

## Section D: Housing

---

# D1: Council housing repairs

## Significant failure to repair

1. Mr X and Ms Y were council tenants. They complained that the council had failed to:
  - deal with water penetration and dampness to their flat;
  - provide them or their solicitors with a copy of a surveyor's report;
  - reply to letters; and
  - rehouse them although they considered the property was uninhabitable.
2. The council accepted the analysis. extended over five years. The council accepted the analysis.
3. The council rehoused Mr X and Ms Y. It agreed to the Ombudsman's suggestion of compensation of £4,500. This was made up of £2,000 for the failure to deal effectively with the water penetration for the first four years; £2,000 for their last year in the property, when conditions were particularly bad; and £500 for failure to deal with correspondence and to recognise the complainants' time and trouble in pursuing their complaint.

## Outcome

2. The Ombudsman found that there were faults by the council which

*(Local settlement 99/A/3041)*

---

# D2: Council housing repairs

## Vulnerable tenant – delay in making accommodation suitable for occupation

1. Ms Page complained about the way a council handled her housing application and the repairs needed to the flat allocated to her. She said that, as a result, she was without a permanent home for a long time, she was deprived of social security benefits which otherwise would have been payable to her, and she lost personal belongings.
2. Ms Page had a chronic back condition and asthma. She needed to be able to accommodate a carer when necessary.
3. Ms Page had a chronic back condition and asthma. She needed to be able to accommodate a carer when necessary.
4. The council accepted that it had a duty to assist Ms Page. Its first offer of accommodation was unsuitable because it was not big enough for her needs, especially since her carer had to stay with her frequently. The council identified larger accommodation which needed repairs before it could be occupied. Repairs were done and the flat was offered to Ms Page six weeks after she left hospital. She stayed with friends in the interim.

## Allocation of property

2. Ms Page was admitted to the mental health unit at her local hospital and, as a result, had to give up the tenancy of her home. She made a homelessness application to the council from hospital.

5. Ms Page could not move in straight away for two reasons. She had insufficient furniture and belongings and needed to obtain a government loan. She was also concerned about the state of repair of the flat. She gave the council a list of repairs she felt needed attention, and her carer returned the keys to the area office so that the council could gain entry.

### Repairs

6. From this point, the Ombudsman said, things went disastrously wrong:
- builders instructed by the council said they could not gain admission to the flat despite the area office having the keys;
  - gas checks were not made for some six weeks;
  - a leak from the flat above brought down the kitchen ceiling, which was not repaired for three months;
  - keys went missing so that the door had to be forced and the locks changed several times; and
  - Ms Page's belongings, including those bought with the government loan, were either disposed of or were stolen because the flat's windows were left open during the building work.

### New offer

7. A year after the offer of the original tenancy, the council accepted that Ms Page should be offered a different home. There was a delay in settling her claim for compensation for the loss of her belongings. She could not move to a new home until she had money to buy new furniture and belongings.

8. The Ombudsman said that the council's failure to resolve the compensation claim more swiftly, given the circumstances of this case, was maladministration.

### Housing benefit

9. Ms Page applied for housing benefit after leaving hospital. The council told her that she was not eligible because she was not occupying the flat.

### Injustice

10. The Ombudsman identified the following injustice to Ms Page:
- she was deprived for some 15 months of suitable accommodation that it was the council's statutory duty to provide;
  - she lost belongings;
  - she might well have lost access to benefits to which she might have been entitled if she had been occupying her own dwelling;
  - she was caused a great deal of anxiety which might have impacted adversely on her medical conditions; and
  - she was put to considerable time and trouble in pursuing her complaint with the council.

11. The Ombudsman observed:

*"It was only when she complained to me that the council seems to have acted corporately in trying to sort out her serious problems, and even then its response was not as prompt as it reasonably should have been."*

### Remedy

12. The Ombudsman recommended:

- that Ms Page should be paid £2,500 for her unsatisfactory living conditions, £1,463 for her lost belongings and £500 for her anxiety and time and trouble; and
- the council should investigate, with the Department of Social Security, whether

if Ms Page had been living at the flat she would have been entitled to benefits and, if she was, assist her in making a claim for backdated or exceptional entitlement or, if that was no longer feasible, pay her a sum equivalent to the benefits she would have received.

*(Report 99/B/3695)*

---

## D3: Grants

### Voluntary housing group – inadequate report – criteria unclear

1. Mr Armstrong complained on behalf of a local housing project that officers of a council failed to present relevant documentation to council members considering the award of grants to local housing groups. He said that, as a result, the members were not able to consider the project's application for funding properly, and so the project received less funding than it had sought.

#### Application

2. The Ombudsman referred to the project as the 'Roof Project' for the purposes of the report. Mr Armstrong was the Roof Project's manager.
3. He submitted an application to the council on behalf of the project seeking a grant of £25,000 for the financial year 1999/2000.
4. The council awarded a grant of £15,000.

#### Decision making process

5. The Ombudsman said that the decision making process was most unsatisfactory.
6. In the case of every grant application apart from Roof's, officers recommended members to approve the full sums applied for. For Roof, officers recommended a grant of £15,000 without any explanation to members of how much had been applied for, what the £25,000 application was intended to fund, or why officers thought that only £15,000 was appropriate.
7. When Mr Armstrong asked officers to tell members that £25,000 had been sought, officers did not do so. Members did, however, become aware of the position because one member had a copy of Mr Armstrong's letter.
8. It was clear from interviews with members that they were unclear why it was appropriate to grant Roof less than it had bid for. Members gave varying explanations of the purpose of

the grant scheme and what kind of expenditure the grants were intended to cover. The criteria for making grants were not formally set down.

9. The Ombudsman said that the process could only lead to suspicion of unfair treatment and was maladministration.

### Remedy

10. The Ombudsman said that it was not for him to say whether Roof should have received the additional £10,000. It was the job of the council to evaluate a grant application, determine whether it met the council's objectives, and decide accordingly, within the

resources available. No such evaluation was made in this case.

11. The Ombudsman could not conclude that Roof suffered the injustice of not getting the grant it wanted. He did, however, conclude that it could justifiably feel its grant application had not received fair or proper consideration; and that it had been put to some time and trouble in pursuing its complaint with the council and with the Ombudsman.
12. The Ombudsman recommended that the council should pay Roof £500, and review its procedures.

*(Report 99/B/1887)*

---

## D4: Grants

### Renovation grant – documentation – statutory time limit

1. Mr Ash complained that a council did not deal promptly or properly with his application for a renovation grant.
2. Mr Ash complained, in particular, that the council insisted he should live in the property while it considered his application and while the work was carried out; that it refused to make staged payments for building work; and implied that, unless he used approved contractors, it would be difficult for the council to settle the final account. He said that he had had a nervous breakdown as a result of living in an unfit property.

### The Ombudsman's findings

3. The Ombudsman found during her investigation that Mr Ash had not always acted honestly during the council's enquiry and grant application process. She acknowledged that the relevant legislation (since amended) presented councils with severe administrative and financial difficulties.
4. The Ombudsman concluded that it was unreasonable that the council deliberately omitted from the application pack sent to people enquiring about grants one of the relevant documents (a blank certificate of future occupation which applicants needed to complete). As a result, completion of the application process was delayed. The Ombudsman said

that applicants were entitled to believe that, having provided all that was required of them in the application pack, their applications were complete and that the six month timescale for the council to make a decision would start from that point.

5. The council did not meet the six month timescale on Mr Ash's application, contrary to what the relevant legislation required.
6. These failings delayed approval of Mr Ash's application by at least 10 months. But they did not affect the amount of grant awarded.
7. The Ombudsman concluded that, because of a requirement of its policy (which was not supported by legislation), the council effectively insisted that Mr Ash should live in the property in order to gain approval for his application. The legislation enabled councils only to require guarantees as to future occupation, but the council in effect imposed a condition that there should be occupation prior to approval of an application.
8. But the Ombudsman was not persuaded that the council was responsible for Mr Ash staying in the property after approval, while the work was carried out. The evidence suggested Mr Ash lived in the property only for some six months prior to approval and that there was another factor in his decision to move in. The Ombudsman found that most of the

time Mr Ash lived in the property prior to his nervous breakdown was in the post-approval period and that other factors appeared to have contributed to his illness.

9. The Ombudsman considered that the council's decision not to make staged payments was reasonable and was not persuaded that the council's advice on the use of approved contractors contained the implication which Mr Ash alleged.

### Outcome

10. The council's maladministration caused Mr Ash injustice because it delayed the approval of a grant and the start of works. But the Ombudsman noted that:
  - the council exercised discretion in Mr Ash's favour at a later stage when it could have withheld grant because of his failure to meet the grant conditions; and
  - the council made extensive and commendable efforts to resolve later difficulties.
11. The Ombudsman considered that the actions of the council provided an appropriate remedy and that no further action was required from the council in response to the complaint.

*(Report 98/C/3023)*

## D5: Grants

### Disabled facilities grant – council tenants – mandatory duty – budgetary limitation

1. Mr and Mrs North complained that a council failed to comply with its statutory duty when dealing with their application for adaptations to their property and that, as a result, they had to live in conditions which did not meet the needs of Mrs North, who was registered as a disabled person.
6. The council's budget for disabled facilities adaptations for the relevant financial year was £40,000. The council declined to carry out the scheme. Instead, the council offered a transfer to a suitably adapted property, or a contribution of one third of the cost on the basis that Mr and Mrs North should approach other sources such as charitable organisations for the remaining two thirds of the cost.

#### Need for adaptations

2. Mr and Mrs North lived in a two storey council property. They had lived there for more than 30 years.
3. Mrs North was a wheelchair user and depended on Mr North for assistance with all personal care and the activities of daily living. Three of their children lived in the same village and provided a support network for their parents.
4. An occupational therapist employed by the social services authority made an assessment of Mrs North's needs. Mrs North was not able to negotiate the stairs independently and had to be carried up and down in her wheelchair by family members. The occupational therapist considered this posed a great risk of serious injury and that urgent action was necessary. Basic facilities such as the toilet and bath were upstairs. The occupational therapist considered the situation totally unacceptable.
5. There was much discussion between the occupational therapist and officers of the council to determine what was the most appropriate scheme. This was estimated to cost some £11,000. Mr and Mrs North's contribution, following an assessment of their means, was considered to be nil.
7. Mr and Mrs North approached several charities. All refused funding on the grounds that the council had a statutory responsibility to fund the adaptations.
8. The council offered an adapted property in another village. Mr and Mrs North refused this on the grounds that it was too far from their family members who provided support. They had lived happily in the same village for over 30 years and were reluctant to leave simply because the council would not pay for the adaptations to their existing property.

#### The Ombudsman's view

9. The Ombudsman was satisfied that the adaptations were necessary and appropriate to meet Mrs North's needs. The works were eligible for a mandatory disabled facilities grant on the grounds that they provided access to Mrs North's upstairs bedroom and basic facilities and on the grounds that they would make it possible for her to occupy the whole house safely.
10. The Ombudsman was satisfied that, if Mrs North had been an owner occupier, she would have received a 100 per cent mandatory grant to fund the adaptations.

11. As Mrs North was a council tenant, the council's policy did not permit her to make an application for a disabled facilities grant. The council had, in place of the statutory scheme, a policy for adaptations to its own properties which was based on the statutory provisions but provided for the works to be carried out by the council under its capital programme.
12. Government guidance was that, in such a case, the council should carry out disabled facilities works on the same terms as if the tenant had applied for a disabled facilities grant. The Ombudsman concluded that the council should not have treated Mrs North any differently than if she had been an owner occupier.
13. It was clear that the council felt constrained by the budgetary allocation of only £40,000. But, the Ombudsman said, that was no fault of Mr and Mrs North. At this point the council took into account irrelevant considerations in deciding not to fund the adaptations that were needed. The council's budgetary allocation was irrelevant to its mandatory duty to fund the works, given that they were expected to come well within the £20,000 ceiling which would have been available if Mr and Mrs North had been owner occupiers.
14. Moreover, the availability of accommodation in another village was not a relevant consideration in view of the family's reliance on a support network locally.
15. Taking these irrelevant matters into account was maladministration. The Ombudsman concluded that it led to the council deciding not to fund the adaptations. That decision kept Mr and Mrs North in deplorable living conditions for some two years longer than necessary. That was a very considerable injustice.

### Remedy

16. The Ombudsman recommended that the council should:
- pay Mr and Mrs North the sum of £4,000 for their distress and inconvenience;
  - pay them an additional £500 for their time and trouble in bringing their complaint to the council and to the Ombudsman;
  - offer them the choice of having the adaptations carried out, or suitable rehousing; and, if they chose the former, implement the scheme without delay; and
  - review its arrangements for disabled adaptations to its own properties to ensure that the maladministration identified by the Ombudsman did not recur.

*(Report 99/B/12)*

# D6: Homelessness

## Domestic violence – rehousing – introductory tenancy – storage of possessions

1. Mrs Begum complained about the way that a council dealt with her housing needs.

### What happened

2. Mrs Begum was a tenant of the council. She left her family home with her two sons for fear of domestic violence from her husband. She applied to the council as homeless, stating that it was no longer possible for her to live in the marital home.
3. While the homelessness application was being processed, Mrs Begum and her children lived in hostel or hotel accommodation arranged by the council. The application was accepted and she was placed on the council's housing waiting list.
4. Mrs Begum surrendered the joint tenancy of her council property and her husband was evicted. Mrs Begum was allocated a council property. She was aggrieved that the council refused to rehouse her in the marital home following the eviction of her husband.

### Timing

5. It took the council five months to determine Mrs Begum's application.
6. The council argued that there were a number of things which prolonged the information gathering and decision making process. The council referred, for example, to the inherent complexity of cases involving domestic violence, the tenancy issues relating to the joint tenancy, and the need to take legal advice.

7. The Ombudsman accepted that the case was not straightforward. But the delay was excessive. The file showed that there were long periods when no action was taken. There was no evidence to suggest that any of the delay was caused by Mrs Begum. And there was no evidence that delay was necessitated by seeking legal advice, as there was no evidence that legal advice was sought.

### New tenancy

8. Mrs Begum's first language was not English. She said that she could understand some English but not if a conversation became complicated or involved technical information.
9. At a crucial meeting with council officers when she agreed to surrender the joint tenancy, Mrs Begum did not have an interpreter with her. Her understanding of what was said at the meeting was substantially different from the view of the council's officers. She believed that officers promised that she would be rehoused in her former home after her husband's eviction. The council said that this undertaking was not given.
10. The Ombudsman considered that the misunderstanding could have been avoided if an interpreter had been present. The council accepted that an interpreter should have been available and one was present at the subsequent meeting when she signed her new tenancy agreement. The Ombudsman said that the failure to have an interpreter at the meeting when the tenancy was surrendered was maladministration.

### Introductory tenancy

11. As a result of the surrender of her tenancy Mrs Begum became an introductory tenant, with less security of tenure and fewer rights.
12. It was clear that Mrs Begum wanted to be rehoused in her former home. Her solicitor made that specific request within a few days of her surrendering the tenancy.
13. The council's view was that the tenancy had to be allocated strictly in accordance with its allocations policy, with those in greatest need having the best claim. But the Ombudsman said that seemed to ignore the particular pressing circumstances which should have been weighed by the council. Making a move to a new address in another district was greatly disruptive to Mrs Begum's domestic arrangements and to her children's schooling, and it caused her considerable additional expense. Those were important considerations. But the council did not allow itself to take them into account because it considered only its policy and adhered rigidly to it. It fettered its discretion to take a properly informed decision on Mrs Begum's request and that was maladministration.
14. On balance, the Ombudsman believed that, if the council had not fettered its discretion and had carefully weighed Mrs Begum's request, it could not reasonably have refused to allow her back into the marital home. The refusal caused her to wait a further two months in temporary accommodation and involved her in very considerable disruption to her domestic arrangements, including her children's education.
15. The council did not tell Mrs Begum when she surrendered her tenancy that she would lose her rights as a secure tenant. The consequences were not

explained to her either in person or in writing. The failure to give full information about the implications of surrendering the tenancy was maladministration.

16. As an introductory tenant Mrs Begum was subsequently unable to effect a mutual exchange of property.

### Storage of possessions

17. In some circumstances councils have a duty to store the possessions of a homeless person living in temporary accommodation. The Ombudsman considered that those circumstances applied in this case. The council failed to discharge its duty to safeguard Mrs Begum's possessions. Some of her property was lost.

### Remedy

18. The Ombudsman recommended that the council should:
  - pay Mrs Begum £1,500 for the time spent in unsatisfactory accommodation and for the disruption resulting from the council's failure to allow her to reoccupy her former home;
  - reimburse her for the value of the goods she lost;
  - pay her £250 for her time and trouble in pursuing the complaint with the council, her Member of Parliament, and the Ombudsman; and
  - in respect of any future application for a transfer give Mrs Begum the priority on the transfer list to which she would have been entitled had she been allowed to continue as the tenant of her former home.

(Report 99/B/3040)

# D7: Homelessness

## Priority scheme – discrimination

1. Ms Skye complained that there were shortcomings in the way in which a council dealt with her application for rehousing because of her homelessness. She said that, as a result, she and her two children had to move frequently and their health suffered.
6. The Ombudsman said that the council's failure promptly to secure accommodation for Ms Skye was maladministration. She was deprived of reasonably suitable accommodation for at least a year longer than necessary.

## What happened

2. Ms Skye told the council she was being made homeless from her privately rented home. Her landlord had told her he would not be renewing her tenancy agreement because of rent arrears caused by delays in receiving housing benefit payments from the council.
3. The council promptly decided that Ms Skye was homeless and that it owed her a duty to secure her accommodation for a period of at least two years.
4. The council told Ms Skye that there was a shortage of council-owned three and four bedroom accommodation and there would be a delay in offering suitable accommodation. The council asked her to make her own temporary arrangements. For 15 months she and her children stayed for short periods with friends and relatives, moving a number of times.
7. Under the council's housing scheme, Ms Skye's prospects for being rehoused would have been far better if she had been accommodated in a council hostel. That would have given her additional points under the council's scheme which were equivalent to the points given for a wait of 10 months in temporary accommodation in the private sector or with friends. She was not told this when she presented herself as homeless to the council. The Ombudsman thought that the council was less than open with her.
8. The Ombudsman commented that the discriminatory effects of the council's points system were arbitrarily unfair to applicants who might well be in worse housing circumstances than those housed in the council's hostels. The Ombudsman invited the council to review its rehousing points scheme for homeless applicants, and to publicise the operation of the scheme to those who might be affected by it.

## Remedy

### The Ombudsman's view

5. The council had not used bed and breakfast accommodation for some years and private sector leased accommodation was not being used at the time. There was no evidence that the council reviewed Ms Skye's case to ensure that it was doing all it could to assist her.
9. The Ombudsman recommended a payment of £2,000 to Ms Skye as compensation for the unsatisfactory housing conditions she and her family had to endure for at least a year longer than necessary, and for the time and trouble to which she was put in pursuing her complaint with the council and with the Ombudsman.

*(Report 99/B/752)*

## D8: Homelessness

### Temporary accommodation arranged for homeless person – death – failure of council to protect belongings

1. Mrs Golding complained that a council failed to make proper arrangements for the secure storage of her late husband's personal property following his emergency admission to hospital.
2. Mr Golding had applied to the council for assistance as a homeless person. The council agreed that he was homeless and in priority need as a victim of domestic violence. He was placed in temporary bed and breakfast accommodation in March 1999. On 15 May 1999 he was admitted to hospital following a severe asthma attack. He remained in the intensive care unit until his death on 27 May.

#### Booking cancelled

3. The council had no reason to believe that Mr Golding's belongings were at risk of loss initially. But on 21 May the owner of the hotel telephoned the temporary accommodation team to say that Mr Golding had been admitted to hospital. As a result, the booking was cancelled immediately. Mr Golding's belongings were subsequently cleared from the room and not kept in secure storage.
4. The Ombudsman said that there was a failure of communication between the temporary accommodation team and the homeless persons unit. The booking should not have been cancelled without consultation with the homeless persons unit. That fault amounted to maladministration.

#### Protection of belongings

5. On 17 May Mrs Golding had visited the homeless persons unit and recalled that she had been told that the council would contact her son to arrange for

him to collect his father's belongings. The Ombudsman did not think it was unreasonable of the council to say that the belongings could be collected by the son because Mr Golding had alleged domestic violence by his wife and had told the council to treat his son as next of kin.

6. But the council did not write to Mr Golding's son when it was unable to contact him by telephone. Moreover, the homeless persons unit neither contacted the temporary accommodation team about Mr Golding's admission to hospital nor spoke to the hotel to discuss the arrangements for the safekeeping of his belongings. Those omissions amounted to maladministration.

7. The council had a statutory duty to take reasonable steps to prevent the loss of, or damage to, a homeless person's personal property when the council had reason to believe that he or she was unable to protect the property and no other suitable arrangements had been made to protect it. But at the time, the council had no written guidance for its officers about what they should do to protect the belongings of a homeless person in such circumstances.

#### Loss of belongings

8. The Ombudsman had no reason to doubt that items were missing from Mr Golding's belongings when Mrs Golding visited the hotel on 27 May. On the balance of probability it was likely that some of the belongings were missing because they had not been stored securely after the booking of the room was cancelled on 21 May.

9. The monetary value of the missing items was not Mrs Golding's main concern. She was distressed by the loss of some items which were of sentimental value and could not be replaced. She was also deeply distressed by the sight of her husband's belongings strewn across the entrance hall when she visited the hotel on the day of her husband's death. She was put to much time and trouble in pursuing a complaint and in obtaining duplicates of some the missing documents.

#### Outcome

10. The council accepted that it had a duty to protect Mr Golding's belongings and had not done so. The council told the Ombudsman it was willing to make an *ex gratia* payment and to apologise to Mrs Golding and her son. The Ombudsman recommended a payment of £600.
11. The council made the payment and issued written guidelines for its staff about the protection of belongings of homeless people.

(Report 99/A/4394)

---

## D9: Homelessness

### Offer of temporary accommodation – refusal of offer – dispute about whether applicant was warned of consequences of refusal – need for warning to be in writing

1. Mrs Field complained about a council's failure to meet her need for housing.

#### Offers

2. Mrs Field was the victim of domestic violence. The council accepted a statutory duty to her as a homeless person. It made her two offers of temporary accommodation.
3. The council withdrew the first offer because Mrs Field's former husband lived and worked nearby. The council regarded the second offer as suitable and decided that it had discharged its homelessness duty to her when Mrs Field refused the offer.

4. The Ombudsman commented that it was not for him to decide whether the second offer was or was not suitable. His concern was with the way in which the council decided it had discharged its duty to Mrs Field.

#### Advice

5. The housing officer said that she clearly recalled that, when she met Mrs Field, she explained to her the consequences of refusing the second offer.
6. But Mrs Field and her mother, who was with her at the meeting, had an equally clear recollection that this point was not explained. Mrs Field said that, if the consequences had been explained, she would have accepted the offer.

### The need for written advice

7. There was no dispute that Mrs Field was not given general or specific advice in writing about the consequences of refusing a suitable offer. The Ombudsman commented:

*"In my experience, people often misunderstand or do not take in what they are told in conversation. I consider, therefore, that Mrs Field should have been given a written warning."*

8. The council accepted that it was good practice to put such advice in writing (and later adopted that practice itself). But the council argued that a departure from good practice was not necessarily the same as maladministration. The Ombudsman observed:

*"While I can see the merit of that argument as a general proposition, I regard the process leading up to a decision to discharge a statutory duty to a homeless person as being so important that a written explanation is reasonably necessary."*

9. The Ombudsman found the omission of written advice in this case was maladministration.

### Injustice

10. The Ombudsman accepted that it was likely that Mrs Field would have accepted the second offer, however reluctantly, if she had been warned in writing of the consequences of refusing it. She suffered the injustice that the council reduced her points for offers of permanent housing and ceased to consider her for temporary accommodation. As a result, she remained without a home of her own.

### Outcome

11. The Ombudsman recommended that:
  - the council should reconsider Mrs Field for offers of temporary accommodation;
  - her application for permanent housing should be treated as though the second offer had been withdrawn; and
  - the council should pay Mrs Field £500 in recognition of her avoidable upset, time and trouble.

*(Report 98/A/4244)*

# D10: Homelessness

## Time taken to determine application

1. Mr Allen complained that a council failed to house him and his family in suitable accommodation.

## The circumstances

2. Mr and Mrs Allen and their two young children originally lived in private rented accommodation. They were given notice to leave their home and made an application to the council for assistance with housing.
3. While the council was assessing whether it owed them a duty under the law on homelessness, it housed Mr and Mrs Allen on an interim basis in bed and breakfast accommodation.
4. In due course the council decided that it had a duty to assist the family. But it took the council over 300 days to determine the application. That contrasted with government guidance that a determination should be made within 30 days except in cases where exceptional circumstances applied.

## Delay

5. The Ombudsman found that the information necessary to determine the application was available or was obtainable from other sources within the council. The delay in determining the application was not justified.

## Injustice

6. The Ombudsman noted that other families who had been in temporary accommodation for a shorter period than Mr and Mrs Allen had been rehoused. The Ombudsman thought it was probable that, without the delay in making the determination, Mr and Mrs Allen would have been offered more suitable accommodation.

## Outcome

7. The council agreed to pay £750 compensation and make an offer of accommodation as soon as possible. The Ombudsman considered that was a satisfactory outcome. She recommended that the council should review and improve its procedures.

*(Report 99/C/4261)*

# D11: Management

## Heating charges – lack of information

1. Miss Holly was a council tenant. She complained that the council charged an excessive amount for the heating in her flat.

### What happened

2. The council had grouped certain housing schemes and pooled the heating charges. When a surplus arose the council used it to fund improvements to the system.

3. The council lost Miss Holly's original letter of complaint about the charge. After she had spoken to an officer about the heating charge, the council told her that it did not have to provide tenants with details of the calculation of any service charge.

### The Ombudsman's view

4. The Ombudsman commented:

*"The council may make reasonable charges for heat supplied to its tenants. In calculating what is reasonable in individual circumstances it seems to me that the council needs to know the cost of gas supplied and what its administrative on costs are reasonably estimated to be."*

5. The Ombudsman noted that, when Miss Holly queried the amount she was having to pay, the council could give her no indication of how the charge had been arrived at. Its failures to answer her request for information, or to know the true position on its reasonable costs of providing her with heat, were maladministration.

6. The Ombudsman said that, if Miss Holly had been a leaseholder, the basis of making the charge would have been transparent as part of the annual collection of service charges. It seemed to the Ombudsman unfair that Miss Holly should have been in a worse position than someone who had exercised their right to buy.

7. In fact it was clear from the investigation that Miss Holly was being overcharged by something in the region of 50 per cent, at least in the most recent financial year. She was not alone. Accordingly the council was able to accrue considerable surpluses in its tenants' heating account. It used this to invest in modernising its district heating schemes.

8. The Ombudsman agreed with Miss Holly that the cost of investing in the physical fabric of her dwelling, including the district heating scheme, should be met from the rent (for which tenants could claim housing benefit) and not from the charge for heating.

9. The surplus arose directly from the failure to know the proper basis for charging. The Ombudsman said that, once a surplus had accrued in that way, it was incumbent on the council to consider reimbursing the tenants who had paid too much. Its failure on that point was also maladministration.

### Outcome

10. The Ombudsman recommended that the council should reimburse Miss Holly for overpaid charges for the four financial years since she took up the tenancy, and should also pay her £100 for her time and trouble in pursuing the complaint.

11. The council changed its arrangements to bring heating charges more closely into line with energy consumed.

12. The Ombudsman added:

*"I am only able to recommend a remedy for the injustice suffered by Miss Holly. But it is clear that she has done a considerable service to the council's*

*tenants by complaining to the council and to me. I hope that the council will take the opportunity to treat similarly affected tenants in the same way I propose for Miss Holly, at least insofar as reimbursing overpayments for heating costs is concerned."*

*(Report 98/B/4870)*

---

## D12: Management

### Vulnerable tenant – guide dog application – records – personal contact

1. Mrs Cromer complained that a council obstructed her mobility and harmed her independence by not assessing or helping to meet her needs as a blind person. She said there was delay by the council in assisting with rehousing her from her flat on the 11th floor of a tower block.
2. Mrs Cromer also believed that this led to a delay in her guide dog assessment because the Guide Dogs for the Blind Association required that provision should be made for a secure pen before a guide dog was allocated.

#### What happened

3. Mrs Cromer lost her sight following an operation. She considered the possibility of a guide dog and raised with the council the question of a pen for the dog. Initially it was not clear to the council whether Mrs Cromer was more interested in staying in her flat or being relocated.
4. There was a gap of 13 weeks between the time when it became clear that she preferred relocation and the offer of

new accommodation. The Ombudsman accepted on balance that this seemed to be a reasonable timescale.

5. The Ombudsman also accepted that there was no evidence of unreasonable delay by the council in investigating the possibility of a pen for a guide dog, or that the decision of the council that there was no suitable site for a pen near to where Mrs Cromer lived was unreasonable.
6. The Ombudsman was advised by the Guide Dogs for the Blind Association that there would usually be a waiting period of some six to eight months following an application for a dog. Mrs Cromer was allocated a dog after seven months.

#### Faults

7. The Ombudsman was critical of two things. The first was the council's lack of proper records, and in particular records of telephone calls, which made it difficult to establish with certainty what took place and when over the relevant period.

8. The council said there were many telephone conversations with Mrs Cromer and accepted that a considerable number of the calls were not recorded. The Ombudsman appreciated the difficulty of recording large numbers of calls but observed that some must have been more important than others and that there was a failure to maintain adequate records. That was maladministration.
9. The Ombudsman also criticised the lack of personal contact with Mrs Cromer. There was no evidence that any council officer visited her in her home in the crucial three months when she was asking for help. This, too, was maladministration.
10. The Ombudsman considered that the failure to make personal contact was inconsistent with the council's housing customer care statement, and this was especially so in view of Mrs Cromer's sudden onset of blindness and the consequent change in her housing needs.

### Injustice

11. The Ombudsman concluded that the maladministration did not result in an unreasonable delay in resolving Mrs Cromer's housing problem. However, it did cause Mrs Cromer to suffer stress and anxiety at a time when she was very vulnerable.

### Remedy

12. The Ombudsman recommended that:
  - the council should pay Mrs Cromer £300; and
  - the council should review its arrangements for recording on file the main points of telephone and other conversations involving council officers.

*(Report 99/B/1002)*

---

## D13: Nuisance from neighbours

### Noise nuisance – harassment – review of procedures

1. Ms Sanderson complained that a council failed to take effective action in response to her complaints of noise nuisance and violent and threatening behaviour from her former neighbour, Mr Fisher. She also complained that the council failed to transfer her and her young son before Mr Fisher was released from prison.

### What happened

2. Ms Sanderson lived in a council-owned flat beneath Mr Fisher's flat. In January 1998, soon after she moved in, she complained that Mr Fisher was causing noise nuisance by playing loud music late at night. A noise abatement notice was served in May, which Mr Fisher breached on two occasions.

3. In September 1998 Mr Fisher threatened Ms Sanderson with a machete. He was arrested and charged with affray for which he received a year's prison sentence. The police told Ms Sanderson's housing officer that Mr Fisher was a very dangerous man and recommended that Ms Sanderson should not be left in the property if Mr Fisher returned home.
4. Notice of seeking possession was then served on Mr Fisher. But when he wrote from prison to say that he wished to terminate his tenancy, the council did not accept his request. Although the council agreed to rehouse Ms Sanderson on management grounds, it made no attempt to find out when Mr Fisher would be released from prison. In March 1999, when she was eight months pregnant with her second child, Ms Sanderson was shocked to encounter Mr Fisher at the property.
5. The council arranged emergency temporary accommodation for Ms Sanderson. But she returned home after 12 days because the temporary accommodation was too stressful for her and her young son and would have been totally unsuitable for the new baby. A recommendation for very urgent out of turn rehousing was lost within the council and was not agreed until 9 April. Ms Sanderson was rehoused by a housing association in mid-May.
6. Although Ms Sanderson completed the necessary forms for a disturbance payment, her claim was overlooked and was not paid until March 2000.

### Service failures

7. The council accepted that there were a number of service failures which contributed to the stress and anxiety which Ms Sanderson suffered. File records were inadequate. Notice of seeking possession should have been served earlier than it was. Mr Fisher's request to terminate his tenancy was not accepted. And there was no attempt to find out when he would be released from prison.

### Outcome

8. Following the Ombudsman's investigation the council took the following action:
  - it agreed to pay Ms Sanderson £1,000 in recognition of the stress and fear she had suffered and the fact that she had to live for two months in the same property as her attacker;
  - it paid her disturbance claim in full and changed the way such claims were dealt with;
  - it devised policies for tenants who needed to leave their homes as a matter of urgency;
  - it introduced new procedures to deal with tenants' temporary absences from home; and
  - it started a review of its housing services with a view to improving arrangements to deal with cases of nuisance and harassment through the creation of specialist teams.

*(Report 98/A/5275)*

# D14: Nuisance from neighbours

## Owner occupier – vulnerable neighbour – delay by council in transferring neighbour

1. Mrs Cook complained that a council failed to take action to deal with persistent noise nuisance and antisocial behaviour from her neighbour, Mrs Walton, over a period of almost five years. Mrs Cook said she was subjected to repeated incidents of loud music, shouting and screaming, threats, verbal abuse and, on one occasion, a physical assault. She did not have peace and quiet and became anxious about her personal safety and that of her young child. Her health was affected and she suffered stress and anxiety.
2. Mrs Cook owned her property. Her neighbour was a council tenant.
3. Mrs Cook said the council failed to act on her complaint and kept promising that her neighbour would be moved. She felt she was misled by the council. Mrs Walton was moved some five years after the difficulties began.
4. Mrs Cook said the council failed to act on her complaint and kept promising that her neighbour would be moved. She felt she was misled by the council. Mrs Walton was moved some five years after the difficulties began.
5. Mrs Cook said the council failed to act on her complaint and kept promising that her neighbour would be moved. She felt she was misled by the council. Mrs Walton was moved some five years after the difficulties began.
6. However, the nuisance did not cease. So the council took formal action through the service of notice of seeking possession and a noise abatement notice.
7. The Ombudsman accepted that housing, social services and environmental health officers tried to work in a co-ordinated and sensitive manner. The Ombudsman did not think there was a failure to act or that there was inappropriate action on this part of the complaint.

### Antisocial behaviour

4. The incidents were erratic. Periods of relative quiet would be followed by incidents of varying degrees of seriousness. The Ombudsman noted that, in the early stages, Mrs Cook and other neighbours tried to support Mrs Walton, who was unwell and whose personal circumstances were difficult. Mrs Walton suffered from episodic mental illness. In the early stages the council was guided by indications from Mrs Cook and other residents that they did not wish matters to be dealt with in a formal manner.
5. Support for Mrs Walton amongst her neighbours ebbed away as the frequency and seriousness of the

incidents increased. The council then considered taking more formal action. Because of Mrs Walton's poor health, and the fact that she had two young children, the council only considered eviction as a last resort. The council made efforts to encourage and enable Mrs Walton to live responsibly and as a good neighbour. The Ombudsman recognised that this approach was a reasonable course of action for the council to take in the circumstances.

### Transfer

8. However, the Ombudsman considered that there was an unjustifiable delay in effecting Mrs Walton's transfer to alternative accommodation. Fourteen months elapsed between the time when the district community psychiatric nurse formally recommended transfer and when an offer of alternative accommodation was made.
9. That included some eight months during which Mrs Walton's transfer was not progressed with any degree of urgency. That failure was maladministration. It was only after 11 months that Mrs Walton was placed

on the council's active transfer list. A further three months went by before she was offered a property.

10. The council confirmed that, from the time when Mrs Walton was accepted on the transfer list to the date of her transfer, a number of properties became available which would have been suitable for her. The Ombudsman concluded that there was a lost opportunity to move her some eight months sooner than was actually the case; and that some of the serious incidents of antisocial behaviour which affected Mrs Cook could have been avoided.

### Remedy

11. The Ombudsman recommended that the council should pay Mrs Cook £1,000 in recognition of the avoidable nuisance she suffered and her time and trouble in pursuing her complaint.
12. The Ombudsman also recommended that the council should review its arrangements for dealing with antisocial behaviour by its tenants.

*(Report 99/B/252)*

---

## D15: Nuisance from neighbours

### Failure to investigate properly

1. Mr and Mrs A complained that a council failed to deal adequately with their complaints about unacceptable behaviour by a council tenant living next door to them.
4. Mr A complained to the Ombudsman that, even when he provided the council with evidence to support his complaints, the council failed to investigate the evidence properly or at all.

### What happened

2. Mr and Mrs A complained that over a 12 year period they and their family suffered harassment, abuse, threats of violence and unacceptable behaviour from their neighbour, Mrs B. Mr A appealed to the council for help.
3. Mrs B denied the allegations. The council took the view that there was no independent evidence supporting Mr A's complaints. It concluded on a number of occasions that it was not in a position to take legal action against Mrs B for breach of her tenancy agreement.

### The Ombudsman's view

5. The Ombudsman found that the council had indeed failed to take proper account of the evidence Mr A had presented.
6. Mr A's solicitor stated that he had been attacked by Mrs B but the council did not interview the solicitor. Neither did the council contact the police who had been called to the incident.
7. While Mr and Mrs A were away on holiday on one occasion, their front door was daubed with red paint. Neighbours called the police who

investigated the matter. Mr A told the council that red paint was also found on Mrs B's gatepost and he thought this was evidence that she was involved. There was no evidence that the council investigated the incident.

8. Mr A obtained a graphologist's report about various letters which had been received either by him or other neighbours which appeared to have been sent by Mrs B. Some of the letters were abusive or offensive. One of the letters was signed by Mrs B, while others had allegedly been signed by other neighbours or by one of Mr and Mrs A's sons. Some of the letters were unsigned. The conclusion of the graphologist was that all the letters had been written by the same person. It was Mr A's contention that the letters and the report supported his complaints about Mrs B's bizarre and threatening behaviour. There was no evidence that the council had considered the contents of the report.
9. On several occasions the council stated that third party evidence was required. But when third party evidence was provided the council had been reluctant to examine it. The council had not interviewed other neighbours who sent in complaints about Mrs B.
10. Police took action about an incident when Mrs B was seen vandalising a neighbour's car. The court case had to be withdrawn when the witness declined to testify. But the council did not investigate other ways of using the witness statement and did not interview the witness or his parents.
11. The Ombudsman concluded that the council's failure, over several years, to carry out proper investigation of complaints by Mr and Mrs A and others amounted to maladministration.

## Injustice

12. The Ombudsman could not conclude that, even if the council had made more extensive enquiries and interviewed witnesses, there would have been sufficient evidence to support a successful application to the court. So there was no guarantee that an order for possession would have been made.
13. But various opportunities to consider commencing proceedings had been lost. Mr and Mrs A suffered continuing uncertainty about their housing situation over a number of years and could reasonably believe that the council did not take their complaints seriously. They were put to much time and trouble in pursuing their complaints.

## Outcome

14. The Ombudsman recommended that the council should:
  - make Mr A a payment of £2,000 for his time and trouble in pursuing the complaint and the distress suffered by him and his family;
  - complete its investigations into more recent complaints by Mr A, provide him with a full report of its findings, and investigate fully any future allegations against Mrs B and take action as appropriate; and
  - review its procedures to ensure that allegations of antisocial behaviour were looked into thoroughly, properly and fairly.

*(Report 99/B/2476)*

# D16: Private housing notices

## Dangerous structures – service of notice – searches

1. The complainants owned houses in a small terrace. Mr A and Ms B owned one of the houses and Ms C another. They complained about the dangerous structures notices the council served on them. The notices were about the boundary wall at the end of their back gardens.

### The notice

2. In 1999 the council served a dangerous structures notice on Mr A and Ms B and another on Ms C, requiring them to repair the boundary wall. They complained to the Ombudsman that the council had failed to ensure compliance with a previous dangerous structures notice; had led Mr A and Ms B to believe that the previous notice had been discharged before they bought their home in 1996; and led Ms C to believe that no previous notice existed when she bought her home in 1995.
3. The Ombudsman established that the council had served dangerous structures notices in 1990 on previous owners. Solicitors acting for Mr A and Ms B made enquiries of the council prior to their purchase. The local land charges search revealed the existence of the 1990 notice. But the council said that the notice had been removed and all conditions had been complied with. Reassured by that response, Mr A and Ms B bought the house.
4. But Ms C had not commissioned her own local land charges search because she had relied upon an earlier search provided by her vendor.

### Action by complainants

5. The complainants protested to the council about the notice and queried what had happened to the previous one. They did accept that the wall was dangerous. Mr A and Ms B carried out a scheme to buttress the section of the wall closest to their home. Ms C was willing to part fund a similar solution of the section of the wall nearest to her home but was unable to agree the terms of the scheme with the owner of the house to the rear of her garden.

### Outcome

6. As a result of the Ombudsman's investigation, the council agreed to compensate Mr A and Ms B by meeting the cost of the complainants' structural engineer's report, their share of the work to the wall, and the cost of the removal of the dangerous structures notice charge on the property, and paid them £250 for their time and trouble in pursuing the complaint.
7. In the case of Ms C the council did not consider it was at fault but, as a gesture of goodwill, agreed to remit the charges it was entitled to make in relation to the dangerous structures notice (some £550), and to seek an agreed solution to the problem of the wall with Ms C's neighbour.
8. The Ombudsman considered these measures provided a satisfactory settlement of the complaints.

*(Local settlement 99/A/1053 & 1591)*

# D17: Right to buy

## Amendment of scheme – enquirers not notified – significant change in discount entitlement

1. Mr and Mrs Clark complained that a council failed to make them aware of changes to the provisions of the right to buy legislation which affected their entitlement to discount. They said that if the council had told them of the changes they could have submitted their right to buy application earlier. The cost of buying their council house would have been £20,000 less than it was.

### What happened

2. In December 1998 the Government introduced changes to the discount arrangements as envisaged in a consultation document of July 1998. In this council's area the maximum discount that could be given was reduced from £50,000 to £30,000.
3. The council received the Government's letter on 10 December. The letter explained the changes and suggested that tenants should be made aware of them. It said that it was expected that the new arrangements would affect anyone applying to buy on or after 11 February 1999.
4. Mr and Mrs Clark decided in November 1998 that they could consider buying their house. They obtained right to buy forms from the council in January 1999. The forms had not been changed in the light of the new discount arrangements and there was no amendment slip attached.
5. Mr and Mrs Clark submitted their right to buy application on 15 April. Because of the changes to the maximum

discount provisions, they found it would cost them £20,000 more to buy their house than it would have done if they had applied before 11 February.

### The Ombudsman's view

6. The Ombudsman said there had been ample opportunity to amend information given to tenants who were making enquiries about right to buy matters. The documentation provided by the council should have contained information which alerted them to the impending changes in the law and to the potential importance of submitting their right to buy application before 11 February.
7. The Ombudsman believed that, if Mr and Mrs Clark had been given appropriate information, they would have submitted their application before 11 February. The application would not have committed them to purchase and they would have had 52 weeks to sort out the detailed arrangements and decide whether to proceed.

### Outcome

8. The Ombudsman recommended that if Mr and Mrs Clark did proceed with their right to buy application, the council should, on an *ex gratia* basis, in effect allow them the discount that would have been available if the application had been made before 11 February.

(Report 99/B/4403)

# D18: Tenancy

## Vulnerable tenant – eviction – failure of council to follow its own procedures

1. Mr Stafford complained that a council failed to follow its procedures for notifying its social services department before evicting him from his flat.
5. The council's procedures required that, where the council obtained a possession order against a tenant who was in priority need, the housing officer should refer the case to the housing and social services liaison meeting. This was not done in Mr Stafford's case.

### Tenancy history

2. Mr Stafford had a chronic depressive illness of a long term nature and had a history of attempting suicide. He applied to the council for housing as a homeless person. The council decided he was vulnerable on mental health grounds and arranged for tenancy of a council-owned flat in 1993.
3. Mr Stafford's rent account fell into arrears. In January 1996 the council served a notice of seeking possession. In March the council told Mr Stafford it would be applying for a possession order. In July the council obtained the order and in September Mr Stafford was evicted. Because he was unwell, Mr Stafford could not cope with the idea of living in bed and breakfast accommodation offered by the council, and so he went to live with his parents in another area.
6. The procedures required the housing officer, before the eviction could take place, to prepare a report, including a full history of the case, and send the report and file to the housing manager and then the area housing manager for decision. The council could not produce a copy of such a report. The Ombudsman considered that either a report was not produced or one was written and had been lost.
7. The housing officer's memorandum to the legal department requesting that application be made to the court for execution of a bailiff's warrant was either not copied to the service manager for mental health as intended or was sent but lost. The memorandum said that the housing officer would contact the social services duty officer to arrange a visit to Mr Stafford but there was no record that the duty officer was contacted and no visit was made.

### Council procedures

4. Under the council's procedures, the housing department was required to send to social services divisions, including the mental health division, a copy of the memorandum instructing the legal department to apply for a possession order of the accommodation of a tenant in priority need. But the mental health division were not informed in this case. It was not clear whether this was because the memorandum was not copied to that division or because of a failure in the council's distribution arrangements.
8. The Ombudsman concluded that the council repeatedly failed to treat Mr Stafford in accordance with its own procedures.

### Injustice

9. The Ombudsman considered that, if the council had acted without fault, it was probable that Mr Stafford would not have been evicted. It was likely that the council's social workers would have been able to offer Mr Stafford

help in managing his money. That might have enabled him to pay off his arrears and avoid incurring further arrears. In that event, Mr Stafford would have been able to remain in his flat, which he liked and in which he was settled. It was clear that he was vulnerable and at times very unwell. It was all the more difficult, therefore, for him to cope with the prolonged distress and worry caused by the council's actions.

#### Outcome

10. The Ombudsman recommended that the council should pay Mr Stafford £1,250 in recognition of the injustice caused by its maladministration.
11. The Ombudsman welcomed the changes the council had now made to its procedures and, in particular, the new requirement that housing officers had to receive a reply from social services before proceeding with an eviction.

*(Report 98/A/280)*

---

## D19: Transfers

### Allocation policy – need for clarity – recording reasons

1. Mrs Pearson complained that a council unreasonably delayed in offering her a transfer of tenancy.
2. Mrs Pearson and her family lived in a council house in one neighbourhood. They applied for a move to a different neighbourhood, Redwood, to be nearer Mrs Pearson's mother who had a disability and was in poor health.
3. Mrs Pearson complained that it was five years before the family was offered a tenancy in Redwood.

#### Allocation policy

4. The council's arrangements were that housing transfer applicants were placed in one of four groups (decant, overcrowding and so on). For any vacancy that arose, the housing

manager had to draw up a shortlist of applicants from each transfer group who needed or requested a property of the relevant type in the particular location. The policy was that the manager would offer the tenancy to the applicant considered to be in the most need.

5. As part of the investigation, the Ombudsman examined information concerning eight allocations. In seven cases the information suggested that the properties were allocated to households who could well have been in greater housing need, or which had earlier dates of application, than the Pearsons. But the eighth property did not appear to go to the household in greatest need. There was, however, at least one other household on the shortlist which seemed more likely than the Pearsons to have been offered it.

So it was not certain that the Pearsons would have been considered for those properties.

6. The Ombudsman expressed concern about some aspects of the allocation policy. She said:

*"I would not wish in any way to minimise the difficulties faced by the council in seeking to allocate houses in a popular area like Redwood. It is seeking to meet the housing needs of numerous households whose circumstances are often not easily compared and weighed up. Whatever system is used to make allocations, those who have not yet been rehoused are bound to feel disappointed when they see allocations being made to families other than their own. In a close knit community such as Redwood, the friends and relatives of disappointed applicants may well pass on to them details, whether accurate or otherwise,*

*of the households which have secured properties in the area. Allegations of unfair treatment are probably inevitable.*

*Every housing authority faces difficulties of this kind. For that reason, and for reasons of good housing management and good administrative practice, it is vital that councils have in place clear policies for determining priorities between applicants. Those priorities should be as transparent as possible, and as objective and rule based as is feasible. The reasons for any decisions should be made clear and should be properly recorded. In principle an outsider should be able to judge from the policy and from the applications made which applicants should be allocated which tenancies. The primary concern I have is the council's failure to record clear and specific reasons for the decisions taken."*

*(Report 98/C/979)*

---

## D20: Transfers

### Demolition – home loss payment – disturbance allowance – offsetting

1. Mr Elm lived in a council-owned flat. He had to move because the council intended to demolish the building. Mr Elm complained about the way the council dealt with his home move.
3. The Ombudsman said that it did not seem to him that it was possible to offer a standard package to cover each tenant's reasonable removal costs, because the costs would vary from tenant to tenant. The council should have made it clear to all tenants at the outset that they could claim other unavoidable removal costs in addition to the costs the council would meet in all cases. The council's failure to do that was maladministration.

### Disturbance payment

2. A disturbance payment to meet the costs of moving was defined in legislation as being equal to the reasonable expenses of the person entitled to the payment. The council initially offered Mr Elm a standard package. The council did not tell him

4. The Ombudsman observed that the disturbance payment was meant to cover reasonable expenses and that what was reasonable in the circumstances would be a matter of judgement. The council, he said, should have clear guidance for its staff and tenants about the sort of costs that might well be met by a disturbance payment. It was unsatisfactory, for example, that Mr Elm was told there would be no assistance with refitting his carpets but, after representations from his solicitor, he was told there would. The failure to have clear guidance was also maladministration.

#### Home loss payment

5. Mr Elm was paying £7.80 a week to clear a housing benefit overpayment of some £161. He was told the overpayment might increase. A month before Mr Elm moved, a housing benefit officer was told that Mr Elm was to receive a home loss payment for £1,500. The officer then assessed Mr Elm's overpayment for benefit for an earlier period at £1,523. Mr Elm was notified of the overpayment the day before he moved to new accommodation. Instead of receiving a cheque for the home loss payment, he found it had been more than swallowed up by the housing benefit overpayment of which he had just been notified.

6. The Ombudsman said that was most unfair. The home loss payment was specifically designed to assist tenants with the high capital costs of moving home and the almost inevitable expenditure on furniture and fittings which it would entail. It should only be denied a tenant for a very good reason. Mr Elm had already discharged a

housing benefit overpayment through weekly deductions. The Ombudsman saw no reason why a similar arrangement should not have been made for the new debt, about which in any event Mr Elm was seeking a review by the housing benefit review board.

7. That possibility was not considered by the council. Neither was the specific purpose of the home loss payment adequately taken into account. Mr Elm was not told of the council's intentions or invited to make representations.

8. The Ombudsman concluded that to deduct the whole of the overpayment from the home loss payment in these circumstances was maladministration. It led to the injustice of Mr Elm being deprived of financial assistance at the time he was setting up his new home.

#### Remedy

9. The Ombudsman recommended that the council should:

- credit Mr Elm's rent account with £1,500 and enable him to draw this in cash;
- reinstate the debt consequent upon housing benefit overpayment and enable Mr Elm to make an arrangement to repay in instalments;
- pay Mr Elm £350 for his time and trouble and any loss incurred by not having his home loss payment available at the right time; and
- review its procedures.

*(Report 99/B/3192 et al)*

# D21: Transfers

## Applicant with severe disability – social services involvement – uncertainty about which council was responsible

1. Mr Henry complained that a council failed to address his housing needs properly and offer him suitable accommodation; and that its social services department did not deal properly with his application for help.

### What happened

2. Mr Henry had a severe physical disability. He lived in a nursing home in the council's area. That placement had been arranged by another council, Council X. The cost was met by a health authority.
3. In January 1996 Mr Henry was assessed by the social services department. The council concluded that he would be capable of living in the community with adequate help, but later that year the social services department closed the file because it concluded that Council X was responsible for Mr Henry's community care.
4. In September 1996 Mr Henry applied to the council for housing. The council registered his application but did not, as it should have done, obtain more information about the nature and extent of his disability.
5. Mr Henry made a second application for housing in April 1997. This was not referred for assessment by an occupational therapist as required by the council's procedure. It was not until after Mr Henry made his complaint to the Ombudsman that, in July 1998, Mr Henry was referred to an occupational therapist.
6. In February 1998 Mr Henry was made an offer of unsuitable accommodation. When he explained why it was unsuitable, the council accepted his explanation but took no further action

despite letters which an advice worker sent between April and June 1998 and to which the council did not reply.

7. In July 1998 the council agreed, in view of Mr Henry's predicament, to accept responsibility for his community care although it considered there were arguments which suggested that responsibility might lie elsewhere.

### The Ombudsman's view

8. The Ombudsman said there were serious faults in the way the council dealt with Mr Henry's housing application over a period of almost two years before July 1998.
9. The Ombudsman was also critical of the council for failing to resolve which authority was responsible for Mr Henry's community care needs when it became aware of his situation in 1996. By law, disputes between social services authorities about where a person was 'ordinarily resident' had to be referred to the relevant Secretary of State for determination. The council was at fault for not seeking to resolve the question when it was first approached in 1996. In May 1998 Mr Henry again asked for help from the social services department. But again the case was closed without proper enquiries.
10. The Ombudsman said that, if the council considered that Council X was responsible for the provision of services for Mr Henry, the council should have taken this up with Council X and, if necessary, referred the dispute to the Secretary of State for determination.
11. The Ombudsman commended the council for a pragmatic and compassionate approach in accepting

responsibility for Mr Henry's community care needs after his complaint to the Ombudsman. But that did not excuse the failure to establish properly which authority had responsibility when he first asked for help in 1996.

### Outcome

12. The Ombudsman considered that, if the council had acted properly, Mr Henry would have been offered accommodation at an earlier stage and that any dispute about responsibility for community care would have been resolved and care provided.

Accordingly, the Ombudsman upheld the complaint that Mr Henry had to live in the nursing home for longer than he need have done.

13. The Ombudsman recommended that:

- the council should pay Mr Henry £1,500; and
- the council should keep Mr Henry regularly informed of his priority for housing and ensure that a care package was available for him when suitable housing became available.

*(Report 98/A/1322 & 2859)*

---

## D22: Transfers

### Harassment – 'like for like' policy – rent arrears – failure to give adequate consideration

1. Miss Lee complained that a council delayed in moving her to accommodation near her father's home where she would feel safe from harassment by the rest of the family.

council said that the absence of a police report was the reason why the panel decided not to give Miss Lee priority for a transfer.

### What happened

2. Miss Lee lived in a council maisonette. She was harassed by members of her family who lived in the council's area.

5. Miss Lee appealed against the panel's decision. Her appeal was not dealt with because an officer did not provide further information requested by the panel.

3. In September 1997 she was physically assaulted by her paternal grandmother and aunts. This was a serious assault. She asked the council for a transfer.

6. In April 1998 Miss Lee's two young children were abducted by members of her family. The children were returned after the police intervened. Miss Lee left her home to live with her father, taking her children with her.

4. Miss Lee's request was put to the case review panel. But the police were not asked for a report on the assault. The

7. As a result, the council awarded Miss Lee very high priority for a transfer to 'like for like' accommodation. She

could be considered for a flat or maisonette, but not for a house. Miss Lee believed that she needed to live near her father for safety, and so she narrowly restricted the areas in which she would consider offers of rehousing.

8. In October 1998 Miss Lee appealed to the case review panel because there were few flats or maisonettes in her area of choice and so she wanted to be considered for houses too. The panel rejected her request and refused to allow the matter to be put to a members' appeal panel. In December 1998 the council let a house, in an area suitable for Miss Lee, to an applicant with fewer points than her. The council did not consider offering Miss Lee the house, or waiving its policy that transfers should not be given to people with rent arrears. Miss Lee had arrears of £114 at the time.
9. In August 1999 Miss Lee moved to a housing association maisonette, to which she had been nominated by the council.

### Faults

10. The Ombudsman found four faults in the council's handling of Miss Lee's transfer application. The first was the failure to provide the panel in September 1997 with a police report about the assault. The second was the failure to deal with the appeal in December 1997.
11. The third fault was that the council did not properly consider Miss Lee's request to be considered for offers of houses. There was no evidence that the council considered all the relevant questions such as:
  - the vacancy rates for three bedroom flats and maisonettes on the one hand, and for three bedroom houses on the other, in the relevant area;

- the length of time Miss Lee had been waiting since she was given priority for urgent rehousing;
  - the length of time she was likely to wait if she was considered only for flats and maisonettes;
  - the length of time she was likely to wait if she could be considered for houses also;
  - that Miss Lee could not live with her children in her own home; and
  - the effect of the delay on her daughter's education.
12. The fourth fault was that the council did not give proper consideration to Miss Lee's position when it let a house to an applicant with fewer points. Miss Lee had rent arrears at the time but there was no evidence that the council considered exercising its discretion to waive its rent arrears policy in the light of Miss Lee's particular circumstances.

### Injustice

13. The Ombudsman concluded that:
  - the council's failure to consider the appeals correctly caused an injustice; and
  - the repeated maladministration in the council's consideration of Miss Lee's application for a transfer made it likely that her transfer was avoidably delayed but it was impossible to judge by how much. She and her children probably lived in overcrowded conditions at her father's home for longer than necessary.

### Remedy

14. The Ombudsman recommended that the council should pay Miss Lee £500.

*(Report 98/A/2804)*

## D23: Transfers

### Demolition of flats – relocation – special needs of three households

1. Four tenants of a council complained that the council delayed unreasonably in offering them suitable alternative accommodation.

#### Relocation

2. The complainants lived as three separate households in a block of flats. The council decided to demolish the block and so the residents had to be rehoused.
3. Miss Smith and her three children lived in one flat. Her mother, Mrs Smith, lived in another. Miss Smith's boyfriend, Mr Lee, lived with his mother, Mrs Chang, in a third flat.
4. Both Mrs Smith and Mrs Chang had serious health problems. They relied on their families for support and assistance. The three households asked to be rehoused close to each other. They wanted to be rehoused in new properties being built in the area by a housing association.
5. Mr Lee's brother alleged that the complainants were treated less favourably than other residents because Mr Lee and Mrs Chang were of Chinese ethnic origin, and because Mrs Smith and Mrs Chang were elderly and had disabilities.

#### The council's obligations

6. The council had a duty to provide alternative accommodation for the complainants and all the other affected households. The Ombudsman observed that the council was under no duty to provide any of the displaced households with better accommodation than they previously enjoyed. Nor did

the council have any duty to accede to a tenant's request to be nominated to the housing association. But it was incumbent on the council to meet the particular needs of each household as far as it reasonably and practicably could; and to deal with all of the displaced households fairly and without discrimination.

7. The Ombudsman found that council officers were quite clear, after visiting the complainants' homes, that the three households wished to be rehoused close together and that there were strong medical and social reasons for this.
8. It was not unreasonable of the council to say that there were bound to be real logistical difficulties in achieving a package of accommodation which could meet the specific needs of the complainants' households. That was undoubtedly true. But, the Ombudsman said, that was all the more reason for the council to have taken a strategic approach to the problem as soon as it became aware of the unique circumstances of the complainants.
9. The Ombudsman was concerned that, following the decision in February 1998 to demolish the block, there was no convincing evidence that any thought was given by council officers before May 1998 about how they might be able to rehouse the complainants close enough together to meet their unique needs. The council failed to acknowledge at a sufficiently early stage that the complainants' applications were always going to present difficulties and that, in order to meet their needs, a concerted and co-ordinated effort would be required. That failure was maladministration.

### Injustice

10. The council missed an opportunity to approach the housing association in good time. Such an approach might have resulted in suitable offers being made to the complainants. But if not, a more proactive and co-ordinated approach by the council might have enabled it to identify suitable properties within its own housing stock. In the event, suitable offers were made and taken up in September 1998.
11. The Ombudsman concluded that the complainants experienced unnecessary uncertainty and distress. They were left with an enduring sense of lost opportunity and great sadness that the last months of the life of Mrs Smith, who died a few days after

they were rehoused, were blighted by uncertainty about whether she would be rehoused satisfactorily.

12. The Ombudsman found no evidence that the council's maladministration was due to racial discrimination or discrimination against older women.

### Outcome

13. The Ombudsman recommended that the council should pay £350 each to Miss Smith, Mr Lee and Mrs Chang; and should make available a further £350 to provide a lasting memorial to Mrs Smith.

*(Report 98/C/3459 et al)*

---

## D24: Transfers

### Racial harassment – lost opportunity for consideration of transfer

1. Ms Rover complained that a council delayed in offering her a transfer to different accommodation.

an immediate transfer to a property of her choice in an area of her choice.

### Transfer request

2. Ms Rover was a tenant of the council. She occupied a ground floor flat.
3. In February 1997 she made an application for a transfer because of the noise coming from the flat above her. She told the council that the noise was having an adverse effect on her mental health.
4. Ms Rover was awarded additional points on the grounds of medical need. But the increase in her points under the council's scheme was not sufficient for

5. The situation changed in March 1999. Ms Rover reported that, as well as the problems with noise from upstairs, her partner had moved into the flat and he was being subjected to racial abuse.
6. The council investigated the allegations and officers made a report to the social need panel. The panel awarded Ms Rover an additional 15 points, though this was still insufficient to take her to the top of the waiting list for a property of her choice in her chosen areas.
7. The Ombudsman was not critical of the actions of the council up to this point. He considered that the council

dealt adequately with the initial reports of racial harassment and acted in accordance with its policies.

### Escalation

8. But in June 1999 things got worse. There was an incident between Ms Rover's partner, Mr Ford, and the boyfriend of the upstairs tenant. Mr Ford threatened the boyfriend with a kitchen knife. Mr Ford said that he had been provoked. The police were involved and told the council that one of the tenants should be moved as a matter of urgency.
9. The Ombudsman considered that the council should have taken more urgent action than it did to investigate the circumstances and have the matter considered again by the social need panel. There was a delay for two reasons. The first was that some officers were on leave. The Ombudsman said that the absence of officers on holiday highlighted the need for adequate cover.
10. The second reason for delay was confusion about which section should refer the matter back to the social need panel. The Ombudsman said that the failure to act upon the new information in June 1999 was maladministration.
11. There was a further incident in early August. The council sought to obtain confirmation from the police of its severity. The matter was not reported to the social need panel until mid-September. There were difficulties in contacting the police officers involved and the Ombudsman said that delay could have been avoided by taking a more flexible approach to the type of information which was needed.
12. Ms Rover had given the council further information about her medical condition, including her proposed admission to hospital for an operation, and a report from a psychiatrist confirming a deterioration in her physical and mental health and requesting an urgent move. The Ombudsman found that, particularly in the light of the medical information which the council received, the delay in referring the situation to the social need panel was maladministration.
13. The Ombudsman recognised the difficulties the council faced in finding accommodation which would satisfy Ms Rover's requirements. She was asking for a bungalow and this affected her chance of a move because of the shortage of bungalows and the infrequency with which they became available.
14. However, Ms Rover might have been offered a move earlier if the social need panel had considered developments sooner. Bungalows were allocated in two of her areas of choice in July and September 1999.
15. Ms Rover lost the opportunity of being considered for a move earlier in the summer. Although it was not certain, it was possible that she might have been moved sooner than she was. She was in fact offered a bungalow in November 1999.

### Remedy

16. The Ombudsman recommended that the council should pay Ms Rover £200 for the injustice caused by the delay in referring her case back to the social need panel, and £100 for her time and trouble in pursuing the complaint.

*(Report 99/B/2375)*