



Section F

Housing

F1 – F2	Allocations	40
F3 – F4	Council housing management	44
F5	Council housing repairs	46
F6 – F7	Nuisance from neighbours	47
F8	Private housing notices	50
F9 – F10	Right to buy	52
F11	Sheltered housing	55
F12 – F14	Transfers	56

F1: Allocations

Tenant with physical disability – adaptations considered – transfer advised – failure of liaison between departments – delay

Mr Clement complained that a council failed to provide him with appropriate or alternative accommodation within a reasonable time following an assessment of his needs.

What happened

1. Mr Clement was an elderly man living in a council-owned bedsit bungalow. He had significant physical disabilities but was mobile with the use of a wheelchair and walking sticks. He had a carer who lived in the same block of bungalows.
 2. The council carried out an assessment and found that he was having difficulty negotiating his wheelchair in and out of the property. The occupational therapy team asked the housing department for works of adaptation to be carried out. A feasibility study was carried out for provision of a ramped access, but the council concluded that this was not economically viable. It explained to Mr Clement that a transfer to a more suitable property would be the best option for him.
 3. Mr Clement applied for a housing transfer, stating that he wished to be rehoused with his carer and her dog. It was three years before the transfer was effected.
 4. The Ombudsman accepted that part of the delay was because Mr Clement considered the possibility of moving to another area of the country to be close to a friend. But the greater part of the delay was the responsibility of the council.
- it failed to note on its computer system that there had been an assessment which indicated the need for adaptations;
 - the council did not decide which department had responsibility for ensuring that its duties towards Mr Clement were discharged, and so staff were unsure where that responsibility lay;
 - no monitoring of Mr Clement's situation was carried out;
 - no review of his case was undertaken by any department; and
 - when Mr Clement applied to the housing department for a transfer, that department was not alerted to the outcome of the assessment.
6. Also, the council failed to explain to Mr Clement what his rights were in the light of the occupational therapy assessment, and also failed to explain that there were few suitable properties available. Mr Clement did not therefore have the opportunity to make an informed choice about whether to apply for a transfer or to insist upon a ramped access at his existing accommodation.
 7. When he applied for a transfer, the council did not consider whether that would be possible within a reasonable time, given his need to transfer to a property in which pets were allowed and given the scarcity of suitable properties. Consequently, alternative ways of meeting his assessed needs were not considered.

Faults

5. The Ombudsman found a number of faults by the council:

Outcome

8. Mr Clement was able to move to a property larger than he would normally

have been eligible for, to enable him to be rehoused with his carer and her dog in an area of his choice. The Ombudsman commended the council on this flexible approach and recommended that, to remedy the remaining injustice caused by the delay, the council should pay Mr Clement £600.

9. The Ombudsman also noted that the council was trying to improve its performance and had set up a new special needs housing team comprising occupational therapists, surveyors and a housing officer. This single team would deal with issues of adaptation and rehousing across both the public and private sectors. New eligibility criteria had been put in place, detailing when

rehousing would be considered and setting a target of an offer of suitable alternative accommodation within 12 months. The team would also review the waiting list for adaptations and conduct annual reviews.

10. The Ombudsman was pleased to note these developments and expressed the hope that the changes would ensure that the failures that arose in Mr Clement's case did not happen again.

(Report 99/C/4848)

F2: Allocations

Rent arrears – fettering discretion – criminal record – unfair procedures

Mr Deaver complained about the way in which a council dealt with his application to join the council's housing waiting list.

application of what seems to be intended to be a flexible policy."

Mr Deaver's daughter also complained that the council unreasonably refused to accept her application to be put on to the housing register.

Appeal

Application for housing

1. Mr Deaver was in prison when he applied for rehousing after his release. The council told him he would not be allocated a property because he had rent arrears from an earlier tenancy.
2. Mr Deaver appealed against that decision. The appeal was unsuccessful.

4. At the appeal stage, the council introduced a new element into its decision – that of Mr Deaver's criminal record. As he had first applied for housing from prison, the council could have asked him for information about his record at an early stage. It did not do so but chose instead to seek information from the police. It did this in circumstances which were not covered by the 'Safer Estates Agreement' between the police and a number of housing authorities. That agreement was designed to exchange information about existing tenants who were thought to be responsible for causing trouble or disturbances on estates with a view to councils taking legal action against those individuals.

Rent arrears

3. The Ombudsman had no reason to doubt that arrears did accrue in connection with a previous tenancy. However, as the council had done nothing to pursue those arrears in the subsequent seven years, when for much of the time Mr Deaver had been its tenant, the Ombudsman considered it unreasonable to decline the application for that reason alone. That did not mean that the council should not have pursued the debt, but that it should have done this as a separate issue. The Ombudsman commented:

"The council's own policy is that arrears become an issue where there is a likelihood that a tenant would 'persistently' fail to pay rent. Arrears of a few weeks from seven years ago does not seem to me to fall into that category. I regard this first decision as resulting from maladministration – that is, the inflexible

5. The Ombudsman found that the way in which information was sought from the police was maladministration.
6. The information which the council obtained was not put to Mr Deaver in such a way as to allow him to challenge it. Instead, it formed the basis upon which his appeal was rejected but without him being able to present his case. The officer conducting the review was specifically told that Mr Deaver had made threats against his former partner. The Ombudsman recognised that the threat of domestic violence could well be something which should be taken into account by councils, but it was not an issue raised with Mr Deaver and not something he was able to challenge. He would in fact have wished to dispute the point. The Ombudsman commented:

“It seems clear to me that the intention of both the Housing Act 1996 and the council’s own housing policy is to prevent people who are likely to engage in antisocial behaviour from being allocated housing in areas where they will cause trouble. It is not intended to prevent convicted criminals per se from getting accommodation. In my view the council interpreted the legislation and its own policy in a way which stretched its intention to breaking point. This is maladministration.”

His daughter’s application

7. The Ombudsman also found that the application from Mr Deaver’s daughter was not considered properly. The council did not look at her own housing needs, but immediately saw the application merely as a way of circumventing the refusal of her father’s application. When the council acknowledged that its decision in respect of this was wrong, it said that the refusal would be lifted immediately. But it was eight weeks before the council formally conveyed that decision to Miss Deaver.

8. The Ombudsman found that both the original refusal and the delay in formally lifting it were the consequences of maladministration.

Injustice

9. The Ombudsman considered that, without the maladministration, Mr Deaver would have been accepted onto the housing register considerably earlier than was the case. He would not therefore have been homeless for as long as he was.

Remedy

10. The Ombudsman recommended that the council should pay Mr Deaver £1,000 and Miss Deaver £150.

(Report 00/C/6074 et al)

F3: Council housing management

Premises broken into by council workers – damage – handling of complaint

Mr and Mrs Ash complained that council workers broke into their back yard and caused damage.

What happened

1. Mr and Mrs Ash were owner occupiers of a terraced house with a back yard. Mr Ash was registered as being disabled. He suffered from arthritis and angina; had suffered two heart attacks and a few strokes; and had poor eyesight in one eye.
2. One morning Mr and Mrs Ash went out. When they returned, Mr Ash looked out of the back window and saw some men in the back yard. He first thought they were burglars. Mr and Mrs Ash then went into the yard to challenge them.
3. They discovered that the men were employed by the council to carry out brickwork cleaning. They had erected scaffolding in the back yard in order to clean the gable end wall of a nearby house.
4. Mr and Mrs Ash found that the men had broken into their back yard. The council accepted that the workmen did not have Mr and Mrs Ash's permission to enter the yard. It said there was a failure to check whose yard and gate it was and then to seek permission for access.

Complaint to the council

5. Mrs Ash complained to the council about the damage to the gate. It was some nine months before the gate was repaired. The council offered to pay £100 compensation.

The Ombudsman's view

6. The Ombudsman said that the maladministration here caused Mr and Mrs Ash some shock and considerable distress. The response of the council to the complaint was also poor. The Ombudsman said she would have expected the council's response to include a written apology and personal attention to ensure that any necessary repairs were carried out immediately and to a high standard. It reflected badly on the council that it took 10 months to agree to provide a written apology, and then only after persuasion by the Ombudsman's investigator, and a further three-and-a-half months to provide that apology.
7. The unsatisfactory response of the council put Mr and Mrs Ash to significant extra time and trouble and prevented them from being able to put the disturbing event behind them. The Ombudsman did not consider the compensation offered was a satisfactory remedy for the considerable injustice. The Ombudsman recommended that the council should pay £500 in total.

(Report 00/C/12429)

F4: Council housing management

Garage rental – disability concession – lack of publicity – refusal to backdate

Mr Francis complained that a council unreasonably refused to backdate his application for free garaging to the date from which he became eligible.

all people with disabilities who rented garages and who fitted the agreed criteria. She commented:

*“In my view, where a policy is directed at benefiting a specific but changing group of people, it is only reasonable that the intended beneficiary should be made aware of it. Either it should be publicised from time to time to give people who **become** disabled the opportunity to benefit, or there should be specific information made available permanently in public places such as the neighbourhood offices or libraries. There is surely no point in deciding that people with disabilities should have concessions and then not making the policy generally known so that they can benefit from it.”*

What happened

1. For many years, the council had offered free garage rental to council tenants with disabilities. This concession was extended to non-council tenants in 1985.
 2. In June 2000 the council amended the scheme. The scheme was changed to a 50 per cent concession.
 3. In 1998 Mr Francis became entitled to an orange badge, which was available for people with serious mobility problems. At that time he would have met the criteria for free garaging, but he said he was not aware of the concessionary scheme. He only became aware of it in November 2000 when he read articles in the local press reporting that free garaging was being abolished and being replaced with the 50 per cent scheme. He then realised that he had been eligible for free garaging for some time.
 4. Mr Francis asked the council for a rebate of the rent he had paid since becoming eligible for the concession. The council refused.
 5. Mrs Francis said that she visited the neighbourhood housing office every week to pay rent. She had never seen any notices or leaflets about the concessionary scheme. Mr and Mrs Francis said there was no reasonable way that they could have known about the concessions before they saw the newspaper articles.
7. The Ombudsman found that in 1985 the policy was publicised to those people who already had garages or whom housing officers happened to meet in the course of their duties. Since then, it had been more or less a matter of chance whether eligible people learnt of the policy at all.
 8. The Ombudsman recognised that the council had no duty to make this kind of concession to people with disabilities. But she said that, after the adoption of such a policy, the way in which it was administered was maladministration.

Outcome

The Ombudsman’s view

6. The Ombudsman recognised that the intention of the council’s original policy must have been to provide concessions for

9. The council agreed to reimburse Mr Francis £1,550 to compensate him in full for the concession which he had lost. The council also agreed to give the same consideration to any similar applications which came to its attention as a result of the publication of the Ombudsman’s report.
10. The council also agreed to review how it publicised its policy on concessions.

(Report 00/A/17145)

F5: Council housing repairs

Secure tenant – significant repairs needed – tenant agrees to move – decision to sell property – failure to inform tenant of statutory rights

Mr Parry complained about the way a council dealt with the tenancy of his maisonette.

What happened

1. Mr Parry had occupied a council-owned two bedroom maisonette as a secure tenant for more than 25 years. He was told that major repairs were needed to the property. The council told him that he could not remain in occupation during the works. He was offered the secure tenancy of a one bedroom flat at a higher rent. He accepted this as suitable alternative accommodation.
2. The council then arranged for the maisonette to be sold. Mr Parry complained to the council that it had misinformed him of the reasons why it was necessary for him to move. The council then said that it had moved him because the repairs needed to his home were too expensive.
3. Mr Parry consulted a legal advice centre and was told that the cost of repairs was not a statutory ground for repossession of a secure tenant's home. Mr Parry complained to the Ombudsman that the council had failed to inform him properly of the reasons it wanted him to move; about whether he had the option to return; and what rights he had if he wished to remain in occupation.
4. The council said that it would have done the repairs if Mr Parry had asserted his statutory rights as the secure tenant of the maisonette.

The Ombudsman's view

5. The Ombudsman said that the council's failure to tell Mr Parry in writing about his statutory rights was maladministration. Mr Parry sustained the injustice that he was denied the opportunity to make a properly informed choice between surrendering his tenancy or going into temporary accommodation while the repairs were done and returning to the maisonette when they had been completed. Also he was put to time and trouble in pursuing his complaint. The Ombudsman saw no reason to doubt Mr Parry's contention that, if he had been properly informed, he would have chosen to remain the tenant of the maisonette.

Outcome

6. The Ombudsman recommended that the council should:
 - pay Mr Parry £2,500 compensation;
 - ensure that where major works were required to a secure tenant's home, and the works could not be done while the tenant was in occupation, the tenant would always be informed in writing of the council's relevant statutory responsibilities and of the tenant's rights.

(Report 00/A/940)

F6: Nuisance from neighbours

Noise nuisance – policy not followed – absence of records – delay

Mr Jackson complained that a council failed to investigate and take effective action in response to his complaints about disturbances and noise nuisance from a neighbouring tenant, Mr Morley.

Nature of nuisance

1. Mr Morley occupied a flat directly above Mr Jackson's flat. Mr Jackson complained of noise nuisance late at night which included shouting, banging, door slamming and loud music. The noise usually started between 10 and 11pm and continued for between four and six hours. He said this occurred most nights.
2. Mr Jackson complained to the council over a 14-month period. In the end he moved out of his flat to live with his parents in another town. He said that he moved because of the stress he was experiencing as a result of Mr Morley's behaviour, which was affecting his sleep, his health and his work.
3. Throughout the time Mr Jackson was complaining to the council, another neighbour had also been complaining to the council about Mr Morley.

Policy

4. The council had a policy for dealing with complaints of nuisance. This required completion of a form to record information about nuisance complaints, with each page reflecting a different stage in the process. Record keeping had to include all meetings, discussions and telephone messages.
5. The policy required that the estate management officer for the appropriate area should agree an action plan with the person complaining and should complete an investigation report.

6. The policy required that, after initial action by the estate management officer, a referral should be made to the antisocial behaviour team. That required completion of a nuisance complaint form, and initial investigation, including details of visits and a report of the problem experienced by the complainant and the response of the perpetrator.
7. The Ombudsman found that there were no records of any meetings, visits, discussions or telephone messages. There was no evidence of an action plan or investigation report having been prepared before referral to the antisocial behaviour team. That referral came only after Mr Jackson had been complaining for a year. Mr Jackson said that, in one six-month period, he was regularly complaining to the council two or three times a week. Council officers said that they visited Mr Morley at least 20 times. But there were no written records of these meetings or of any action taken as a result. Before the referral to the antisocial behaviour team Mr Morley received only two letters from the council warning him about his behaviour.

Outcome

8. The council accepted that it had failed to investigate and take effective action in response to Mr Jackson's complaints. In recognition of this it offered to pay him £1,000.
9. The Ombudsman accepted that this was an appropriate remedy. She asked that the council should take steps to ensure that proper records were kept and that housing staff were properly trained and aware of the council's policies and procedures.

(Report 99/C/5299)

F7: Nuisance from neighbours

Racial harassment – policy not followed – delays

An agency complained on behalf of Mrs X that a council failed to deal properly with her reports of racial harassment while she was the council's tenant.

Harassment

1. Mrs X was an Asian woman who had mental health problems. She had an allocated social worker. She spoke very little English.
2. Mrs X lived in a council flat with her adult daughter and her teenage sons. She first experienced harassment in June 1999 when children on the estate were verbally abusive and threw stones. After a further incident in November, she made a report of racial harassment to the agency. The agency completed the council's form for an initial report of harassment and sent it to the council.
3. Subsequently Mrs X reported that items had been stolen from her shed, her car had been stolen, and someone had tried to mug one of her sons on his way home from work. She also reported an arson attack, receipt of racist mail, and an attempt to break into her home.

Faults

4. The Ombudsman found faults in the council's handling of Mrs X's reports of racial harassment:
 - no action was taken on the initial harassment report form, completed by the agency;
 - after the report of the arson attack there was a delay of a month in referring the incident to the council's harassment panel;

- there was delay in implementing the decisions taken by the harassment panel;
 - it was two months before the transfer section was told of the panel's decision to offer Mrs X permanent rehousing, and there was a similar delay in carrying out the panel's decision that Mrs X should be made an immediate offer of temporary accommodation;
 - when the council made Mrs X an offer of temporary accommodation this was done orally and the offer was not confirmed in writing; and
 - the council did not provide Mrs X with a translation of the letter about the panel's decision.
5. The Ombudsman said that the council's harassment policy was an admirable statement of aims. But the council acted contrary to that policy. The Ombudsman commented:

"If the council's policy is to be observed properly, it is essential that all the officers concerned – and the agencies with which they work – should share a common interpretation of it and that sufficient resources are made available to implement the policy."

6. The council had made a number of operational changes in its housing management arrangements. The Ombudsman said it was important that the council should amend its policy and procedures, and issue new guidance for staff, agencies and the public, to reflect those changes.

Injustice

7. The Ombudsman said that Mrs X's rehousing was delayed and meantime she was exposed to continued frightening incidents of racial harassment. She was not treated in the way she was entitled to expect from the terms of the council's policy. That was all the harder for Mrs X because of her mental health problems.

Outcome

8. The Ombudsman recommended that the council should pay Mrs X £2,000 in recognition of the injustice to her.

9. The Ombudsman commented:

"The investigation of complaints can not only obtain redress for the complainant but can also offer lessons for the future. In this case, I hope that the publication of this report will help the council learn lessons which will contribute to the improvement of its housing management arrangements."

(Report 00/A/6476)

F8: Private housing notices

Property unfit for human habitation – repair notices – default powers – prosecution – compulsory purchase order

Ms Cameron complained, as a tenant of a private landlord, on her own behalf and on behalf of the tenants of five neighbouring flats. She complained that a council took too long to deal with the disrepair of the properties in which they lived.

Disrepair

1. The complainants said that floors sloped, windows did not fit, and there were cracks so that there was both penetrating damp and draughts. Top floor flats suffered leaks through the ceiling. Plaster had come away from kitchen walls and the ceiling to the stairway had collapsed. Ms Cameron said that she was unable to obtain insurance for the contents of her home because of the disrepair.
2. The complainants were longstanding tenants and most of them had lived in the flats for more than 30 years.
3. The council accepted that the two properties containing the flats were unfit for human habitation. In September 1994, after obtaining legal advice, the council served repair notices on the owners.
4. But no significant action was taken for some five years.

Repair notices

5. The Ombudsman accepted that it might not have been easy to pursue a prosecution about the failure to comply with the repair notices. But the council had been aware of the condition of the properties well before it served the notices. It had obtained legal advice about those notices. The Ombudsman said the council should have been

confident that it had drawn up notices and served them in such a way that there was no escape from compliance other than by lodging an appeal. When the deadline for appeal had passed without the landlords notifying the council of an appeal, the council should have moved confidently to prosecute for non-compliance.

6. The council's environmental health officer said that prosecution would probably not have forced the landlords to improve the properties. The Ombudsman commented:

"The effect of being taken to court is unknown, but is more likely to have caused the landlords to take the matter seriously than apparent immunity because of inactivity by the council. Failure to prosecute devalued the work that had gone into preparing the notices, and it undermined the council's credibility."

Default powers

7. The council had the power to do the necessary work in default if the owner did not comply with the repair notice. But over the course of six years, officers did not even ask for the necessary resources. The Ombudsman said:

"This shows inadequate understanding of the council's obligation towards the residents of unfit housing. The council ought to have had a procedure by which it could, openly and objectively, compare priorities and when appropriate allocate money for default works to unfit housing."

8. The Ombudsman understood that there were competing demands on the council's capital resources. But reasonable attention to the council's obligation might have led to an allocation of the necessary funds.

Compulsory purchase order

9. The council used the possibility of compulsory purchase as a threat against the landlords over a five-year period. But it failed to make a reality of its threats. The Ombudsman said that tactic was not only ineffective but it almost certainly discredited the council in the eyes of both landlords and tenants.

Injustice

10. The Ombudsman said that the council's failure to get to grips with the problem of these properties, so that repairs were done sooner rather than later, was maladministration. The result was that the residents of one property had to wait for three years longer than necessary, and the residents of the other property waited for four years.

11. The council accepted responsibility for the delays and said that it had taken steps to improve its administrative processes to avoid such problems in future.
12. The council agreed to pay each of the complainants £1,000 a year in recognition of their lost right to enjoy to the full the benefit of their homes, their distress at the disrepair, and their sense of insecurity. Four complainants each received £3,000 and two received £4,000. In addition the council paid Ms Cameron £250 for her time and trouble in pursuing the matter on behalf of the six complainants.

(Report 00/C/861)

F9: Right to buy

Applicant detained under Mental Health Act – right to buy application cancelled

Mr A complained about the way a council dealt with his mother's application to buy the property she occupied as a council tenant.

What happened

1. Mrs A lived with her son. She suffered from a dementia-related condition. In May 1998 she applied to buy the property. Shortly afterwards she was sectioned under the Mental Health Act. She was held in hospital and then moved to a care home.
2. The council asked Mrs A to come to its offices and sign the right to buy application form. Mrs A was on day release from hospital and did so. She appeared to be aware of what she was doing. The house was valued and, as Mrs A qualified for maximum discount, the council offered it for sale at £22,800. That offer was accepted in October 1998.
3. In December 1998 the health authority sought and was granted supervised discharge powers over Mrs A, which gave it the right to say where she should live. In February 1999 the council wrote to Mr A's solicitors to say that, in view of Mrs A's continuing hospitalisation, her right to buy application was being held in abeyance until a final decision had been taken about her tenancy. In March the council's solicitor advised that there was case law to suggest that a lengthy absence from the property did not mean that the tenancy conditions could not be fulfilled. The solicitor said there were no grounds on which to terminate the tenancy, but if Mrs A were to stay in residential care for the rest of her life the position would change. Mr A did not have the right to buy the property himself.
4. In May social workers applied to the court for Mrs A to remain under supervision for a further six months. That was granted. In August a housing officer wrote to the health authority, which replied that Mrs A's condition was likely to deteriorate and her principal home was the nursing home where she was then living. The council then learnt that social workers had been ordered to draw up a care plan for Mrs A which included the possibility of a return home. The council concluded that there were no grounds at that point to seek possession of Mrs A's home. The rent account was up-to-date and the property remained Mrs A's principal home.
5. In December social workers obtained a further supervised discharge order for one year. In February 2000 a senior housing officer decided that the situation had been allowed to drag on for too long. He instructed that the tenancy should be terminated because Mrs A no longer fulfilled the tenancy condition, and the right to buy application should be cancelled. The council told Mr A that the application was cancelled. But the council never served notice to quit on Mrs A.
6. Mr A appealed to the Mental Health Tribunal over the supervised discharge order. The appeal was upheld and the tribunal ruled that Mrs A should return home. In May 2000 Mr A's solicitors wrote to the council to say that Mrs A would be returning home and asked whether the right to buy application could be reactivated. The council said that a fresh application would be required. A further valuation of the property took place. But the sale price meantime had risen and the maximum discount had been capped. The purchase price was therefore £36,000. The sale

was completed on that basis, but Mr A complained that he had lost £13,200, which was the difference between the first and second purchase prices.

The Ombudsman's view

7. The Ombudsman questioned whether the first right to buy application should have been held in abeyance in February 1999. There was no evidence that Mrs A did not fulfil the tenancy condition at that time and no apparent provision under the law for the council to act in that way. He saw no reason why the sale should not have gone ahead at that time.
8. The Ombudsman took the view that it was not open to the council to cancel the application in February 2000. The decision as to whether the property was Mrs A's only or principal home was for the courts and not for the council to take. That decision should have been taken by the courts following an

application by the council to seek repossession. The Ombudsman said that the application to exercise a right to buy could not be cancelled in the absence of a court decision that the property was no longer Mrs A's only or principal home. But the council did not test this point in the courts.

Outcome

9. The council agreed to settle the complaint by paying Mr A the difference between the first and second purchase prices, together with the cost of professional fees incurred on the second application and compensation for distress. This amounted to a total of £14,107.

(Local settlement 00/B/15780)

F10: Right to buy

Delay – death of applicant

Mr Crossman complained that a council delayed in processing the right to buy application of his mother, Mrs Crossman.

What happened

1. Mrs Crossman lived in her council-owned property for almost 50 years. She applied to purchase the property. In view of the length of her tenancy she was entitled to the maximum discount of £24,000.
2. The council acknowledged her right to buy the property. Legislation required the council to make an offer to sell the property within eight weeks. The council in fact took 16 weeks.
3. Shortly before completion of the transaction Mrs Crossman died. As a result, the transaction was not completed and the house did not pass to Mrs Crossman's estate.

Injustice

4. The Ombudsman considered that, if the application had been processed within the statutory timescale, the transaction would have been completed before Mrs Crossman died. As a result, there was a net loss of £24,000 for her estate.

Remedy

5. The Ombudsman recommended that the council should pay to Mrs Crossman's estate the sum of £24,000, together with interest at the county court rate.

(Report 00/B/3214)

F11: Sheltered housing

Consultation about changing the warden service – implications not explained
– loss of right to concessionary television licence

Mr Edwards lived in sheltered accommodation. He complained that the council acted unreasonably in withdrawing the resident warden service. He complained that the council did not tell residents that if the resident warden service was withdrawn, they would lose the right to a concessionary television licence.

Consultation

1. The council consulted residents about a proposal to replace the resident warden service with a responsive call out service.
2. The Ombudsman found no evidence that the council explained to residents the full implications of the change. They were not told that residents under the age of 75 would lose their right to a concessionary television licence. The concession was worth £2 a week.
3. The Ombudsman found it was maladministration that the council failed to tell residents of all the implications of the proposed change.

Injustice

4. The Ombudsman accepted that it was possible that, if tenants had been fully informed, they would have voted differently in response to the consultation. But the Ombudsman noted that, if a resident warden service had been maintained, there would have been a cost to each tenant of some £7 a week. So it was not possible on balance to conclude that the decision would have gone the other way. The injustice to Mr Edwards was the lost possibility of a different outcome.

Remedy

5. The Ombudsman recommended that the council should pay Mr Edwards £250 for the time and trouble to which he had been put in pursuing the matter. The Ombudsman commented:

"The council should seek to ensure that residents are fully informed of the implications when they are being consulted on proposals regarding changes in housing management."

(Report 00/C/11090)

F12: Transfers

Mutual exchange proposal – rent arrears – fettering of discretion – complaints system

Mr Jones complained about the way a council considered his proposal for a mutual exchange of property.

His proposal

1. Mr Jones had been the tenant of a council-owned property for some six years. He had periodic difficulty in meeting his rent payments, and rent arrears accrued.
2. Mr Jones became aware of a property, which was let by the council at a much lower rent than he was paying for his house. He agreed in principle with the occupant of the smaller property that they would do a mutual exchange. Mr Jones felt this would be a way of helping him to cope with his rent payments and clear his arrears.
3. Mr Jones approached the council. He explained his proposal and pointed out that he would be in a position to make an agreement for clearing his rent arrears and that this could be done much more quickly than if he stayed in his existing property.
4. The council declined the proposal. The area housing manager explained that the council had a policy of not allowing exchanges to go ahead when there were rent arrears. That policy was always strictly applied.

The Ombudsman's view

5. The Ombudsman could understand why the council had a policy requiring tenants to have clear rent accounts before it agreed to a mutual exchange. The council had a clear fiduciary duty to collect rents, and withholding a benefit from tenants was not an unreasonable

way of encouraging them to pay off their arrears.

6. But in this case the very purpose of the proposed mutual exchange was to reduce the tenant's financial liabilities and enable him to pay off more quickly the arrears he owed the council. What Mr Jones was offering the council appeared to satisfy both his needs and the council's. On the face of things, it was a proposition that required full and careful consideration.
7. But the Ombudsman did not believe that that is what happened. The housing manager felt fettered by the council's policy. No enquiries were made into the feasibility of Mr Jones' proposal. No one explored with him how he might afford the new arrangement, or how his personal circumstances had changed to enable him to be confident about fulfilling his promise. The Ombudsman believed the council allowed its discretion to be fettered and that was maladministration.

Complaints procedure

8. Mr Jones made a formal complaint to the council. He received no response at all and after two months complained to the Ombudsman. The complaints procedure provided for a response within 14 days. It also provided for further consideration by the chief executive or his designated officer if the complainant was not satisfied. But Mr Jones was not told of this.
9. The Ombudsman said that consideration at the second stage of the complaints procedure might have injected into the process a badly needed independent view. But this did not happen and that was further maladministration.

Outcome

10. The Ombudsman did not believe that the council was bound to give Mr Jones what he wanted. But it was a case that required further exploration with him. If necessary, further advice from finance and legal officers should have been sought after the council had thoroughly explored with Mr Jones what he was offering.
11. The Ombudsman concluded that Mr Jones could feel justly aggrieved by the council's failure to consider properly the exceptional circumstances he wanted the council to take into account. His frustration, anxiety and wasted time represented the injustice caused to him by the council's maladministration, together with the disappointment of losing an opportunity to improve his situation.
12. Shortly after Mr Jones sent his complaint to the Ombudsman, the council transferred its housing stock to a private housing management company. So the council was no longer in a position to assist him.
13. The Ombudsman recommended that the council make Mr Jones an *ex gratia* payment of £500.

(Report 00/B/14837)

F13: Transfers

Permission for mutual exchange refused – council’s reasons for decision not fully explained

Two sets of tenants of a council complained about the refusal of the council to allow them to exchange their homes.

Reasons

1. In refusing permission for the exchange, the council gave a reason. But the council’s own guidance appeared to make it clear that this reason was not sufficient to disallow the proposal.
2. Subsequently, the council cited a further reason for refusal. The Ombudsman accepted that refusal for that reason was legitimate and lawful. But the Ombudsman was concerned that this reason for refusal was hidden until the whole process was over. That was maladministration and the Ombudsman found it hardly surprising that the complainants were confused.
3. Without that maladministration, the situation would have been clear at an early stage. While the tenants might have been disappointed, they would not have been misled, had their expectations unduly raised, or made actual preparations to facilitate a move.
4. The Ombudsman commented that all and any relevant grounds for refusal should have been conveyed to the tenants at the time of the decision. The Ombudsman recommended the council to pay each set of complainants £100.

(Report 00/C/9701 et al)

F14: Transfers

Domestic violence – request for accommodation considered under domestic violence policy – homelessness duties not considered

Mr Cullinane complained that a council delayed unreasonably in rehousing him and his daughter.

What happened

1. Mr Cullinane and his partner, Miss Rivers, became the joint tenants of a council flat in 1985. They had a daughter, Jody, who was born shortly after they moved into the flat.
2. Miss Rivers became violent to Mr Cullinane. She turned him out of the flat in September 1997. In January 1998 Miss Rivers sent Jody to live with Mr Cullinane. In May his solicitor wrote to the council to ask it to provide housing for him and Jody. The next month the solicitor told the council about Miss Rivers' violence to Mr Cullinane.
3. The council had a policy which provided guidance on how officers should deal with reports from council tenants that they had been subjected to domestic violence. There was provision to rehouse the victim by means of a management transfer. The council dealt with Mr Cullinane's application in accordance with this procedure. In May 1999 the council approved him for a management transfer. The council obtained legal advice on what Mr Cullinane needed to do to end his joint tenancy. He completed the relevant form the next month and the council registered him for offers of accommodation in October 1999. He was offered a two bedroom flat in April 2000.

The Ombudsman's view

4. The Ombudsman pointed out that the law on homelessness applied as much to council tenants as to private tenants. It was not reasonable for a person to continue to occupy accommodation if it was probable that it would lead to domestic violence to him or her. In view of what the council knew about the situation, from a social worker's letter about Jody and the letter from Mr Cullinane's solicitor in June 1998, the council had a duty to consider whether Mr Cullinane was unintentionally homeless and in priority need. The council did not do so. The Ombudsman commented:

"Compliance with the council's own procedure on domestic violence does not excuse the council's failure to discharge its statutory homelessness duties under the Housing Act 1996."

5. The council should have made enquiries into Mr Cullinane's and Jody's circumstances. It should then have issued a notice under the 1996 Act giving its decision on whether they were unintentionally homeless and in priority need, and whether the council had a duty to ensure that accommodation was made available to them. The Ombudsman thought it probable that, if the council had acted in accordance with those requirements, it would have decided that it did owe them such a duty. Mr Cullinane should have been considered for offers of accommodation as a homeless person as soon as the council had accepted a duty to him, and he had terminated his joint tenancy with Miss Rivers.

6. The Ombudsman said it was maladministration that the council considered the application for rehousing only under its domestic violence policy, and failed to consider it in accordance with the law on homelessness.
7. Mr Cullinane and his daughter probably lost the opportunity to live together in suitable council accommodation for about a year.

Outcome

8. The Ombudsman recommended that the council should:
 - pay Mr Cullinane £1,000; and
 - review its procedure on applications for rehousing by council tenants who had suffered domestic violence to ensure that it complied with its statutory duties under the homelessness legislation.

(Report 99/A/3731)