Section E: Housing

E1: Allocation

Importance of fulfilling statutory duties and having regard to statutory guidance – criticism of refusal to register applicants on the housing waiting list

1. Mr Alpha claimed that a council had treated him unfairly in failing to rehouse him for four years. He felt the council had acted unreasonably in excluding him from the housing waiting list and in failing to accept him and his partner as being statutorily homeless. He and his partner were unable to obtain a secure tenancy and lived in four different flats over a four-year period, from two of which they were evicted.

2. The Ombudsman concluded that, had the council properly considered Mr Alpha's housing circumstances at the point when he applied for accommodation and his partner was pregnant, the council would have accepted that it owed a duty to offer them suitable accommodation as homeless persons in priority need. The council failed to have regard to the advice in the *Homelessness Code of Guidance* in failing to accept that Mr Alpha, his partner and their child were a family and should be housed together. The council also failed to issue the requisite statutory notice setting out its decision on whether he was homeless and in priority need.

3. The council also refused to accept Mr Alpha on its housing waiting list. This was in part because it had a policy of refusing to register certain groups of people. The excluded groups changed from time to time: some examples were people who had owned an interest in a house or flat within the previous three years; anyone who was a single person below the age of 25; and anyone who was a tenant of another housing authority. Mr Alpha was excluded because of rent arrears on the council property occupied by his wife under a joint tenancy. Under the council's policy, even if his partner were to be accepted as homeless and in priority need, Mr Alpha would not have been rehoused with her because he had not divorced his wife although he was separated from her.

4. The Ombudsman pointed out that the council had a duty to give reasonable preference to persons from specific categories who were likely to be in housing need, as defined in the legislation, such as homeless persons and persons occupying insanitary or overcrowded houses or otherwise living under unsatisfactory housing conditions. Any of those categories was likely to contain persons who fell within the excluded groups under the council's arrangements and who, therefore, were prevented from registering their housing needs with the council. The Ombudsman could not see how the council could be in a position to give such people a reasonable preference in the allocation of its housing when they were prevented from even registering their housing need. The council's policy prevented it from knowing if its statutory duties were being fulfilled and that was maladministration.

5. The council argued that it had an appeal mechanism which could have enabled an excluded person to appeal against exclusion. But that was unclear from the information the council gave to applicants. The right of appeal was never made known to Mr Alpha in any of his four attempts to obtain housing from the council over a five-year period. An appeal system, the Ombudsman considered, was not effective unless it was publicised and the failure to inform applicants properly of their ability to appeal was maladministration.

6. The Ombudsman commented that he could not object to a policy that, once a person had been permitted to register his or her housing need, reflected the council's prioritisation of certain households over others by means of a points scheme. That would give the council the opportunity to take into account all aspects of housing need. But the council's existing policy prevented it from doing so, as would a policy excluding any groups which might include significant numbers of persons to whom the council owed a statutory duty.

(Report 93/B/4060)

E2: Allocation

Importance of recording reasons for allocation decisions – need for a system for monitoring allocations to ensure that they have been made in accordance with the council's policies – importance of allocation officers understanding and fulfilling the council's statutory duties towards people who may be homeless

1. Until August 1992 Mrs Murray was living with her husband and children in a council property. The tenancy was in their joint names. Mrs Murray said that her husband then moved out, but would return from time to time, causing disruption and leaving the children upset and unsettled. She therefore decided that her husband should return permanently and she would leave. In December 1992 she told the council that she was to leave the matrimonial home from January 1993, and that her husband would have custody of the children. She said she would then be homeless because she had nowhere to go, but she would like her children to come and visit her, and sometimes to stay, so she needed somewhere for them to come.

Rehousing under relationship breakdown policy

2. Mrs Murray was accepted for rehousing under the council's relationship breakdown policy on 3 March. She was registered for a one-bedroomed property. Mrs Murray informed the council of the eight wards in the borough where she would like to be rehoused, and the type and floor level of property that she would prefer.

3. From 1 January 1994 to mid-April 1995 there was a total of 15 offers to relationship breakdown applicants of properties that matched all Mrs Murray's stated preferences. Five of these offers were made to applicants with less priority than Mrs Murray under the council's points scheme.

4. The Ombudsman commented:

"Was there any good reason for this? The council has not been able to provide one. It has suggested that allocators may have thought that Mrs Murray would not accept three of the properties on offer because of their size, bearing in mind that she had a number of children living with her ex-husband. But there were no

grounds on which to make such an assumption and there is no provision in council policy for allocators to make such judgements. In any event, most relationship breakdown applicants being rehoused into one-bedroomed properties would, like Mrs Murray, have been people who had access to one or more children.

"If an exceptional decision had been made to pass over Mrs Murray, even though she was at the front of the queue, I would have expected to find some record of this, and the reason for it. Yet for only one of the five offers made to applicants with less priority than Mrs Murray is there any record of why the offer was made. The record states that the offer was made to the first suitable case. This information is wrong. Mrs Murray was a suitable case, according to the council's policies, and she was considerably higher on the priority list than the applicant to whom the offer was made."

5. In April 1995 Mrs Murray had a baby. The council said she was entitled to a two-bedroomed property from then on, but the rehousing officer's note on the computer said that it was unlikely she could be considered for two bedrooms. Her application was neither suspended nor changed until 19 May. She remained on the list of applicants under consideration for one-bedroomed properties.

6. Between 12 April and 18 May 1995 there were a further seven offers of one-bedroomed properties that met all Mrs Murray's stated preferences. Five were made to applicants with less priority than Mrs Murray. There was no evidence that allocators considered Mrs Murray or checked the position.

7. The council's policy was normally to respect the preferences of non-homeless applicants (eg as to area, type and floor level of properties). Yet one senior rehousing officer had a different understanding of the council's policy, and the investigation showed that the correct policy was indeed not being followed. It appeared that whether an applicant's preferences were respected might vary according to which officer was dealing with the case.

8. One applicant in the relationship breakdown category achieved greater priority for rehousing than Mrs Murray because medical points had been added. Yet the council's policy was not to add medical points in relationship breakdown cases, and an instruction had been issued to this effect.

9. The investigation revealed grounds for serious concerns about the fairness of the allocation of the council's very scarce accommodation. There was evidence of inconsistent practice and applicants were rehoused out of order. It appeared that Mrs Murray was not the only applicant passed over while offers were made to those with less priority. This investigation, while not considering the detailed circumstances of other applicants, indicated that there might have been other anomalies. The Ombudsman was not convinced therefore that the council's monitoring procedures were equal to the task of demonstrating the fairness of the system, or of identifying allocations that were not in accordance with policy. Nor was he convinced that there was close enough supervision of the rehousing function.

10. The council had previously said it would record the reasons for allocations in future. But the records examined in this investigation showed that reasons were sometimes recorded for offers but they did not in fact shed any light on the allocations and why Mrs Murray was passed over. As a result the council was unable to explain the offers of accommodation that were made.

Homelessness

11. Mrs Murray's letter in December 1992 explained that she was threatened with homelessness. The council then had a duty to make enquiries to find out if she was homeless or threatened with homelessness, as defined by the Housing Act 1985, and if so, whether she was in priority need. It should have made an assessment of her application and the council's obligation towards her. A letter from her general practitioner said that Mrs Murray was depressed, vulnerable and homeless. No action was taken following its receipt, either to obtain more information or to refer her application to the medical assessment officer, and the council again did not consider its duty to make enquiries.

12. It was not until January 1994, after Mrs Murray asked if she could be placed in homeless accommodation, that she was told that she could approach the homeless persons unit. At that time Mrs Murray's children were not living with her and it was unlikely she would have been found to have been in priority need of rehousing within the terms of the legislation. But in the summer of 1994 her circumstances changed when she became pregnant. The Ombudsman thought the council might well have had reason to believe she was homeless, and therefore that the council had a duty to make enquiries, but there was no evidence that any consideration was given to this. Even in May 1995, when the council had a letter from Mrs Murray explaining that she and the baby were relying on family and friends to put them up, officers still did not make enquiries in accordance with the council's statutory duties. Rehousing staff were unfamiliar with the provisions of the legislation, and there was no procedural guidance to help them. It was only during the course of the Ombudsman's investigation that the council began to make the necessary enquiries, which resulted in the council accepting that it had a rehousing duty towards Mrs Murray.

13. The Ombudsman commented:

    "This investigation has shown grounds for serious concern about the way the council deals with applications for rehousing from people who might be homeless. The council has issued interim guidance to officers on when to refer relationship breakdown applicants to the homeless persons unit, and says that a new relationship breakdown procedure will be issued shortly. It also has plans for additional training. The council needs to ensure that as a matter of routine all rehousing officers fully understand the council's duties towards people who may be homeless, irrespective of whether they are or are not in the relationship breakdown rehousing category, and ensure that referrals are made to the homeless persons unit whenever officers have reason to believe an applicant may be homeless or threatened with homelessness within the terms of the Housing Act."

Injustice

14. The Ombudsman considered that as a result of the maladministration, Mrs Murray spent a period of at least 20 months staying temporarily with various friends and relatives, sleeping on settees and floors, while she waited for the council to make her an offer of rehousing. This period included the whole of her pregnancy and several months when she had a new-born baby to look after. This, in the Ombudsman's view, was a major injustice. He recommend that the council should pay her £3,000 compensation. He said:

"I welcome the council's decision to consider, in the light of this investigation, what steps it can take to ensure that residents can be confident that the council's accommodation is allocated fairly to the people in greatest need ... . I recommend that the council includes in its consideration the question of supervision of the rehousing function; the recording of information about offers; the need to ensure that officers understand and follow the relevant legislation and policies; and better monitoring procedures to check offers have been correctly made."

(Report 94/A/4778)

After this report, the council agreed to settle a number of other complaints of a similar nature, both where it appeared not to have complied with its statutory duties towards rehousing applicants who might be homeless, and where allocations appeared to have been made that did not conform to the council's stated policies. It also agreed to conduct its own investigations of a number of other complaints from rehousing applicants who alleged that they had not been treated fairly, using the approach adopted in the Ombudsman's investigation of Mrs Murray's complaint. Finally, the council also undertook an extensive review of its allocations system and engaged consultants to assist in this process.

E3: Allocation

The importance of housing appeal arrangements having sound and fair procedures which include the preservation of confidentiality for applicants

1. A Member of Parliament complained on behalf of his constituents, Mr and Mrs Williams, that:

- a council failed to deal properly with Mr Williams' appeal about his family's application for rehousing; and

- as a result of the MP's request for Mr and Mrs Williams' housing application to be considered by the council's housing (appeals) sub-committee, the council disclosed their name and address, and their appeal was the subject of adverse comment in the press by the chairman of the housing services committee.

The council's arrangements

2. The council had a leaflet which outlined the procedure for making an appeal against a decision on a housing matter. It included a form for appellants to complete and send to the director of housing. Appeals were considered by senior housing staff in the first instance and if appellants were unhappy with the result they were advised to take up the matter with their ward councillor. The councillor would either pursue the matter with a senior officer or recommend that the case be heard by the housing (appeals) sub-committee.

3. If a case was to be heard at the appeals sub-committee, an officer would outline the facts of the case and the reason for the decision which was the subject of the appeal. The appellant, members and the council's solicitor could ask the officer questions. The appellant would then present his or her case and could be questioned. Both parties summed up, and the officer and appellant withdrew from the meeting while the members made their decision. The appellant could be accompanied by a friend or representative.

Background

4. Mr and Mrs Williams, their son and two daughters lived in a privately rented flat. The flat had one double and one single bedroom, kitchen, bathroom, dining room and living room. The family used the living room as another double bedroom. They had a shorthold lease which was renewable every six months.

5. Mr and Mrs Williams first applied for council housing in July 1985. The council said that the reason the family had been waiting so long was that they had limited their area of choice to one area out of the 11 areas covered by the council, and that this area was particularly popular, with little family accommodation becoming available.

6. The assistant director of housing replied to an enquiry from the MP saying that although the Williams had a high level of points, this was not sufficiently high to attract an offer of housing in their chosen area. They would be rehoused eventually but he was unable to say when. If they would change their minds about their choice of areas they might be rehoused more quickly. The MP replied saying that he appreciated the council's position about the waiting list but that he felt "10 years was far too long a wait for a family of five requiring three-bedroomed accommodation." He went on to say that: "I would be very grateful indeed if urgent consideration could be given to Mr Williams' case and if this could, perhaps, go before a review committee as a matter of urgency."

The appeal

7. A letter was sent to Mr and Mrs Williams informing them that their "appeal to be housed out of turn" would be discussed by the sub-committee. The letter went on: "The Hearing will be PRIVATE AND CONFIDENTIAL and is intended to give you the opportunity to state your case." Mr Williams was not asked to complete an appeal form and his case was not considered through the usual appeals process.

8. The report to the sub-committee was marked confidential and was not made available for public inspection. Mr Williams did not see a copy before the meeting. The report was headed, "Report on Mr and Mrs [Williams] – [full address]. Request to be housed out of turn." The report said that the MP had requested that the housing department house Mr and Mrs Williams "out of turn due to the length of time they have been on the housing waiting list (10 years)." The report said that Mr and Mrs Williams were not willing to consider extending their choice of area as they preferred the area where they lived and did not wish to disturb their children's education by changing schools. It concluded that Mr and Mrs Williams had been "generously pointed", and that their 10-year wait was in part due to their limited choice of area and that their chosen area was a particularly popular one where very little family accommodation became available. The children were not at a critical point in their academic careers and did not have special needs which could be met only by their current

school. The report recommended that the request to be housed out of turn be refused.

9. At the meeting of the sub-committee, Mr Williams told the members that he had been at his current address for five years, but had been on the waiting list for 10 years. He worked locally and his children were at local schools. He explained that the family had to use a living room as a bedroom, that the flat had no garden and that they lived on a busy road. After he had put his case, Mr Williams and the housing officers left the room while the sub-committee came to a decision.

10. When Mr Williams returned to hear the decision, Councillor A, the chairman of the housing services committee who was a member of the sub-committee, had joined the meeting. Councillor A had arrived while the members of the sub-committee were discussing Mr Williams' case, but after Mr Williams and the housing officers had left the room. Councillor A did not take part in making the decision.

11. When Mr Williams was invited to come back into the room, the chairman of the sub-committee told him that his appeal had not been upheld. A heated exchange then took place between Mr Williams and Councillor A. Mr Williams was not satisfied with the decision of the sub-committee and became annoyed. He claimed that other applicants for housing got rehoused by unfair means. Councillor A said Mr Williams made an attack on the council and the sub-committee and he spoke only because he found Mr Williams' remarks unacceptable.

12. The minutes of the meeting referred to the complainants by their name and full address. All the other appellants were identified by tenant reference numbers only.

Events after the appeal

13. The minutes formed part of the open agenda of the subsequent housing services committee meeting. The Williams' case was discussed in open session and the committee resolved that the director of housing should write to the MP explaining that it was inappropriate for a Member of Parliament to encourage tenants to apply for housing priority outside the points system.

14. After this meeting Councillor A issued a press release. The MP was contacted by a reporter from a local newspaper, referring to the Williams' case and quoting their name. The MP, as was his normal practice, refused to discuss constituency casework with the journalist. The journalist then spoke to Mrs Williams. An article about the case appeared in a newspaper. Mrs Williams' request not to be named was complied with, although the name of the street was mentioned. Councillor A was quoted as saying it was hypocritical of the MP to try to have his constituents jump the housing queue when he and other MPs of his party accused people of becoming homeless or having babies to jump the council house queues. Councillor A also suggested that the MP should be backing the council's demands to the government for more money for council house building.

15. The Ombudsman's investigation established that there had been variations in the way appellants were referred to. Mr and Mrs Williams were not the first who had been referred to by name. There were minutes of the sub-committee referring to appellants by their tenancy reference number but then mentioning their name in the body of the minute. There was another minute about a council tenant in which her full name and address were given and her tenancy reference number was

not used. In other cases appellants' initials had been used. It was also found that, although housing applicants who were not existing council tenants did not have tenant reference numbers, they did have a file reference number for their housing application.

16. As a result of the routine annual review of Mr and Mrs Williams' housing application, their points were later reduced because they were using a living room as a bedroom and so were considered to be short of only one bed space and not considered to lack a bedroom.

The Ombudsman's conclusion

17. The Ombudsman recognised that Mr and Mrs Williams had the disappointment of seeing their housing priority reduced because they were using one of their two living rooms as a bedroom. He accepted that in assessing housing need a council should take into account the total number of rooms available in an applicant's existing accommodation. Accordingly, he did not think Mr and Mrs Williams had been treated unfairly. He said:

    "Naturally, I sympathise with Mr and Mrs Williams' aspirations for their family and their frustration about how long they have waited. I have concluded, however, that their application is being dealt with in accordance with the council's policies, which are intended to share out the limited stock of housing among those who have the greatest need. While I am critical of the way that the council has dealt with Mr and Mrs Williams' representations, I do not find that these have affected their housing priority."

18. The Ombudsman accepted that the assistant director of housing acted with good intentions in complying with the MP's request that Mr Williams' case should be put before a review committee. But he should have followed the council's normal procedure of asking appellants to complete an appeal form and for that appeal form to have been considered first by officers in the usual way. As the assistant director acknowledged, there was no decision against which to appeal. Consequently, Mr Williams attended the sub-committee meeting without knowing the point of the hearing and what he might reasonably expect to get out of it. It was unfair that he was not sent the housing officer's report on his case before the meeting.

19. Some of the argument at the end of the meeting and, subsequently, at the housing services committee meeting, occurred because the MP was said to have asked for an 'out of turn offer'. This was inaccurate and misleading. The MP had not asked for Mr and Mrs Williams to be rehoused out of turn but only for their case to be reviewed. But the Ombudsman was satisfied that the sub-committee members considered Mr Williams' case conscientiously and that their decision was not prejudiced by defects in the procedure leading up to the hearing or inaccuracies in the report.

20. The Ombudsman said that the absence of a tenant's reference number was not a good reason for the council to use Mr and Mrs Williams' full name and address in the minutes of the housing (appeals) sub-committee, knowing that these minutes would form part of the open agenda of the housing services committee. Other appellants' names were not disclosed on that occasion and Mr Williams had been told that his appeal would be 'private and confidential'. Instead his name and address were published. This was maladministration. The chairman's press release drew attention to the minute of the (appeals) sub-committee and, quite unwittingly and undeservedly, Mr and Mrs Williams became embroiled in a political controversy.

Outcome

21. The Ombudsman found that the referral of Mr Williams' case to the housing (appeals) sub-committee outside the usual procedure; the inaccuracies in the report; the failure to provide Mr Williams with a copy of the report in advance of the meeting; and the disclosure of his name and address, were maladministration by the council. This caused injustice to Mr and Mrs Williams. Mr Williams suffered the worry and frustration of attending the housing (appeals) sub-committee without knowing what it was for. Mr Williams and his wife were caused anxiety and embarrassment because of the publication of their name and address. To remedy this injustice the council was recommended to pay Mr and Mrs Williams £300.

22. The council made changes to its arrangements as a result of the lessons of this investigation. Applicants will be referred to by initials or reference numbers in minutes of the housing (appeals) sub-committee and any discussion of individual appeals at the housing services committee will take place in private; and appellants will be given a guide to the appeals procedure and a copy of the officer's report on their case in advance.

(Report 95/A/2204)

E4: Council housing repairs

Need for effective checks to ensure work has been done before payment – need for effective systems for dealing properly with complaints and for using complaints as an indicator of problems

1. Ms Boston was the tenant of a council flat and complained of a delay by the council in dealing with her complaints about defective storage heaters.

2. New storage heaters had been installed in Ms Boston's flat. They broke down repeatedly over the following two years. There was a dispute between the council and its contractors about whether the contractors or the electricity company were responsible for repairs. No proper consideration was given to whether it would be better to replace the heaters again or whether there was any redress against the contractors or manufacturers.

3. Ms Boston said that for a period of some months she telephoned the council nearly every day, and that contractors failed to keep appointments. Repairs were recorded as completed and paid for but were not in fact carried out. Ms Boston made a formal complaint to the council through its complaints procedure and said that the bedroom heater where her children slept was a fire hazard. No action was taken on the complaint. Ms Boston's solicitor wrote to the council twice but his letters were not answered and no checks or inspections were carried out.

4. The Ombudsman found that these faults were maladministration which caused injustice to Ms Boston. She and her children were without proper heating for a year; she incurred additional electricity costs for inadequate temporary heating; and she complained repeatedly to the council and engaged a solicitor to no avail. The council had paid her £310 as compensation for inconvenience and a contribution towards the additional heating costs. The Ombudsman recommended payment of a further £450.

5. The council was in the process of reviewing the contracts for planned preventative maintenance and responsive repairs to heating systems and agreed that it would take account of the Ombudsman's findings before letting new contracts. The Ombudsman recommended that the arrangements should include a means for identifying heaters which broke down repeatedly and for assessing whether repair or replacement would be the most economic approach. He added:

   "I cannot emphasise too strongly the need for effective checks to ensure work has been done before it is recorded as done and invoices paid; for using complaints such as those made by Ms Boston as an indicator of problems with contractual arrangements at an early stage; and for effective systems for dealing properly with people's complaints."

(Report 94/A/2537)

E5: Council housing repairs

Deficiency in housing repairs service – introduction of improvements by the council

1. A council house tenant complained that the council delayed in completing repairs to her home, and that the council failed to compensate her adequately for the period when she had inadequate or no heating. She felt that the service she received did not match up to the promises given to her in a leaflet from the council entitled *Guarantee of service*. This said that the area office would always send a confirmation letter detailing the repair work ordered and the priority time limit in which it would be done; that the repair would be done within the agreed time; and that complaints would be dealt with promptly and courteously. None of those promises, she said, had been kept.

2. The Ombudsman agreed. His investigation revealed serious delays and muddle over a number of years. The council took:

- 14 months to repair a broken gutter;
- well over a year to deal with a damp problem in the kitchen;
- seven months to deal with damp in a bedroom and almost another year to do repairs following a leak through the ceiling;
- three years to replace a defective external door which was insecure, during which time the house was burgled, and the council replaced another door which was perfectly sound; and
- three years to replace an electrical socket, and almost a year to replace a damaged light fitting.

3. The tenant had been complaining for over four years about the faulty central heating system, which was still not working at the time of the report.

4. The tenant was seriously inconvenienced by the number of appointments which council contractors failed to keep, and she lost working days as a result.

5. The Ombudsman recommended compensation of £2,000 and urged the council to repair or replace the central heating system, particularly in the light of the tenant's health problems.

6. The Ombudsman noted measures which the council had introduced to improve its repairs service:

- amendment to the repair contract to provide for a system of appointments whereby a tenant could request a morning or afternoon appointment;
- feedback from tenants facilitated by customer satisfaction cards which contractors were required to issue;
- formulation of a comprehensive policy and procedure for dealing with insurance claims and claims for compensation for loss of accommodation or service; and
- arrangements to monitor contractors' performance and ensure contract compliance.

(Report 93/A/1038)

E6: Grants

Need for a system for determining priority for assessments of need – criticism of disparity of performance between different areas – need for adequate information for enquirers – need to devise procedures to implement new legislation

1. Mr and Mrs Smith complained that a council failed to give proper consideration to their application for a disabled facilities grant (DFG). As a result they had to live in unsatisfactory conditions for a prolonged period.

What happened

2. Mr Smith was a tenant of the council. In the late 1980s he had several strokes. A shower was installed in an upstairs bathroom and a stairlift provided. Following a further stroke in 1989 he was unable to use the stairlift and his bed was brought downstairs. He had the use of a commode downstairs. Mrs Smith, who cared for him, had angina and diabetes and began to find it increasingly stressful looking after her husband.

3. A social worker from the local hospital asked that an occupational therapist visit Mr Smith to assess him as he was then in a wheelchair and would need a push-in shower. The occupational therapist recommended that the downstairs hall and cupboard area be converted into a downstairs shower with level-deck shower area and toilet. Her report was marked 'urgent'. As the estimated cost was more than £2,000 it was decided that Mr Smith should apply for a DFG. The council assessed his contribution to the cost as nil and the architects' department was asked to organise the work.

4. The Ombudsman criticised severe delay by the council. Work was only completed some five years after the request to assess Mr Smith was made. First, the assessment by the occupational therapist was not carried out until 16 months after the request. There was then a delay of four months in the social services department in processing the application before it was passed to the grants section. There was then what the Ombudsman described as a "catalogue of disasters and duplicated work; and a lack of liaison" between the social services department (whom the Smiths' daughter contacted on a regular basis) and the grants section. After four years no progress had been made and it was decided that the work should be funded by the social services department. The Ombudsman thought that it was not unreasonable for the department to decide to use the council's own workforce to carry out the work as long as that workforce was capable of doing it. In this case the work could not be carried out but this was not admitted for over a year. Once it was recognised that the work could not be carried out by the council's workforce everything was completed within six months.

5. The Ombudsman considered that the social services department should earlier have given proper consideration to taking back the work itself and, throughout, to its statutory duties to assist people with disabilities. But the overriding area of maladministration was that the request for a DFG was caught up in the problems which existed within the architects' section.

The council's arrangements

6. The Ombudsman recommended compensation of £1,500. She also drew attention to the weaknesses in the council's arrangements.

7. The details taken of an initial referral to the social services department were often insufficient. That led to problems and possible unfairness between enquirers when determining priority for an assessment visit. At times there was also a failure to seek more information in order to establish priority for a visit properly.

8. In establishing a priority for an assessment visit, the low category 'desirable' was used to include those referrals where the council had little or no information. Assessment of those people, some of whom might have great need, was therefore delayed and, in some cases, an assessment was never carried out.

9. There was a failure to assess cases within a reasonable time and sometimes a failure to assess urgent cases more rapidly than the less urgent ones.

10. The time taken to carry out an assessment varied between areas. That was maladministration causing injustice to those who were not assessed within a reasonable time owing only to their location.

11. There had been a failure to inform people of the timescales involved in waiting for their case to be assessed. That caused uncertainty and distress to a number of people who, by the nature of their request, were already likely to be living in adverse circumstances.

12. The council also failed to inform all DFG enquirers properly that the property had first of all to be fit and thus a mandatory renovation grant (MRG) might be required before a DFG could be paid. The council did not have a specific procedure for awarding priority in processing DFGs.

Failure to plan for change in legislation

13. The Ombudsman was also critical of the delay by the council in devising appropriate procedures for processing grant applications following the introduction of new legislation in July 1990. The council should have had a reasonably comprehensive system for processing DFGs in place from the start and ensured that all DFGs were processed in the same way.

14. Within a relatively short period, the system adopted by the council should also have allowed those people requiring both a DFG and an MRG to be treated equitably with those requiring only an MRG. For some time they were required to queue twice. That was inequitable.

15. The council failed to formulate a system for dealing with DFG enquiries from tenants of the council where the property was unfit. Such a failure was maladministration and undoubtedly led to extremely lengthy delays in processing a number of applications.

16. Liaison between the social services department and the grants section was poor. There was also confusion between officers as to their respective responsibilities in the DFG process. These issues should have been addressed and procedures clearly defined from the start.

Recent improvements

17. The Ombudsman commended the council's more recent efforts to improve the procedure for processing DFG enquiries. There had been a favourable impact on the waiting list, as improved procedures through training sessions and revisions of the forms used had improved liaison between sections and officers of the council.

(Report 94/C/805)

E7: Grants

Taking irrelevant factors into account in assessing the level of grant – failure to reconsider decision following a review of policy and a complaint to the council and the Ombudsman

1. The complaint was that there were shortcomings in the way a council administered a man's application for a mandatory renovation grant.

2. The Ombudsman did not uphold certain elements of the complaint. He did, however, criticise the way in which the relevant sub-committee considered the grant application. Officers properly advised it of the matters to be taken into account in determining the amount of grant to be awarded. These were the eligible expense of the work and the impact of grant on rent levels or capital value, as assessed for the council by the rent officer. On this basis, the level of grant would have been £13,065.57. But then officers went on to introduce completely irrelevant matters when advising members what grant they could reasonably decide to pay: these were the level of landlord grants above which members made a decision (£6,000); and the average level of grants in the north region (72 per cent of eligible expense). These matters had nothing whatsoever to do with this grant application and led to the entirely arbitrary decision to award £6,000, some £7,000 less than the grant should have been. That was maladministration.

3. The sub-committee reached its decision at a time when the council was undertaking a policy review following government changes in the test of resources for landlords. The review led to the adoption of a revised policy the month after this application was considered. The factors which the council considered when determining mandatory landlord grants were not essentially changed by the review. They did not provide for any 'average' to be taken into account when deciding how much grant to award on the merits of an application, and nor did the law or government guidance ever provide that they should. When the new policy was adopted, it was open to the council to reconsider this case. Despite a complaint to the council and to the Ombudsman, this opportunity was foregone. The failure of the council to reconsider its decision in these circumstances was also maladministration.

4. The Ombudsman recommended that the council should award an additional grant of £7,065.57 with interest at the appropriate county court rate as the applicant had been deprived of the use of that money for a period, and £250 for the time and trouble in pursuing the complaint.

(Report 94/B/4805)

E8: Grants

Importance of having proper regard to Department of the Environment's advice about the administration of renovation grants – need to consider options open to a council with regard to unfit property

1. Mrs Frost complained that a council failed to take action to ensure that the works to make the property she occupied fit for human habitation were completed to a satisfactory standard.

Improvement scheme

2. Mrs Frost was a tenant of a property listed as of special architectural or historic interest. She went to the council for help to improve her very poor living conditions in April 1990, complaining that the property was very damp and cold. The council tried to persuade the landlady, Mrs Snow, to put in place an improvement scheme but these informal negotiations failed and in December 1990 the council served a notice on Mrs Snow. This ordered her to start works by April 1991 but no works were started and it was not until April 1991 that Mrs Snow said she wished to apply for a renovation grant.

3. There then followed a period of 19 months during which the council sought a properly completed grant application, and a further period of four months for the council to approve the grant. It took almost three years from Mrs Frost's complaint to the approval of the grant which was to improve her living conditions. Given the admitted seriousness of these, and the council's power to carry out the works in default of the owner undertaking the necessary repairs, the Ombudsman concluded that the time taken in getting to the point of starting works was too long. It should have taken no more than 12 months and the additional two years of avoidable delay amounted to maladministration.

4. The grant was approved in March 1993 with works to be completed within 12 months. However, Mrs Frost did not move out until January 1994 when work began. The Ombudsman accepted that Mrs Frost was reluctant to leave the property because of her fears about her tenancy rights and no blame could be attached to the council for this period of delay.

Standard of work

5. Mrs Frost moved back to the cottage at the end of March 1994. Almost immediately she began to voice her reservations about the standard of work carried out. These were echoed by council officers after their visits in May. Nevertheless, following an interim payment of £7,000 on 17 March, a further payment of £5,000 was made on 17 June, leaving only a balance of £247.80. Yet it was clear from subsequent events that many works were outstanding and the quality of much of what had been done was considered to be poor.

6. The Ombudsman considered that, in making these payments, the council failed to have sufficient regard to the advice given in DoE Circular 12/90 that a local authority should not certify as satisfactorily completed any works displaying an unacceptable quality of workmanship, or where the objectives of the grant were not met. This was also maladministration.

7. In September 1994 Mrs Frost obtained a surveyor's report on the property which she sent to the council. Although she was initially reluctant to allow the original builder to return, by November she had accepted that the landlady had the right to nominate any builder she chose to put the work right.

8. In April 1995 the council accepted that a substantial amount of work had not been done to a satisfactory standard. In June a deadline of 1 September 1995 was given for completion of the works. The council's letter said that, unless this deadline was met, the council would carry out the works in default.

9. In fact the matter proceeded by way of reports to the housing and public services committee in November 1995 and January 1996. These reports acknowledged that the property was by now unfit for human habitation. Thus in the five years since the repair notice had been served, the condition of the cottage had deteriorated to the point where it was unfit despite the grant of £12,000 which the council had made. At the time of the Ombudsman's report the council had still not determined the course of action which it should pursue, more than six years after Mrs Frost first went to it for help.

10. Failure to ensure that the works begun in January 1994 were completed within a reasonable time, if necessary by carrying out works in default, as threatened after September 1995, or to implement an alternative scheme for remedying Mrs Frost's living conditions, amounted to further maladministration. It had caused a further year's avoidable delay in addition to that identified in paragraph 3.

Conclusion

11. The Ombudsman considered this a deplorable saga of maladministration causing the complainant and her family the injustice of living in cold and damp conditions for an unacceptably long period. Even having regard to the genuine difficulties that the council encountered in dealing with the case, the Ombudsman considered that Mrs Frost had suffered very poor living conditions for at least three years longer than she need have done.

12. The Ombudsman recommended that the council should pay Mrs Frost £6,000, and a further £500 for her considerable time and trouble in pursuing the complaint.

13. The Ombudsman commented that in addition to Mrs Frost's injustice, £12,000 of scarce public funding appeared to have been largely misspent. He therefore recommended that the council should review its arrangements for private sector housing repair notices and the administration of renovation grants.

(Report 95/B/1374)

E9: Homelessness

The importance of complying with legislation – necessity of not discriminating against particular groups of people – council members exceeded their powers in purporting to give instructions to officers

1. Mr and Mrs Andover complained about failure by a council to determine their application to be housed as homeless persons.

What happened

2. The couple owned land in the council's area and occupied it as a caravan site. The council took enforcement action against them, but the couple were still on the site after the required date for the site to be cleared and were still there at the time of the investigation.

3. The family was one of a number of closely related gypsy families. Their sister-in-law applied to the council as a homeless person and for personal reasons she wanted a house on a particular estate. Existing tenants expressed their concern about this to one of the ward members. He spoke to the chairman of the housing committee and put the view that the Andover family members should not be offered housing on that estate. However, the sister-in-law was offered a home there and it appeared that there were no neighbour problems as a result.

4. A few months later Mr Andover visited the council's offices because, he said, at that time eviction had seemed imminent. The planning department had suggested that he should consider registering as a homeless person, on the basis that he was threatened with homelessness because of the council's action.

5. At around the same time Mr Andover's father, Mr Senior, requested a house on the same estate as the sister-in-law. There was a meeting of senior members, including the chairman of the council and chairmen of major committees, to discuss the two applications. There were no minutes of the meeting but a note by officers recorded that they were ordered not to rehouse the Andover family as they were not homeless.

6. However, Mr Senior, who had health problems, applied for housing not as a homeless person but via the housing waiting list. Because of his housing needs he was immediately top of the waiting list. An officer's note referred to this; to the fact that he was pressing for an offer to be made, and to the fact that there was a suitable property available with no one else to take it. The note continued: "we have run out of reasons for not making an offer ...". On the subject of Mr Andover, the note said: "notification of our decision in respect of their homelessness application ... had not been issued, partly as a stalling tactic ... our instruction is to find them 'not homeless' ...".

7. Mr Senior was in fact subsequently offered a property on the estate he wanted and accepted it. Officers did not however take any further action to determine Mr Andover's homelessness application. Officers said in the course of the investigation that they recognised, on legal advice, that if they did succeed in evicting the Andovers, the family would immediately become unintentionally homeless and in priority need. They accepted therefore that there would in those circumstances be an obligation to provide suitable housing.

Powers of the Ombudsman

8. The Ombudsman commented:

"One of the most important powers of the Local Government Ombudsman is the ability to see all council files, and to interview members and officers of the council. This enables me to find out why someone has been badly treated in a way no complainant acting alone ever could; and to publicise that information without fear of outside influence. In this case, all the complainants knew was that they had presented themselves as homeless, and that the council had not determined their application. The first significant explanation they had for this was when I decided to investigate their complaint."

What should have happened

9. The Ombudsman pointed out that anyone is entitled to present as homeless. They then have the right to expect the council to investigate the application diligently and to decide it in accordance with legislation and government guidance within a reasonable period. The decision should be reached entirely on the needs of the persons presenting, set against the requirements of the law and guidance. If the council accepts that it has a duty to house them, then they have a right to be housed in accordance with the council's normal procedures.

10. The Ombudsman accepted that the complainants would not be homeless unless the council as planning authority succeeded in removing them from their land. He welcomed the council's acceptance that if this happened it would have a duty to house them. He said that the correct course of action for the council was to decline to accept Mr and Mrs Andover as homeless, and to issue a statutory notice to this effect. But in order to minimise as far as possible the insecurity an impending eviction no doubt caused, the council should also have told them that it would have a duty to house them if they had to leave their land because of the council's actions. The Ombudsman saw no reason why that decision should not have been reached within the statutory 30-day period. The failure to issue a notice was maladministration.

Involvement of members

11. The Ombudsman also found that senior members exceeded their powers when they met in private and purported to give instructions to officers. The members could not and did not constitute a committee or a sub-committee with power to give instructions to officers. The members' involvement in this way was entirely inappropriate and amounted to maladministration. It prevented the council from dealing properly with the complainants' housing need. It was difficult to escape the conclusion, the Ombudsman said, that Mr and Mrs Andover were treated in this way because they were gypsies.

Injustice and remedy

12. There was an injustice to Mr and Mrs Andover because they were faced with delay, uncertainty and a sense of victimisation by the council, which seemed intent on evicting them while denying them the assistance to which they were entitled. The council was recommended to determine their application and issue a statutory notice, together with an indication of how the council might consider their application should they become homeless or threatened with homelessness, and in addition to pay them compensation of £350.

(Report 95/B/1009)

E10: Homelessness

Criticism of difficulties being put in the way of an application to be considered as homeless – criticism of inadequate staff understanding of the legislation

1. Ms Rankin complained that a council unreasonably refused to accept her application to be considered as homeless and that, when it finally did accept the application, it then delayed unreasonably in determining whether or not she was intentionally homeless.

2. She and her children had left her house in the area of another authority, following an attack on the property which she suspected was carried out by associates of her husband, who had a criminal record. She feared that she would not be safe from attack in that area. She wanted to be in the area where she had lived before her marriage and where she still had family.

3. The Ombudsman was concerned that Ms Rankin was not allowed to complete an application form when she first contacted the council. The Ombudsman commented:

   "The council has a duty to investigate the circumstances of a person whom it has reason to believe to be homeless. I consider that by making it so difficult for people to make a declaration of homelessness by restricting access to the forms, the council is severely limiting its ability to perform this duty fairly. I am concerned that council officers seem to take it upon themselves to dissuade people from making applications to be considered to be homeless. In effect, there is an informal and seemingly subjective vetting system in operation. I consider this to be maladministration."

4. Ms Rankin provided enough information to give rise to the council's duty to investigate her case further. The onus was on the council to instigate immediate enquiries in the circumstances and its failure to start the process on the first occasion when Ms Rankin presented herself was maladministration. She was not allowed to fill in an application form until some four months later. When she did, it was clear that her circumstances were not investigated properly before a decision was made. The decision to decline her application for housing on the grounds of homelessness was made on the basis of inadequate information, muddled thinking and a failure to address the correct questions. The Ombudsman concluded that by this time, the council had decided that Ms Rankin would not make a fit tenant and this was the reason why it rejected her application.

5. The council acknowledged that its decision was wrong and that Ms Rankin was indeed homeless and in priority need.

6. The council took over three months to determine the application once it had agreed to reconsider it. That was longer than the period set down in the government's *Code of Guidance*. However, the Ombudsman accepted that there were grounds for the council to investigate very carefully the circumstances which led to Ms Rankin leaving the area of the other council, since there were contradictions in her account of what happened and the council had reason to be sceptical about it.

7. The Ombudsman expressed concern that Ms Rankin's case was dealt with by a number of officers who did not communicate well with each other and who seemed to have a flawed grasp of the legislation. The failure to make enquiries about her situation; the failure

to deal with the fundamental issues of homelessness and priority need; and the suggestion made that she could be considered intentionally homeless if she made applications to two councils and did not accept the offer of housing from the other council, were all examples of the council's failure to apply the legislation properly and fairly.

8. In the event, the council did provide Ms Rankin with accommodation. The Ombudsman accepted that she had contributed to her own misfortunes and did not recommend any further remedy. However, the Ombudsman was concerned that the council's procedures might be prejudicial to others presenting themselves as homeless and recommended that the council should review how homeless people were dealt with so as to ensure that both the letter and the spirit of the legislation were properly observed.

(Report 94/C/1207)

E11: Nuisance from neighbours

Failings in considering complaints about noise nuisance – failure to inform complainant about the result of investigating counter allegations of racial harassment – concern about liaison arrangements between housing and environmental health officers

1. This was a complaint from a council tenant, Ms Grant, about excessive noise from the flat of a nearby council tenant, Ms Turner. Ms Grant complained to the council over a period of some three years, until she exchanged properties with another tenant.

2. The Ombudsman saw no fault by the council in the way it handled the matter for the first year or so up to the service of the notice of seeking possession on Ms Turner. Following the service of the notice the council received further complaints from another tenant about noise nuisance from Ms Turner but this did not prompt legal proceedings; only another warning letter was sent.

3. The council received a number of complaints from the local vicar about noise from Ms Turner's flat and the noise was witnessed by the council's mobile patrol. A decision was taken to issue a summons for possession against Ms Turner, but the council failed to implement that decision because of a delay in drafting the proceedings. During the delay, the original notice expired. This delay was maladministration.

4. Ms Grant made further complaints of noise nuisance. Officers reviewed the situation and decided that in view of counter-allegations from Ms Turner (that she was the subject of racial harassment by Ms Grant), they would not serve another notice. They decided to move one of the parties instead.

5. The investigation found no evidence that officers considered whether the council had a duty to serve an abatement notice in this case. Indeed, one key officer was unaware of the council's procedure note on the Environmental Protection Act. Despite a report of serious nuisance from the mobile patrol, housing officers gave no consideration to whether action under the Environmental Protection Act was appropriate and practical. This omission amounted to maladministration.

6. The council failed to tell Ms Grant of the outcome of its investigation into the racial harassment allegation against her. That was also maladministration. The council acknowledged that this illustrated a deficiency in its policy and agreed to include such a provision in its next policy review.

7. The council's failures to act removed opportunities – which might or might not have been fruitful – to relieve the stress Ms Grant suffered because of the noise nuisance. She also suffered further anxiety in not knowing whether the council was pursuing the serious allegations of racial harassment that had been made against her. To remedy this, the council was recommended to pay Ms Grant £750, a sum which included an element for her time and trouble in making her complaint.

8. The Ombudsman was glad that the council had, since the events considered in the investigation, adopted a new procedure note for staff dealing with noise nuisance and anti-social behaviour. However, he remained concerned about the arrangements for liaison between environmental health officers and housing officers at a neighbourhood level and recommended that the council should review the policy in the light of his findings in this case.

(Report 94/A/2897)

E12: Nuisance from neighbours

Failings in council's response to complaints about noisy neighbour – need for a written procedure for housing officers – need for liaison between housing and other departments – advantages of out of office hours noise nuisance service

1. Mrs Henry complained that a council failed to respond properly to her complaints of noise nuisance caused by the occupants of her neighbour's flat. She had complained to the council almost continuously over a period of more than two years. Eventually the council served a noise abatement notice on the neighbour.

2. The Ombudsman commented:

   "It is rarely easy for local authorities to resolve problems of noisy neighbours. Where the parties are council tenants there is a wide range of action the council can take on an informal or formal basis to try to resolve matters. What action is most appropriate, however, depends on the seriousness of the allegations and what evidence there is to support them. But the chances of effective action are greatly increased by prompt collection of supporting evidence, and by liaison between council departments and other agencies."

What happened

3. The Ombudsman's investigation revealed a number of failings in the council's response to Mrs Henry's complaints which included:

- housing officers did not keep proper records – for example, of many of the visits made to neighbours and of interviews with them, and of contact with other departments;
- a housing officer wrote to the local MP saying that he would recommend that the environmental health service should be involved, but there was no record of any such contact until Mrs Henry approached them a year later;
- a housing officer wrote to the MP saying that he would consider referring the case to the director of legal services, but it seemed that the legal services' advice was not sought until six months later;
- Mrs Henry called the police to a number of incidents but the council did not write to the police seeking confirmation of those incidents until a year after the first incident;
- there was no review of the case on the expiry of an eight week monitoring period agreed by the council at one point;
- the tenancy services officer was asked by his manager to arrange an urgent meeting with Mrs Henry, but the meeting did not take place for two months;
- the officer did not complete interviews with neighbours until four months after the date by which he had undertaken to complete them;
- the housing service did not send any warning letters to the noisy neighbour until two years after Mrs Henry began complaining; and

- Mrs Henry did not receive a response to the complaint she made under the second stage of the council's complaints procedure.

Conclusion

4. The council's maladministration delayed proper consideration of what action the council should take in response to Mrs Henry's allegations. This caused her additional stress and anxiety because of her frustration over the apparent lack of effective action by the council, and its failure to respond to her complaints. To remedy this, the council was recommended to pay Mrs Henry £750, a sum which included an element for her time and trouble in making her complaint both to the council and to the Ombudsman. The Ombudsman said the council should also consider carefully what action it should take in response to any continuing complaints from Mrs Henry and ensure that it kept her fully informed about what was happening.

5. The Ombudsman was glad that the council had introduced a 24 hour noise nuisance service, albeit on a temporary basis. He commented:

   "Many serious neighbour noise nuisance incidents occur outside office hours and so this should greatly assist the council in obtaining independent evidence of any nuisance. I remain concerned, however, about the lack of a written procedure for housing service officers when dealing with noise nuisance complaints. If this had existed and been followed in this case, it seems likely that many of the problems I have identified might have been avoided. I recommend, therefore, that in the light of this report the council should now consider introducing such a procedure; this should include details of liaison arrangements with other departments. The council should also review the monitoring of its complaints procedure."

(Report 95/A/2621)

E13: Nuisance from neighbours

Importance of having adequate procedures for dealing with complaints of domestic noise nuisance

1. Over a period of five years Ms Orwell was regularly subjected to noise nuisance caused by the tenant of the flat above her council flat. This included thumping and banging sounds, arguing, loud noise late at night and very loud television in the small hours. She also became concerned for her safety following what she considered to be threatening and intimidating behaviour by the tenant of the flat. He was considered by council officers to be potentially violent, and was apparently feared by other tenants.

2. The council did not at any stage serve a notice of seeking possession on grounds of noise. Nor did it serve a noise abatement notice. In the end, Ms Orwell succeeded in securing a transfer to alternative accommodation and it was only that transfer which brought her problems to an end.

Faults by the council

3. The Ombudsman's investigation showed that the council's treatment of her complaint was flawed in a number of respects:

- Ms Orwell was not advised until three years after she started complaining that she could take her own legal action against the perpetrator of the nuisance under the Environmental Protection Act 1990, and apparently was not told at all that she could apply for an injunction against her neighbour;

- there was insufficient liaison between the various departments involved. There was a delay by the housing department in referring the matter to the environmental services directorate. The council failed to consider whether evidence from housing officers who had witnessed unreasonable levels of noise could be used either in possession proceedings or in noise abatement proceedings by the environmental services directorate;

- the possible value of corroborative evidence from Ms Orwell's friends and relatives was not considered;

- the possibility of setting up recording equipment and specific monitoring by environmental health officers was not fully explored;

- the council did not consider whether it should apply for an injunction to restrain the neighbour from causing a nuisance; and

- when environmental health officers eventually witnessed the statutory noise nuisance, no abatement notice was served on the neighbour because the council's procedure provided for him to be given a warning on the first occasion when noise was witnessed. In the Ombudsman's view that was contrary to the council's clear duty under the 1990 Act.

Conclusions

4. The council's failure to act corporately and effectively to assist Ms Orwell and the particular failures listed above, amounted to maladministration which caused Ms Orwell injustice. It was difficult to be certain that more robust action by the council would have ended the nuisance, but the Ombudsman believed that it was probable that it would have been reduced. Also Ms Orwell suffered great distress and inconvenience as a result of the council's failure to assist her. The

Ombudsman recommended that the council should pay her £1,000.

5. The council had already set up new procedures for dealing with complaints and noise nuisance. The Ombudsman recommended that it should regularly monitor the effectiveness of those new procedures, and that the council should review its procedures in respect of abatement notices to ensure that its practice was consistent with its statutory duty.

(Report 95/A/615)

E14: Private housing notices

Need to work systematically – need for adequate records – priority planning should be undertaken if staffing resources are reduced

1. Six tenants living in a house in multiple occupation complained about a council's failure to deal properly with disrepair in their homes.

2. When the tenants first complained to the council, officers carried out a survey and found more than 100 items of disrepair, about which notices were served. Some works were done, but they were neither satisfactory nor complete. Further notices were served, but the landlord did nothing about these and neither did the council.

3. At this time, the council had to cope with reduced staffing resources as a result of financial cutbacks. The Ombudsman said that a council's proper course in such circumstances was to set priorities and reallocate its reduced resources consistent with those priorities. He saw no evidence that the council engaged in any such planning. It effectively abandoned its responsibilities to the complainants for some three years. The Ombudsman was concerned, in particular, that defective gas fires, water heaters and drains were left with no further action. The primary responsibility for conditions in the house lay with the landlord, but the council was charged with statutory duties, which it failed to fulfil: to secure minimum standards for the protection of tenants.

4. The council did not retain orderly files. So when the council began to build up its team of officers again, they could not refer to reliable records as a basis for future action.

5. Even after that, there was unreasonable delay in enforcing statutory notices. The council served notices requiring repairs, provision of amenities, and fire precaution works, all of which were to be completed within 16 weeks. The landlord protested that the timescale was too short. He did not appeal, but offered the prospect of enhanced improvements. The Ombudsman commented that the council should not simply accept such proposals at face value. The council should have considered the nature of the defects to the property: they were serious and likely to be injurious to the tenants' health. If officers had been able to examine council records, they would have been aware of a history of non-compliance. In the absence of records, the council might have consulted the

tenants. Instead, the council took no action to enforce repairs until well over a year later.

6. The Ombudsman recommended compensation sums to the tenants, varying between £1,000 and £2,000. He recommended that the council should review its procedures to ensure that statutory action, once initiated, is properly followed up; that proper records are maintained; that where appropriate tenants are adequately consulted; and that works undertaken, including those done in default of the owners, are properly supervised.

(Report 93/A/2373)

E15: Repossession of property

The importance of having adequate procedures for staff to follow when considering whether a council property has been abandoned; and when taking repossession action

1. Mrs Anderton complained that in May 1993 a council wrongly terminated her tenancy and disposed of her possessions. She said that she lost belongings of both financial and sentimental value, and she sought compensation substantially in excess of the £250 paid out by the council's insurers.

Advice from the Chartered Institute of Housing

2. The Chartered Institute of Housing advises councils to:

   "Have a clear policy and procedures for dealing with properties that appear to have been abandoned including criteria and guidelines for:

- checking whether the property is unoccupied and, if so, for how long;
- ascertaining the tenant's whereabouts;
- deciding whether the tenancy has been surrendered; and
- storing or disposing of possessions left by the tenant."

What happened

3. While living at her council flat Mrs Anderton became engaged to be married. Her fiancé was in the armed forces and the couple planned to live in married quarters after their marriage on 20 March. Mrs Anderton says she spent her last night at the flat on 22 March. For a number of reasons she did not consider it practicable to relinquish her tenancy immediately. She and her husband were without private transport and they had to rely on her father to help them move her belongings whenever he was available.

4. Mrs Anderton said she telephoned the district housing office shortly before her marriage to ask whether it would be acceptable for her to move her belongings gradually. She said she was told to keep paying her current amount of rent and to return her keys within three months. She said that the telephone conversation was not an anonymous, general enquiry: she gave her name and address because, in the same conversation, a specific problem relating to the balconies in the flats was discussed. The council had no record of this telephone conversation on its file.

5. Mrs Anderton's father, Mr Muller, visited the flat to pick up belongings on several occasions up to 26 May, the date on which the council repossessed the flat. He believed that his last visit must have taken place only two or three days before the flat was repossessed. Neither Mrs Anderton nor Mr Muller was aware of any other person visiting the flat after 22 March, and Mr Muller was confident that the flat did not appear to have been disturbed by anyone else by the time of his final visit.

6. On 26 May the estate manager attended the flat to check whether it had been abandoned as reports from neighbours suggested. She concluded that it had and that it contained nothing of value, and therefore no inventory of goods to be stored was taken. On 1 June the voids and repairs inspector visited the flat. He arranged for contractors to clean the flat, carry out repairs and, in the absence of an inventory of goods for storage, to clear all the remaining contents as rubbish. The flat was then re-let.

7. Early in June Mrs Anderton and her father discovered that the flat had been cleared by the council. Mr Muller had been on holiday during the week beginning 31 May. The following week he went to the flat intending to collect more of Mrs Anderton's belongings, but found that a new tenant had already moved in. In the meantime, a friend of Mrs Anderton who lived locally had telephoned her to say that the windows were open. Mrs Anderton contacted the district housing office and was told about the clearance. She was told that the contents of the flat had been disposed of as rubbish, but if valuables had accidentally been discarded at the same time then a claim under the council's insurance policy would be a simple, routine matter.

8. Mrs Anderton was not satisfied with the sum paid by the insurance company. She felt that her problems could have been avoided if a notice to quit had been delivered to the flat, or a letter had been sent following the first reports from neighbours: her father would have found any correspondence delivered in the week beginning 17 May. She would then have known, well in advance, of the council's intentions and could have made more urgent arrangements for the prompt removal of any remaining valuables.

9. Mrs Anderton was upset about the loss of her belongings for two principal reasons. First, many of the items cleared from the flat were reasonably new baby equipment which she intended to use for the baby she was expecting in the summer. These items had to be replaced at considerable expense, and Mr and Mrs Anderton had to borrow money from relatives. Second, many possessions of sentimental value were lost and could never be replaced.

The Ombudsman's views

10. The Ombudsman commented:

    "Clearly, councils should not allow their untenanted housing to stay unused. There are many people seeking council housing and to allow accommodation to remain unoccupied can cause injustice to them and a financial loss to taxpayers. But where a council has reason to believe that a tenant may have ceased occupying a council property in accordance with the terms of the tenancy, the law generally requires service of a notice to quit before the council recovers possession. A council must be very sure of its ground before dispensing with that process. If a council considers it necessary to repossess accommodation on the basis that it has been abandoned, without making any effort to inform the tenant of this intention, it should ensure that it has sound and properly documented reasons and that the decision is made and recorded by an officer of appropriate seniority."

11. These standards were not met in this case. The earliest record of the reports

from neighbours which prompted the council to act was the estate manager's brief diary note of 17 May. The repossession took place nine days later after a single inspection. Individual telephone calls from neighbours were not recorded. Mrs Anderton had made a payment towards her rent in April. The council had sent her a letter on 10 May warning of the possibility of court action for rent arrears and she received that letter, although there was no record of a subsequent telephone call she remembered making. In the Ombudsman's view, the council did not consider in sufficient detail Mrs Anderton's likely intentions towards the flat, including the question of how substantial her absence from it had been and whether she could thus be deemed to have surrendered the tenancy. He found that the council's failure, however well intentioned, to serve a notice to quit in this case amounted to maladministration.

12. The Ombudsman went on to consider the council's disposal of Mrs Anderton's possessions. By her own account Mrs Anderton had packed many of her belongings in plastic rubbish sacks, and no doubt the state of the property appeared chaotic since she was in the process of moving out. The Ombudsman concluded that the council disposed of Mrs Anderton's property in the genuine belief that it was worthless and abandoned. But no inventory was made and from the evidence of the investigation the Ombudsman concluded that some goods of value were overlooked and consequently discarded. This was maladministration. The Ombudsman said:

   "The reason for making an inventory is not only for the purposes of records, but also to ensure that there is a systematic evaluation of items disposed of and that officers do not dispose of people's possessions simply on the basis of hasty impressions. Commendably, the council has now adopted a new procedure of taking photographs and compiling an inventory whenever goods are cleared from empty property."

Injustice

13. In considering the question of injustice, the Ombudsman said that if a notice to quit had been left at the flat Mr Muller would have found it within the four-week notice period, because he returned to the flat about two weeks after the estate manager's inspection, intending to collect more of his daughter's goods. The council would have made no arrangements to clear the flat until after the expiry of the notice and Mrs Anderton would have had the opportunity to remove her possessions urgently.

14. The Ombudsman found that the council's failure to serve a notice to quit and subsequently its failure to extract valuables from among the contents prior to disposal did cause material loss to Mrs Anderton. It was not possible to say with confidence what the value of the lost goods was, but he was satisfied that it amounted to more than the sum of £250 paid by the council's insurers. He took this into account in forming a view on the compensation that it would be appropriate to pay Mrs Anderton.

15. It did not appear that she informed the council directly of the change in her circumstances for the express purpose of having her entitlement to housing benefit reviewed. She had been told in notification letters that this was required of her. Her rent account was credited with £480.36 in housing benefit. The council had not sought to recover this sum and that mitigated the injustice sustained by Mrs Anderton as a result of maladministration. Moreover, the council's insurers had already paid her £250. In the light of these factors the council was recommended to pay Mrs Anderton a further £250.

(Report 93/A/3895)

E16: Right to Buy

Commendable action by a council to compensate leaseholders for problems following their exercise of the right to purchase their homes from the council

1. There were complaints from 17 leaseholders of flats in three tower blocks from which occupiers were being moved by the council because of structural problems. They claimed that the council was at fault in failing to disclose defects in their properties before they bought them from the council.

2. Extensive surveys of the blocks had been carried out by a former council in 1985 and subsequently by the present council in 1989 and 1993.

3. The landlord's offer notice under section 125 of the Housing Act 1985 had a section which referred to 'structural defects known to the council'. The council had put 'none' on each of the complainants' forms. At the time of purchase the market value of the flats was up to £50,000 each. At the time of the complaints to the Ombudsman the values were between nothing and £2,000.

4. The council was willing to consider a way of settling the complaints. The Ombudsman thought it reasonable to assume that if the complainants had known of structural defects to the properties, they probably would not have exercised their right to buy and so would have remained tenants throughout. A package of measures was agreed with the council with the intention as far as reasonably possible to reinstate the leaseholders to the position they would have been in if they had remained as tenants.

This included:

- re-purchase of flats at the discounted price paid, plus interest on that amount (less any mortgage loan);
- legal and removal costs, home loss and disturbance payments;
- the difference between (i) mortgage payments, service charges and buildings insurance and, (ii) the rent which would have been paid (if (i) was greater than (ii); if (i) was less, there would be a deduction);
- re-housing as emergency decants;
- arranging (with the approval of the Department of the Environment) for tenants to be able to obtain a discount on any future right to buy purchase as if the original right to buy had not been exercised;
- £500 for time and trouble and for uncertainty and delay in being rehoused;
- payments of up to £4,000 for loss of amenity; and
- £1,000 compensation for the lost opportunity to apply for a home purchase grant.

5. The council also offered an alternative package based on straight re-purchase at market value, assuming no repairs were necessary. Complainants could choose between the two packages.

(Local settlement 94/A/1283 et al)

E17: Tenancy succession

The importance of handling a tenancy succession correctly and sensitively – dealing accurately with housing benefit – handling complaints effectively

1. The complainant, Miss Wood, alleged that there was fault in a council's handling of her succession to the tenancy of her home following her mother's death in 1989, and of her claims for housing benefit since her mother's death. She said that as a result she spent many months worrying about whether she would be allowed to continue living in the family home, and she was not awarded housing benefit to which she was entitled. She said this caused her financial hardship as she agreed to pay off arrears which accrued needlessly, while her only source of income was income support and child benefit. She tried for five years to get the council to respond to her concerns about these matters, and said the council had never given her any satisfactory response.

2. Under the terms of the relevant legislation (the 1985 Housing Act at the time) the daughter of a secure council tenant was qualified to succeed to the tenancy of a dwelling-house if the tenant's husband did not wish to do so; if she occupied it as her only or principal home at the time of the tenant's death; and had resided with the tenant throughout the period of 12 months ending with the tenant's death (unless the deceased tenant had already succeeded to the tenancy). Where there was a daughter qualified to succeed the tenant, the tenancy vested in her at the date of the tenant's death unless any other relatives were also qualified to succeed and there was a dispute over who should succeed.

Events concerning the tenancy

3. Mrs Wood became the tenant of Viewforth in 1980. When Mr and Mrs Wood subsequently separated and the council granted Mr Wood the tenancy of a flat elsewhere in the borough, Mrs Wood retained the tenancy of Viewforth, and her four children continued living with her. Following various adjustments to her housing benefit, Mrs Wood was owed a credit of £516.95 at the time of her death.

4. Miss Wood said that within a month of her mother's death on 23 October 1989 she went to the council's local office to make arrangements for her succession to the tenancy of Viewforth. She says that she presented a copy of her mother's death certificate to the then local housing officer and said that two of her three brothers would continue living with her and none of the three disputed her wish to succeed to the tenancy.

5. Miss Wood said that the officer continually delayed dealing with her succession, saying that he would need to check on possible under-occupation of Viewforth and that the more senior officers whom he needed to consult about how to proceed were on leave. She said he told her that she did not need to worry about the rent because her mother's account was in credit. Mr Wood said that he approached the council on his daughter's behalf early in 1990, and the then local housing officer told him: "As far as we're concerned, Mrs Wood is still alive." Mr Wood said he understood the officer to mean that the credit owed to Mrs Wood at the time of her death was being used to cover the rent due in respect of Viewforth. Mr Wood and Miss Wood said that what the officer said was extremely upsetting given their recent bereavement.

6. Miss Wood said the officer did not confirm her succession to the tenancy until June 1990. She said that at this time, he got her to sign a form confirming her succession and the fact that two of her brothers were to live with her at Viewforth, and told her to put the date 30 January 1990. She said it was only at this stage that he asked for written confirmation that her brothers did not contest her succession to the tenancy. She provided this. She said that the officer told her that he could not 'backdate' her succession beyond 30 January 1990 "because that's the law".

7. It was not possible to trace and interview the officer in question, who no longer worked for the council. The information on the council's files was not sufficient to be sure exactly what happened, but some facts were apparent. The Department of Health and Social Security notified the council of Mrs Wood's death in early November 1989. Her housing benefit claim was terminated three weeks after her death, and the three weeks' overpaid benefit was debited to the rent account. The then local housing officer completed a form to arrange for a refund to Mrs Wood of the credit due to her at that time. The rents and benefits officer returned the form to him saying that the amount was incorrect because housing benefit had been overpaid, although she did not give a correct figure. She said that a different form had to be completed because Mrs Wood had died (and the credit would have to be paid to her estate, which would not be done by the local office). It appeared that the local housing officer took no further action to arrange a refund.

8. The files showed that the council did receive a copy of Mrs Wood's death certificate and of letters from her three sons saying that they agreed with their sister's succession to the tenancy. However, no date stamp was used and so it was not clear when these were received. The form which purported to confirm Miss Wood's succession to the tenancy of Viewforth from 30 January 1990 appeared not to be the appropriate form as it had been completed as though she was the original tenant and also the successor tenant. The file note said Miss Wood was the new tenant whose "succession only completed on 5th Feb 90."

Comments on the handling of the succession

9. The Ombudsman commented on the handling of the tenancy succession:

   "Councils should be especially sensitive to the feelings of individuals who have recently been bereaved and who of necessity must sort out practical problems such as the succession to a deceased parent's tenancy. Where there are delays or complaints, councils should respond promptly and courteously, provide clear explanations, and seek to resolve problems as soon as possible. It is not clear exactly how the council handled Miss Wood's succession to her mother's tenancy. There was no general written guidance for officers about this at the time. I think it is likely that the council had accepted by the end of April 1990 that Miss Wood was, indeed, the tenant of Viewforth. I cannot be certain why there was a long delay coming to this conclusion, although the evidence suggests to me that this was the council's fault. The evidence also suggests great insensitivity in the council's handling of the matter. Mrs Wood died on 23 October 1989, and the tenancy vested in Miss Wood as successor on that date. Whatever the reasons for the delay in confirming this, the council should have confirmed Miss Wood's succession with effect from 24 October 1989. This has never been done. Indeed, Miss Wood has spent more than six years believing that her succession was effective only from 30 January 1990."

Housing benefit

10. There were also problems about housing benefit. Miss Wood wanted to claim benefit very soon after her mother's death, but did not complete an application form for some months. This was due at least in part to the misleading advice she received from the council (see paragraph 5). When she did complete an application the wrong form was used and there was no explicit question about whether backdated benefit was needed. There was no evidence that Miss Wood was encouraged to request backdated benefit even from 30 January 1990 (the date from which the council said her succession was effective) although the council accepted that it would have been good practice to have encouraged her to do so. When housing benefit was eventually awarded, it was only from 2 April 1990. The council considered making a manual adjustment to pay housing benefit for the intervening period but this was never done.

11. Miss Wood could have appealed against the council's decision to award her housing benefit only from 2 April 1990. She did not do so. The Ombudsman said he could understand why Miss Wood did not appeal. The local housing officer had wrongly told her that her succession could not be confirmed with effect from the correct date, and that this was 'the law'. Believing this, she might well have felt that any appeal was pointless.

12. The council should have confirmed Miss Wood's succession with effect from 24 October 1989. An application for backdated housing benefit should have been encouraged and would probably have succeeded. In the event, no housing benefit was awarded for the period from 24 October 1989 to 1 April 1990. The missing housing benefit totalled £1,016.14.

Handling of complaints

13. The council's errors were compounded by its failure to respond adequately to the series of complaints which Miss Wood and Mr Wood made to council members and officers, and to complaints made by solicitors on their behalf. On many occasions correspondence went unanswered. Such responses as were sent were incomplete and unsatisfactory. A 'correction' to Miss Wood's rent account in 1992 was incorrect and was not explained. A complaints procedure was in place from 1992 and yet the Woods were never invited to use it. The council failed to respond thoroughly to the enquiries made by the Ombudsman's investigators.

The Ombudsman's views

14. The Ombudsman said:

"Nearly seven years have passed since the events in question. At any stage, careful consideration by the council of the facts would have revealed what had gone wrong, and matters could have been put right. I consider that Miss Wood has been caused significant injustice by the council's maladministration and by its longstanding failure to respond to her quite justified concerns. She has been caused much anxiety about her tenancy and about how to pay the rent. Between July 1990 and May 1992 she paid about £70 more rent than she needed to. Her claim for housing benefit was not determined in good time and she was not given benefit to which she could have been entitled. She received three notices of seeking possession which would not have been served but for the council's fault. She has been put to substantial time and trouble in pursuing these matters with the council and with me."

15. The Ombudsman recommended that the council should:

- pay Miss Wood compensation of £2,500. (To cover the missing housing benefit; the balance of the credit due to Mrs Wood; and compensation for the delay in determining her claim for housing benefit, for the anxiety caused by the three notices of seeking possession, and for her time and trouble in pursuing the matter);
- send Miss Wood confirmation in writing that her succession was effective from 24 October 1989;
- produce written guidance to local housing officers on how to deal with succession; and
- in the light of the defects revealed by the report, review its 'Comments and complaints' procedure and also its procedures for responding to the Ombudsman's enquiries about complaints.

(Report 94/A/1613)

E18: Transfer

Inadequate consideration of making an exception to the policy of not rehousing tenants with rent arrears – need for clear guidance on the circumstances on which a tenancy can be assigned

1. A ward member complained on behalf of a constituent, Mrs Juxon, that a council delayed unnecessarily in transferring her to more suitable accommodation.

2. Mrs Juxon had lived for several years with her husband and children in a maisonette rented from the council. Her husband was the sole tenant. In 1991 she was diagnosed as having multiple sclerosis. Her husband left the household later that year, when there were rent arrears of more than £800. As her husband was the sole tenant, the arrears were his responsibility. But Mrs Juxon assumed responsibility for the rent and began steadily to reduce the arrears. She remained in occupation with her children.

3. When her condition deteriorated, she asked the council for rehousing. The council responded well at that time. It arranged for her needs to be assessed promptly by one of its occupational therapists who recommended urgent rehousing in ground floor accommodation suited to Mrs Juxon's special needs. The council promptly told Mrs Juxon she had been awarded urgent medical priority for a transfer.

4. But after that things went wrong. The Ombudsman found that:

- for more than a year the council failed to recognise her as a legitimate occupier of the maisonette, even though she had assumed responsibility for the rent and the arrears, and delayed the transfer of the tenancy to her;

- although she had no legal responsibility for her husband's arrears, they were a factor in the council's consideration of her transfer and caused delay. This was despite the council's stated policy that exceptions could be made in specific cases and in the light of special circumstances to the normal arrangement that tenants with arrears would not be rehoused. The council had no agreed practice on how to deal with such situations;

- for more than a year, despite the special circumstances, the council did not consider exercising discretion to rehouse Mrs Juxon. Even when the point was eventually addressed, the council failed to make an effective decision and the point remained under discussion for a further six months;

- when the council identified accommodation for Mrs Juxon it took too long to prepare for, fund and complete conversion works. What might reasonably have been expected to take six months took 13; and

- an access ramp was laid at a steeper gradient than planned and other significant problems arose with the accommodation after Mrs Juxon moved in.

5. The council agreed to apologise; to pay £2,500 compensation; to draw up a programme of works for speedy completion of the outstanding repairs; and to review liaison arrangements between the housing directorate and the social services occupational therapy section.

6. The Ombudsman described this as a commendable response which substantially remedied the injustice caused by the council's maladministration.

7. The Ombudsman recommended that the council should also review the way in which exceptions to its policy of not rehousing tenants with rent arrears were considered. The council should also review its policy and procedures on tenants' relationship breakdown to provide clear guidance on the circumstances in which a tenancy could be assigned, and the mechanisms for achieving assignments, including the appropriate treatment of any arrears.

(Report 95/A/2502)