine all other cases where tenants had been unable to return to their homes within the time predicted by the council and if it seemed that such tenants had suffered injustice to pay compensation at a rate of £50 per week.

(Local settlement 99/B/1295)

D7: Council housing repairs

Delays – redecoration allowance – use of vouchers

1. Mr Cooper was a tenant of a council. He complained that the council:
 - delayed unduly in carrying out works to damp-proof his home;
 - failed to pay his reasonable costs of redecoration following repairs; and
 - made payment for redecoration in an unduly restrictive form by issuing vouchers for use solely at a specific supplier.

Damp-proofing work

2. The Ombudsman found that there were undue delays both in reporting and in executing work to repair Mr Cooper's home. The Ombudsman noted that the council had agreed to make a payment of £500 compensation and considered that satisfactory.

Redecoration allowance

3. The council had a standard scheme to compensate tenants for damaged decorations following repairs. This was based on a sum per wall or a sum per room.
4. Mr Cooper was offered £210 under this scheme. He said this was insufficient. In particular he said that it would not cover the cost of paying for a decorator to hang wallpaper. He did not know how to hang it himself and it would have been difficult for him to do it because of problems with his back.
5. The council said that payments above those set out in the scheme could be considered if merited in individual cases. But the council told the Ombudsman that tenants were not generally informed of this and additional payments depended on the tenant raising the matter with the council. Following the Ombudsman's enquiries about this complaint, the council did in fact increase the allowance for Mr Cooper

and he accepted that the amount was fair.

6. The Ombudsman noted that the council was in the process of considering revisions to its scheme. The revisions under consideration included specific arrangements to assist tenants who were, because of age or infirmity, unable to carry out redecoration work themselves; and explicit reference to the need to vary standard amounts in exceptional circumstances.

Use of vouchers

7. Mr Cooper argued that tenants should be free to choose from other suppliers and he said that some goods were not available from the specific retailer with whom the council had the voucher arrangement.
8. In the Ombudsman's view, the council's insistence on the use of vouchers was unduly restrictive. She was pleased to note that the council was reviewing the use of vouchers and considering making cash payments instead.

Outcome

9. The Ombudsman accepted that the action taken provided a satisfactory response to the complaint.

(Report 98/C/1214)

D8: Council housing repairs

Delay in installing central heating needed on medical grounds

1. Miss X complained about a council's delay in installing central heating which was needed on medical grounds.
supply was re-routed: this was 18 months after the council first knew about the problem.
2. This was dependent on a satisfactory water pressure. Miss X's flat shared a mains water supply with the tenant downstairs which meant that if the neighbour had her taps running Miss X's flat did not get sufficient pressure. The council knew about the low water pressure and about a defunct water heater. But nothing was done for a long time. After the Ombudsman's intervention the water
3. The council agreed to pay Miss X £500 compensation, decorated two rooms and was willing to pay for temporary accommodation for the family while central heating was installed.
4. By this time Miss X had very high priority for a transfer and decided not to have the central heating installed.

(Local settlement 98/A/2702)

D9: Grants

Delay – inappropriate instruction to take no action – monitoring officer

1. Mr and Mrs Croft complained about a council's administration of their application for a housing grant following the declaration by the council that their house was unfit for human habitation.
discuss possible options. There was no agreement on the most appropriate way to proceed. Mr and Mrs Croft understood that the officer would be seeking advice from the relevant government department to clarify some technical points.
2. Mr and Mrs Croft complained about delays in sending them an application form for a grant, delays and faults in administering the grant once approved, and refusal to extend the deadline for completion of the works for a further three weeks which resulted in non-payment of the outstanding balance of the grant.
4. There was no record on the council's files of anything at all happening about Mr and Mrs Croft's case for more than a year after that meeting. The Ombudsman's investigation established that the senior officer they met issued an instruction after the meeting that their enquiry about a renovation grant should be 'buried'. The Ombudsman could find no evidence that there was any other reason for the delay of over a year and concluded that the lack of action resulted from that instruction. The delay was maladministration.

Initial problem

3. Mr and Mrs Croft had a long meeting with a senior officer in the council's environmental health department to

5. Another officer was aware of this instruction from his senior officer and thought it inappropriate. However, he did not report the matter to the monitoring officer. The Ombudsman appreciated that the junior officer was in a difficult position but considered that he should have drawn the monitoring officer's attention to the instruction.

Capping

6. The Ombudsman was also concerned that officers put a report to committee recommending that the renovation grant should be capped at £50,000. Mr and Mrs Croft incurred additional worry and expense in having to challenge that. The council received legal advice that the grant could not be capped because of the date when the application was made and the council promptly accepted that advice. The Ombudsman considered that the council should have checked the legal position before the report was considered by committee.

Other complaints

7. The Ombudsman did not uphold the complaint that the council did not

properly supervise the renovation work. That was the responsibility of Mr and Mrs Croft.

8. Neither did the Ombudsman uphold the complaint about refusal of an extension of time for completion of the works. The Ombudsman found that the council twice exercised its discretion to extend the time limit but declined to give a third extension. Mr and Mrs Croft had the opportunity to present their case and there was no evidence of maladministration in the way the council took the decision not to extend the deadline again. The grant was paid in full except for the costs of decoration.

Remedy

9. Mr and Mrs Croft had to live in an unfit property for 14 months longer than they should have done, and they incurred additional worry and expense when having to challenge the council's attempt to cap the grant.
10. The Ombudsman recommended that the council should pay Mr and Mrs Croft £5,000.

(Report 97/C/2402)

D10: Grants

Distinction between enquiries and applications – confused advice – withdrawal of grant offer

1. Mr and Mrs Hornby complained that there were shortcomings in the way a council considered their enquiry about a house renovation grant to repair their home.
2. They complained that the council failed to make clear the difference between a grant enquiry and a grant application; and that the council withdrew an offer of grant without giving an explanation. They said that the council's actions left them with a roof in need of repair or replacement, and windows in need of repair.

Work needed

3. Mr and Mrs Hornby first approached the council over problems with their windows. The officer who visited them drew attention to the state of repair of the roof and explained that they could be eligible for grant funding to have their roof replaced as well as their window frames.
4. There was then confusion within the council over exactly what work was needed for the roof. The first officer to visit said that it was in need of repair but renewal was preferable. A second officer then sent out a schedule of defects requiring the roof to be renewed with tiles, and Mr Hornby sought builders' estimates on that basis. A third officer thought slates should be used, even though the house next door had a replacement tiled roof. A fourth officer thought it should be repaired with slates and not renewed at all.
5. The Ombudsman said that these inconsistencies over a relatively routine technical matter amounted

to maladministration. They left Mr Hornby understandably confused and frustrated.

Enquiries and applications

6. Mr Hornby was further confused because the council failed to make clear to him that the completion of a preliminary grant enquiry form and the submission of builders' estimates and property title did not constitute a grant application. These failings were also maladministration. The Ombudsman said:

"It seems to me that the council has a duty to explain the complicated process by which grants are applied for and approved."

7. The Ombudsman said that this was especially so when, as in this case, the council encouraged Mr Hornby to apply for grant aid because it had money available to help him.

Withdrawal of grant

8. The council offered Mr Hornby a grant on the basis that the roof would be repaired but not renewed. Mr Hornby did not believe that repairs would be sufficient and officers said that additional help might be available if closer inspection showed that the condition of the roof was worse than the council had eventually concluded.
9. When closer inspection was made officers considered, in the light of concerns expressed by the builders, that Mr Hornby had tampered with the roof to make things worse than

they were and so secure a greater grant than the council was offering.

10. The council commissioned an independent surveyor's report. The surveyor did not conclude that the roof had been tampered with, though it might have been; and he found some evidence of nail fatigue showing that materials were nearing the end of their useful life. It was, in the Ombudsman's view, an equivocal report and on its own it did not confirm the officers' suspicions.
11. Despite this, officers withdrew the grant. Before doing so, they took legal advice. But the solicitor concerned was not shown the surveyor's report, but merely responded to an officer's oral request for a view. Officers sought the view of the chair of the housing committee but he did not read the report's conclusions.
12. Officers did not show the report to Mr Hornby or tell him their view of the matter. He was thus not given the chance to refute their suspicions. He was merely told that the grant was being withdrawn because of the age and condition of his property. That was both uninformative and less than the truth.
13. The Ombudsman concluded that the decision to withdraw the grant was made with maladministration. The Ombudsman said:

"Public money must be safeguarded; but in doing so officers have to act fairly and openly, and neither element was apparent here."

Outcome

14. The Ombudsman was in no position to judge whether Mr Hornby tampered with his roof. But it was clear that the administration of the grant was very unsatisfactory and as a result Mr Hornby suffered confusion and frustration certainly; and possibly he was deprived for some two years of repairs which the council should have funded.
15. The Ombudsman recommended that the council should:
 - commission an independent survey to ascertain whether the roof needed to be renewed or repaired and whether there was evidence of damage being deliberately caused to it;
 - on receipt of that report and any representations that Mr Hornby made, consider whether he was entitled to grant aid;
 - pay Mr Hornby a grant if he was entitled to it, together with an *ex gratia* payment of £2,000 to recompense him for the delay in repairing the property, or if he was not entitled to a grant, give him a clear explanation for its decision;
 - in any event make an *ex gratia* payment of £500; and
 - review its arrangements for grant assistance to owner occupiers to ensure that, as far as possible, the shortcomings revealed by this investigation did not recur.

(Report 97/B/5114)

D11: Grants

Repayment of grant – erroneous advice

1. Ms Smith received from a council a renovation grant for works to her home. After the works had been completed she wanted to move house, and asked the council to tell her the date when she would no longer be liable to repay any of the grant if she sold her house. Relying on the information the council gave she arranged to sell her property and move into rented accommodation.
2. A few days before she was due to complete the sale of her property the council told her that the date for the property being freed from the repayment of grant was wrong and that the correct date was seven months later. Ms Smith felt unable to withdraw from the sale at that stage and had to repay £5,948 to the council.

The circumstances

3. There was no dispute that the council made a mistake when it wrote to Ms Smith to inform her of the date when she would no longer have to repay a proportion of the grant. Almost a year later when arrangements for the sale of her property were virtually complete, she checked again with the council and discovered that the date she had been given was wrong.
4. Ms Smith wanted to move because she was in financial difficulties and could no longer afford the mortgage and upkeep on the house and needed to move to cheaper rented accommodation. She had found a

property and paid a deposit. She did not want to withdraw from the sale as she knew the buyers would not wait a further seven months.

The Ombudsman's view

5. The Ombudsman commented:

"The late change in the council's position, just six days before exchange of contracts was due, left Ms Smith in the position of choosing between having to withdraw at a very late stage from the sale, and so frustrate her own plans and those of her buyer, or swallowing hard and recouping less on the sale. That may not have been an impossible situation but it was very close to being one."

6. The Ombudsman understood why Ms Smith went ahead with the sale. It was clear that if she had known the true position when she originally asked for advice she would have planned a later sale. The Ombudsman concluded that, had it not been for the council's maladministration, Ms Smith would have avoided paying back the element of her grant recovered by the council.

Remedy

7. The Ombudsman recommended that the council should repay Ms Smith the £5,948 it had recouped, together with a further £250 for her time and trouble in pursuing her complaint with the council and with the Ombudsman.

(Report 98/B/3957)

D12: Grants

Fault not in dispute – disagreement over the level of compensation

1. Mr Adam, together with the council against which he complained, asked the Ombudsman to assist in resolving a long-standing complaint.

to cost around £30,000. The grant was for less than £5,000 and so if there had been no maladministration Mr Adam would have had to pay some £25,000 himself.

The problem

2. The council accepted that there was fault in its administration of Mr Adam's home improvement grant.
3. The fault involved inappropriate actions by two grants officers. That problem had first come to light in a report the Ombudsman had issued about another complaint. Since that time, other cases had come to light. The council's general approach to those cases was twofold: to carry out work to put the dwellings concerned into the condition they would have been in if the original grant-related works had been carried out properly; and to pay compensation depending on the individual circumstances of each case. The council took this approach in relation to Mr Adam's complaint and work to his home was completed.
4. However, the amount of compensation which the council suggested was not acceptable to Mr Adam. Both he and the council agreed that it would be helpful if the Ombudsman considered the complaint and suggested appropriate compensation.

6. The evidence available suggested that Mr Adam spent some £32,750. The Ombudsman considered that the first part of a remedy should be that the Council should reimburse him the difference between that and the £25,000 originally expected.
7. The second part of the remedy was compensation for the disruption to Mr and Mrs Adam's life over a 10-year period. They would have expected some disruption, perhaps for a period of about 18 months, but in fact there was disruption of one kind or another for 10 years. The Ombudsman considered that compensation of £1,000 a year was merited in relation to those periods when work was in progress but that for the other periods the disruption was less serious. So the Ombudsman recommended compensation for disruption totalling £4,250.

8. These two elements, together with £250 in respect of the anxiety Mr Adam was caused and the time and trouble to which he was put, amounted to £12,250. The Ombudsman therefore recommended the council should pay Mr Adam £12,250 in recognition of the injustice he was caused by the council's maladministration. He also commended the council for proposing that the question should be referred to him.

The solution

5. The complaint in essence was that officers of the council pressurised Mr Adam into using a builder who subsequently did works to a poor standard and caused damage to Mr Adam's home. The works which Mr Adam had proposed were likely

(Report 98/A/1984)

D13: Homelessness

Delay – inappropriate arrangements

1. Ms Cooper complained that a council did not deal properly with her request for rehousing as a homeless person.

What happened

2. Ms Cooper asked to be rehoused as a homeless person. She told the housing officer dealing with homelessness that she was being harassed by her ex-partner's family who lived within a few yards of her home. She had two children. She provided copies of letters from her GP and health visitor confirming that she was depressed as a result of harassment from her ex-partner. She also provided copies of court orders which prevented her ex-partner from harassing her. Despite those he had visited her the previous week and smashed her windows.
3. The council accepted that Ms Cooper was homeless and in priority need. The decision was not taken within the 30 days suggested by the *Code of guidance to the Housing Act 1996*. Ms Cooper did not receive the decision until more than three months after her request.
4. Ms Cooper asked the council to refer her application to another council. She was asked to visit the council's office but on arriving was told that she could not be interviewed in a separate room. She had to speak to the housing officer on the telephone from the front desk.

The Ombudsman's view

5. The Ombudsman noted that the council accepted that it was presented with sufficient evidence by Ms Cooper on the day she made her request to enable it to make an immediate decision about her eligibility for rehousing as a homeless person. The

delay in making and communicating the decision was maladministration.

6. When the council was told of the request to transfer to the area of another council there was a further delay in passing that request to that council. Moreover, the Ombudsman could not see why it was necessary to ask Ms Cooper to visit the council's office to discuss her request, if no private interview was possible when she did so. It was unreasonable to expect her to explain her difficult circumstances on the telephone in the public waiting room where there was no privacy.

Outcome

7. The council accepted that if the application for rehousing had been dealt with correctly, a decision would have been made within 30 days. An offer of accommodation would have followed shortly. As a result of the council's maladministration Ms Cooper's request for rehousing was delayed for several weeks.
8. The council agreed to pay for Ms Cooper's costs in storing and removing her belongings and paid her a further £500 to reflect the distress and time and trouble caused to her by the delay.
9. The council reviewed its procedures. Improvements were introduced to ensure that all decisions on homelessness applications could be dealt with within 30 working days. Changes were made to accommodation so that interviews could be conducted in private.
10. The Ombudsman considered that these measures were a satisfactory outcome to the complaint.

(Report 97/C/4829)

D14: Nuisance from neighbours

Noise nuisance – vulnerable neighbour – failure to follow council’s procedure – poor communication between departments – review of procedure

1. Mr and Mrs Smith lived in a council flat. They were both aged over 80 and in increasingly poor health. They complained that the council failed to deal with problems from a noisy neighbour, Mr Jones, who lived in the flat above them.
 2. Mr Jones had from time to time received treatment for mental health difficulties. He was vulnerable, as were Mr and Mrs Smith.
- after a later incident, Mr and Mrs Smith’s complaint was categorised as major under the council’s procedure and identified for urgent action, but nothing was done for two months;
 - at that time the estate manager suggested that a case conference should be held so that the housing, environmental health and social services departments could decide on the way forward, but no case conference was held until more than a year later;

Nature of problem

3. Mr and Mrs Smith complained to the council that Mr Jones was making too much noise. Their first complaint was that he was playing drums until 3 am and also that they thought he was behaving strangely. Later complaints were that he was screaming and shouting obscenities in the middle of the night.
 4. The Ombudsman recognised that complaints of noise nuisance from the council’s tenants can be difficult to resolve, particularly where they involve vulnerable people. The council had procedures to help officers respond in a structured and timely way, to ensure proper co-ordination between departments, and to have special regard to the problems of vulnerable people.
- record keeping was inadequate – when a new member of staff planned to visit Mr and Mrs Smith after a complaint, some two years after the first complaint, he looked at the file but could not find on it any information about previous complaints; and
 - there was a lack of communication between departments, with some memoranda going unanswered.

Injustice

6. These faults caused Mr and Mrs Smith injustice because there were excessive delays in dealing with their complaints and taking proper action on them.
7. Latterly the council had taken appropriate action, and Mr and Mrs Smith confirmed that their relationship with their neighbour had improved and the noise problem had not been so great. It was likely, therefore, that if the council had acted sooner Mr and Mrs Smith would not have had to suffer the problems of noise for such a long time.

Faults

5. But in this case the council failed to follow its procedures. In particular:
 - there was no evidence that the council took any action in response to the first complaint;

Outcome

8. The Ombudsman recommended the council to pay Mr and Mrs Smith £500 in recognition of their injustice.
9. The Ombudsman was glad to note that the council was reviewing the way it dealt with complaints of antisocial behaviour and, as a result, had adopted a number of new initiatives, which included:
 - the appointment of antisocial behaviour managers in each neighbourhood housing office to co-ordinate and monitor work done by other housing staff following complaints of antisocial behaviour;
 - the identification of areas where there might be significant problems so that resources could be targeted to those areas;
 - working with tenants' and residents' associations to draw up estate action plans and estate-based agreements to determine what was reasonable behaviour and what was not; and
 - the regular reporting of statistics to neighbourhood committees on the number of complaints and action taken on each complaint.

(Report 97/A/4232)

D15: Nuisance from neighbours

Investigation procedure – conduct of interviews

1. Mr and Mrs Abbot, who were home owners, complained that a council had not done enough to investigate their complaints of antisocial behaviour by their neighbours, Mr and Mrs Bishop, who were council tenants.

council's investigations at that stage were not as thorough and as detailed as they should have been.
2. Initially the complaints were about rowdy behaviour, drunkenness, and loud music. The Ombudsman made no criticism of the way the council dealt with the initial complaints.
3. But the Ombudsman was critical of the actions of the council in response to complaints later when relations between the Abbots and the Bishops took a turn for the worse. The complaints included allegations of damage to property and verbal abuse. The Ombudsman considered that the

Investigation of complaints

4. Council officers visited the Bishops, but they did not interview the Abbots. The Abbots were making serious complaints which, if justified, would have constituted breaches by the Bishops of their conditions of tenancy. The Ombudsman commented:

"In my view, a face-to-face interview between a housing officer and a complainant is a minimum requirement of any investigation of a neighbour dispute."

5. The council's procedures required that even for complaints which appeared less serious than these, and capable of resolution by informal means, the housing officer needed to visit all parties concerned. That requirement, it seemed to the Ombudsman, was even more relevant where allegations were made which involved breaches of tenancy conditions. The failure to meet that requirement was maladministration.
6. The council said that neighbours were interviewed and did not confirm the Abbots' allegations. But what had happened was that an officer talked to neighbours about other matters, not about the complaint, and believed on the basis of advice from colleagues that if those neighbours had anything to say about the Bishops they would say it without being asked. The officer accepted with hindsight that she should have been more direct in her approach. The Ombudsman said that those interviews did not meet the guidelines in the council's procedures and that was further maladministration.
7. The council failed to interview the one resident who was most likely to know what was going on. He lived in the house adjoining Mr and Mrs Abbot and he was the only other resident in the close. He was, therefore, the obvious person to interview. The failure to interview him was also maladministration.

Outcome

8. After a year, following the involvement of the police, the council served a

notice of seeking possession on the Bishops. They moved away voluntarily by way of a mutual exchange.

9. The Ombudsman said that if the council had pursued enquiries more assiduously it might have been in a position to serve notice of seeking possession on Mr and Mrs Bishop earlier. It was impossible to say with any certainty, because it could not be known what evidence officers would have obtained. But on the balance of probabilities it seemed that, if the council had taken the Abbots' complaints more seriously earlier in the history of events, it would have at least made greater efforts to intervene. There was every chance that the Abbots' problems would have been mitigated much sooner. In any case, the Ombudsman considered that the Abbots had a legitimate grievance because the council took insufficient steps to investigate their complaints.

Remedy

10. The Ombudsman recommended that the council should:
 - pay the Abbots £750 to reflect the distress and frustration they suffered as a result of the council's failings, and their time and trouble in pursuing the complaint with the council and with the Ombudsman; and
 - review its procedures to ensure that allegations of antisocial behaviour were investigated thoroughly, properly and fairly.

(Report 98/B/2390)

D16: Nuisance from neighbours

Sound insulation – need for policy and procedures

1. A solicitor working for a law centre complained on behalf of a council tenant that the council failed to deal properly with his complaints of noise nuisance caused by his upstairs neighbour, which was due in part to inadequate sound insulation in the building.

Sound insulation

2. The complaints were about the playing of excessively loud music. The council carried out sound transmission tests which showed that there was an inadequate level of sound insulation within the building.
3. The Ombudsman found that there was muddle and confusion in the way the council dealt with the problem. It had no policy to deal with sound insulation and no budget for such work. Housing officers passed the problem back and forth without making any progress. There was inconsistency because the council installed sound insulation at other properties in the same housing area and there was no evidence that the problems in those properties were worse than in the complainant's building.
4. The Ombudsman noted that, at the time, the legal position about a landlord's responsibilities for sound insulation in older properties was uncertain and that there were cases due to go on appeal to the House of Lords on this subject.

Vulnerable tenants

5. The council knew that the upstairs neighbour had mental health problems and was vulnerable. But the council failed to take that point into account when dealing with complaints about him. The council had a protocol for dealing with complaints about vulnerable tenants which involved a co-ordinated approach from relevant departments, but it appeared that this was not well known to staff. No such approach was taken in this case.

Recommendations

6. The Ombudsman recommended that the council should install sound insulation in the two flats above that of the complainant; and should pay the complainant £350 and the law centre £250.

7. The Ombudsman commented:

“At present, the council does not have a policy on the installation of sound insulation in its own residential properties. I recognise the current legal uncertainties about the extent of the council's responsibilities. I also recognise that the council has many competing demands on its resources. Nevertheless, councils need proper systems for investigating complaints of inadequate sound insulation in their housing stock. Accordingly, I recommend that the council should review its present arrangements, consider what policies and procedures are needed and ensure that staff understand and operate them.”

(Report not for publication 97/A/4382)

D17: Nuisance from neighbours

The need for thorough and independent investigation of complaints about nuisance from neighbours

1. Mrs Eliot complained that a council failed to take action against her neighbour who was causing a nuisance.

her in the street, threw rubbish into her garden, parked on her land, cut down shrubs which Mrs Eliot had planted, and physically assaulted her.

The initial problem

2. Mrs Eliot was an owner occupier who had bought her house from the council under the right to buy scheme. Her neighbour, Mrs Clay, was a council tenant who wished to purchase her property.
3. One day Mrs Eliot returned from work to find that the hedge around her front garden which had been about 5 feet high had been cut down to about 4 inches by Mrs Clay. Mrs Clay claimed to have authority from the council to cut down the hedge.
4. Mrs Eliot approached the council. The council discovered that the valuer who had surveyed the property when Mrs Eliot applied to purchase had made an error on the conveyance plan. The result was that part of the drive to Mrs Clay's property had been sold to Mrs Eliot. The plan which the surveyor drew for the proposed sale of Mrs Clay's property had not been checked with the conveyance for Mrs Eliot's property, and indicated that the drive to Mrs Clay's property was much wider than it was on the ground.
5. The council began action to rectify the boundary problem.

7. The Ombudsman noted that Mrs Eliot's letters, and the file notes of her telephone calls and conversations with council officers, made it clear that she felt severely harassed by the actions of her neighbour and that she expected the council to take some action.

Action by the council

8. Mrs Eliot told the estates department about her initial concerns. But that department did not tell the housing management section and there was evidence of poor liaison between them. The Ombudsman observed that, where a housing management problem arose as a result of error by the council's valuers, the sharing of information between officers was important if the council was to be able to take effective action. The failure to pass on relevant information to the appropriate section was maladministration.
9. When the housing management section became aware of the complaints it wrote to Mrs Clay to tell her not to interfere with the boundaries. The council put considerable effort into seeking to resolve the boundary question. But the problem of alleged harassment was not properly addressed. It was some six months before the council set out to Mrs Clay the allegations made by Mrs Eliot, and told Mrs Clay that action could be taken to possess her home if the council secured evidence to support the allegations.

Harassment

6. In the meantime Mrs Eliot complained to the council about harassment by Mrs Clay. Her complaints included that Mrs Clay shouted abuse and threats at

10. Despite frequent telephone calls and letters from Mrs Eliot's solicitors which made it clear that the neighbour dispute was serious and continuing, the council took no action to establish whether the level of harassment was such that a notice of seeking possession should be served. The council contacted the police but there was no evidence of any investigation by the council itself. The Ombudsman observed that, while liaison with the police might be necessary, the council should have carried out its own investigation to ascertain whether there was a breach of tenancy conditions.
11. The council decided to take no further action against Mrs Clay. That decision was made on the basis of police statements about one incident. But the council did not approach Mrs Eliot to check whether she had any additional information, it did not interview the estates officer and it did not interview another neighbour who also had complaints about Mrs Clay's family. The Ombudsman said that the decision not to take possession proceedings was made without all relevant information being available and that was maladministration.
12. Mrs Eliot was entitled to have her complaints competently investigated. She was frustrated by the council's failure to take action against its tenant, particularly as the catalyst for the harassment was the faulty plan supplied by the council. That was a significant injustice.
- Remedy**
13. The Ombudsman recommended that the council should:
- pay Mrs Eliot £1,000;
 - discuss with Mrs Eliot how best to resolve the continuing boundary dispute and pay any legal costs she might incur in rectifying the matter; and
 - review its procedures for dealing with complaints of nuisance by neighbours to ensure such complaints were properly investigated and resolved.

(Report 97/B/4595)

D18: Private housing

The role of a housing advice service – operation of council’s complaints procedure

1. Mr and Mrs Demetriadi were owner occupiers of a leasehold flat in a building where Mrs Poniatowska was the sole remaining regulated tenant. There was a dispute between them about Mrs Poniatowska’s claim to use of the garden which was included in Mr and Mrs Demetriadi’s lease. Mr and Mrs Demetriadi wanted to sell their flat. They complained to the Ombudsman about the role of a council’s housing advice service.

Advice service

2. Mrs Poniatowska enlisted the help of the housing advice service. It encouraged her to threaten legal proceedings against Mr and Mrs Demetriadi before hearing their views and without taking proper account of an offer they made to Mrs Poniatowska to settle the dispute. The offer would have allowed Mrs Poniatowska access to the garden.

3. The Ombudsman noted that government guidance recognised that councils could provide a valuable service by giving advice on housing. The Ombudsman commented:

“I know from other complaints I have investigated that many people have received much proper help and been spared injustice through housing advice services. But things went wrong in this case.”

4. The Ombudsman accepted that the housing advice service could not advise both sides to the dispute. Since it was Mrs Poniatowska who first sought assistance it was reasonable for the advice service to tell Mr and Mrs Demetriadi that it could not help them as well. But the Ombudsman thought it was all the more important,

therefore, that the advice service should actively seek to obtain and understand Mr and Mrs Demetriadi’s point of view. The service should have been trying to achieve a settlement which was fair to all parties and the Ombudsman was not satisfied that the service acted in that spirit.

5. In particular the advice service did not give proper consideration to the reasonable offer of settlement which Mr and Mrs Demetriadi made. That offer was not even mentioned in the papers which the service sent to the lawyer it consulted.

Complaints procedure

6. When Mrs Demetriadi complained to the council, an officer who took a prominent part in the consideration of the complaint at the first stage of the council’s internal complaints procedure also took a prominent part at the second stage. The council’s investigation of the complaint at the third stage of the procedure omitted significant events which had occurred after the decision at the second stage. The council agreed that there were these faults at the second and third stages.

Conclusion

7. The Ombudsman considered that the council should have advised Mrs Poniatowska to accept the settlement offer. It was likely that the council’s faults contributed significantly to the delay in achieving a settlement, caused Mr and Mrs Demetriadi expense (including £1,000 which they paid to Mrs Poniatowska), worry and distress.

8. The council agreed to pay Mr and Mrs Demetriadi compensation of £1,500. It agreed to publish procedures about the handling of cases where more than one party sought advice from the housing advice service

on broadly the same issue; and said that it would refer enquiries to other agencies in cases where the housing advice service could not help.

(Report 97/A/2007)

D19: Right to buy

Boundary dispute – failure to clarify – inadequate records – particular attention to records was needed as neighbour was council employee

1. Mr and Mrs Pilgrim complained that there was delay and indecision by a council in establishing, for right to buy purposes, the correct boundary between their house and the adjacent property.
2. They said that their neighbour had built a wall on land that was originally part of the front garden of their house and that, in consequence, the path to their front door was restricted and hemmed in by overhanging vegetation. They wished to buy all the land originally within the curtilage of their house and said they had incurred unnecessary legal fees in trying to resolve the situation.
4. After that, on the basis of the Land Registry record, they argued that the land on which the wall stood was conveyed to them. The council believed that the land on which the wall stood might have been conveyed both to Mr and Mrs Pilgrim and to their neighbour.
5. The Ombudsman said that it was not for him to provide a definitive view on this point. But the council's dilatoriness in deciding on the true ownership of the land amounted to maladministration.

The neighbour

Applications

3. When Mr and Mrs Pilgrim first applied to purchase their property the council delayed in reaching a decision as to the correct position of the boundary. Mr and Mrs Pilgrim withdrew from the sale. They later made a new application and the council drew up a conveyance plan which showed the boundary as it existed on the ground. On the advice of their solicitor, Mr and Mrs Pilgrim proceeded to purchase the property on that basis.
6. The Ombudsman was concerned that there were no records in the council's files of some important meetings, discussions and telephone calls. This prevented the Ombudsman from verifying many of the facts concerning this complaint. Such a serious failure to keep and maintain proper records was maladministration.
7. The Ombudsman said this was particularly important since Mr and Mrs Pilgrim's neighbour was an employee of the council. Mr and Mrs Pilgrim believed that the legal officer dealing with the conveyancing

was influenced unfairly by the fact that their neighbour worked for the council. The officer confirmed that the neighbour did visit him to discuss the matter but there was no record of this meeting.

8. The Ombudsman saw no evidence to suggest that the council was influenced improperly by the fact that Mr and Mrs Pilgrim's neighbour was a council employee. The Ombudsman commented, however, that:

"In those circumstances officers should ensure that scrupulous attention be paid to fairness, and that the records can demonstrate that fairness has been secured."

Remedy

9. The Ombudsman recommended that the council should:
 - carry out a detailed comparison of the deeds of Mr and Mrs Pilgrim's property and that of their neighbour, with an accurate survey of the situation on the ground to decide the true position of the boundary;
 - determine whether or not it owned the land between the two properties and, if it did, to whom, if anyone, it wished to convey the land;
 - facilitate the amendment of the title deeds of the relevant property and meet the entire costs of doing so; and
 - pay Mr and Mrs Pilgrim £300.

(Report 98/B/181)

D20: Transfer

Failure to apply rehousing policy correctly

1. Mrs X was a council tenant who complained about delay by the council in offering her a suitable transfer.
2. Mrs X's daughter had severe disabilities because of cerebral palsy. The family needed wheelchair accessible property. Mrs X herself was HIV positive. As her daughter grew older, Mrs X had difficulty in carrying her upstairs. Because Mrs X could not manage, she had to put her daughter into voluntary care.
3. About 18 months after her application, a suitable property was offered to someone who had fewer points than Mrs X. It was more than four years before Mrs X was rehoused.
4. The council accepted that it was at fault and agreed to pay Mrs X £4,000.
5. The council also agreed to check its procedures to prevent the occurrence of a similar problem.

(Local settlement 98/A/4876)

D21: Transfer

Sheltered housing – sex discrimination – policy unlawful

1. Mr Clarke complained that a council discriminated against him on the grounds of his sex by refusing to transfer him to sheltered accommodation until he reached the age of 65, while allocating similar accommodation to women from age 60.

The application

2. Mr Clarke was a tenant of the council. He was aged 62. He had some health problems and asked for a transfer to sheltered accommodation.
3. The council declined his request. This was because its policy was to consider applicants for sheltered accommodation from the age of 60 for women and 65 for men. The policy required applicants for sheltered accommodation to be of national retirement age.
4. The council explained that its policy was intended to protect sheltered accommodation from the right to buy legislation and the council believed the policy was appropriate and lawful.

Right to buy

5. The Ombudsman pointed out that under the provisions of the Leasehold Reform Housing and Development Act 1993 the right to buy did not arise if a dwelling was one of a group of dwellings which it was the practice of the landlord to let for occupation to persons of pensionable age. That Act defined persons of pensionable age as “persons aged 60 or over”. There was therefore no distinction between the sexes. The Ombudsman therefore invited the council to review the legality of its policy.

Outcome

6. The council offered Mr Clarke sheltered accommodation, revised its policy, and agreed to pay Mr Clarke £1,000 to compensate him for having to wait longer to be transferred than he would have done if the council’s original policy had properly taken account of the 1993 Act.

(Report 98/B/2748)

D22: Unlawful eviction

Council officer was former landlord – confusion about whether prosecution or disciplinary action was under consideration – the need for clear understanding about responsibility for taking decisions

1. Mr Ash complained that a council did not properly investigate his complaint of unlawful eviction by his former landlord, and unreasonably decided not to prosecute the landlord. He said that, as a result, he was denied justice and his chances of obtaining some compensation from the landlord had been diminished.
7. Mr Ash believed the council did not conduct a proper investigation and made the decision it did because it did not want to prosecute one of its own officers.

What happened

2. Mr Ash believed he was unlawfully evicted by his landlord. He asked the council to prosecute his former landlord.
3. In the meantime the former landlord had joined the staff of the council's housing department.
4. A senior housing manager of the council asked a district housing manager to investigate Mr Ash's allegations. The senior manager gave his instructions orally and there was no written record on the council's files of the instructions.
5. The investigating officer met Mr Ash and sought legal advice from a council solicitor. The investigating officer noted that there was a *prima facie* case against the former landlord and that disciplinary action was planned against him by the council for another reason.
6. Following further discussion between the senior housing manager, the investigating officer and the solicitor, the solicitor wrote to Mr Ash to tell him that the council considered the chances of a successful prosecution were very low and that the council had decided not to proceed.
8. The Ombudsman considered that the council's handling of Mr Ash's complaint was muddled and inadequate. The first mistake was the failure to give the investigating officer clear instructions in writing about what he was to investigate and for what purpose. The senior housing manager thought that this was merely an investigation about whether to take disciplinary action against an officer of the council. The council's solicitor, however, considered that she was being asked to give advice about whether to prosecute the landlord for illegal eviction.
9. The Ombudsman concluded that the council did not properly investigate the complaint of illegal eviction. At the very least, the council should have approached the police for information.
10. The Ombudsman also considered that the council failed to take a proper decision about whether to prosecute for illegal eviction. The senior housing manager was adamant that such a decision was not for him to make, but it was clear from a note made by the solicitor that her letter to Mr Ash telling him that the council would not pursue a prosecution was based on the decision of the senior housing manager.

Outcome

11. The maladministration put Mr Ash to unnecessary time, trouble and frustration. It delayed a proper investigation of, and decision on, his complaint; and probably prevented a prosecution that might have been possible and successful at the time he complained.

12. The Ombudsman welcomed an undertaking by the council to investigate the alleged unlawful eviction. The Ombudsman recommended that the council should:

- ask an independent expert whether the delay of more than two years was likely

to have made a difference to the decision whether or not to prosecute the landlord and, if it was, to pay Mr Ash £200 for denial of justice;

- pay Mr Ash £200 for his time, trouble and frustration in dealing with the matter; and
- ensure that clear procedures were put in place concerning:
 - (a) instructions to officers about carrying out investigations; and
 - (b) responsibility for relevant decision taking.

(Report 97/C/4882)