

CYNGOR SIR YNYS MÔN	
CYFARFOD:	CYNGOR LLAWN
DYDDIAD:	13 MEDI 2011
TEITL YR ADRODDIAD:	ADRODDIAD YR OMBWDSMON AR YMCHWILIAD I GWYN A WNAED GAN MS A YN ERBYN CYNGOR SIR YNYS MÔN (ACHOS 2009002138)
ADRODDIAD GAN:	PRIF WEITHREDWR
PWRPAS YR ADRODDIAD:	I'R CYNGOR LLAWN YSTYRIED ADRODDIAD YR OMBWDSMON A'R ARGYMHELLION

1.0 Rhagarweiniad

- 1.1 Ar 15 Mehefin 2011, cyhoeddodd Ombwdsmon Gwasanaethau Cyhoeddus Cymru ("yr Ombwdsmon") adroddiad ("yr Adroddiad") yn unol ag adran 16 Deddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2005 ("y Ddeddf") mewn perthynas â'i ymchwiliad i gŵyn a wnaed yn erbyn y Cyngor.
- 1.2 Yn yr adroddiad, mae'r Ombwdsmon yn casglu bod y Cyngor wedi camweinyddu ac mae'n cyflwyno argymhellion i'r Cyngor. Mae'r Adroddiad wedi ei gyhoeddi ac mae'n rhaid i'r Cyngor rhoi sylw iddo, ei gasgliadau a'i argymhellion a hynny cyn pen 3 mis i ddyddiad yr adroddiad. Cyflwynir yr adroddiad i'r cyfarfod hwn fel y gall y Cyngor llawn ystyried gofynion yr Adroddiad ac ymateb i'r Ombwdsmon.
- 1.3 Mae'r adroddiad ynghlwm fel atodiad i'r Adroddiad hwn. Mae'r Adroddiad yn cyfeirio at yr achwynydd fel Ms A. Fe ŵyr aelodau bod gan achwynwyr hawl i fod yn anhysbys ac felly, atgoffir aelodau yn barchus, os ydynt yn gwybod, neu os ydynt yn meddwl eu bod yn gwybod pwy yw'r achwynydd, ni ddylent, un ai yn uniongyrchol neu'n anuniongyrchol, ddatgelu pwy yw'r achwynydd na rhoi unrhyw wybodaeth a fyddai'n cynorthwyo i ddatgelu pwy yw'r achwynydd yn ystod unrhyw ddatganiad neu mewn unrhyw drafodaeth ar y mater hwn mewn sesiwn gyhoeddus.
- 1.4 Cyflwynir yr adroddiad hwn mewn sesiwn gyhoeddus. Os bydd angen un ai ryddhau gwybodaeth sydd heb ei chynnwys yn Adroddiad yr Ombwdsmon, neu os bydd aelodau angen cyngor cyfreithiol pan fyddant yn rhoi sylw i'r materion hyn, yna bydd yn rhaid penderfynu efallai i gau allan y wasg a'r cyhoedd yn unol ag Atodlen 12A Deddf Llywodraeth Leol 1972 fel y cafodd ei diwygio.

2.0 Adroddiad yr Ombwdsmon

- 2.1 Dyddiad yr Adroddiad yw 15 Mehefin 2011 ac mae'r Cyngor wedi rhoi cyhoeddusrwydd iddo o faint ac o fath sy'n ofynnol gan yr Ombwdsmon. Gwnaed hynny trwy hysbyseb yn y wasg, rhybudd ar y wefan a thrwy sicrhau bod copi ar gael hefyd yn swyddfeydd y Cyngor i'r cyhoedd ei weld.
- 2.2 Mae'r Adroddiad yn cynnwys crynodeb yn nhudalen 2 ac mae ffeithiau'r mater wedi eu nodi'n fanylach yng nghorff yr Adroddiad. Mae'r Ombwdsmon yn gosod ei ddadansoddiad a'i gasgliadau ym mharagraffau 151 i 167 ei Adroddiad (tudalennau 40 i 46) ac mae wedi cynnwys ei argymhellion ym mharagraffau 168 i 172 (tudalennau 46 i 48).
- 2.3 Mae'r Ombwdsmon wedi casglu bod y Cyngor yn euog o gamweinyddu systemig fel a ganlyn:
- 2.3.1 Oherwydd absenoldeb trefniadau priodol a chadarn i gofnodi ynghyd â diffyg cefnogaeth TG i hwyluso'r gwaith o reoli a blaenoriaethu achosion digartrefedd yn effeithiol, nid oedd ceisiadau Ms A i'r Cyngor yn cael eu trin bob amser fel y dylent (paragraff 151 tudalennau 40 a 41 yr Adroddiad).
- 2.3.2 Fe fethodd y Cyngor, dro ar ôl tro, i ystyried yr holl wybodaeth a oedd ar gael ac a oedd yn berthnasol i geisiadau Ms A yn unol â'r polisi, a methodd ag asesu'n gywir y pwyntiau a roddwyd i gais Ms A. Yn ei dro, arweiniodd hyn at amddifadu Ms A o gynnig o lety diogel gyda'r Cyngor mewn ardal o'i dewis ym mis Medi 2005 (paragraff 160, tudalen 43 yr Adroddiad).
- 2.3.3 Oherwydd methiant i gynnig llety dros dro, cam-ffeilio cais Ms A a methiant wedyn i flaenoriaethu ei hachos i gael ei hailgartrefu ar frys yn wyneb risg barhaus o drais, ni chafodd Ms A gynnig o lety addas dros dro am gyfnod pellach o 4 blynedd a hanner (paragraff 161 tudalennau 43 a 44 yr Adroddiad).
- 2.4 Mae eich Swyddogion yn derbyn casgliadau'r Ombwdsmon bod camweinyddu wedi digwydd a byddant yn argymhell i'r aelodau y dylent dderbyn y casgliadau hyn hefyd. Fodd bynnag, maent yn dymuno nodi, er eu bod yn derbyn y bu camgymeriadau gweinyddol o ran nifer y pwyntiau a roddwyd i geisiadau Ms A, nid oeddent yn derbyn y byddai hynny wedi bod er anfantais o ran y cynnig o lety parhaol a wnaed yn Medi 2005. Fodd bynnag, roeddent yn derbyn nad oedd digon o dystiolaeth ddogfennol i gefnogi'r farn hon.
- 2.5 Mae'r Ombudsmon yn cydnabod bod eich Swyddogion eisoes wedi cychwyn rhoi sylw i rai o'r methiannau y cyfeirir atynt yn yr Adroddiad 'It is pleasing to note that the Council is in the process of procuring a new Housing IT system and that it had already taken steps to remedy some of the failings identified by my investigation' (paragraff 168 ar dudalen 46).

2.6 Gwnaeth yr Ombwdsmon yr argymhellion isod:

- 2.6.1 Y dylai'r Cyngor gynnig i Ms A a'i theulu denantiaeth yr eiddo Cyngor addas nesaf a ddaw ar gael yn yr ardal o'i dewis (pwynt a ym mharagraff 171 tudalen 47 yr Adroddiad).
- 2.6.2 Y dylai'r Cyngor, o'r cyfnod pryd gododd y ffioedd ym mis Rhagfyr 2009, hyd nes y bydd Ms A wedi ei hailgartrefu, godi swm sy'n cyfateb i rent ar gyfer y tŷ Cyngor 3 ystafell wely y dylid bod wedi ei gynnig iddi (pwynt b, paragraff 171 yr Adroddiad).
- 2.6.3 Y dylai'r Cyngor weithio allan y cyfanswm rhent a dalwyd gan Ms A i'w landlord preifat a'r Cyngor o 5 Medi 2005 hyd yma. Dylai gynnig fel iawndal unrhyw rent neu ffioedd a dalwyd gan Ms A sy'n uwch na'r rhent y byddai wedi ei dalu am y tŷ Cyngor 3 ystafell wely yn yr un cyfnod (pwynt c ym mharagraff 171 yr Adroddiad).
- 2.6.4 Y dylai'r Cyngor gynnig i Ms A a'i theulu ymddiheuriad ysgrifenedig am y diffygion y mae wedi eu nodi a swm o £1,500.00 fel iawndal. Mae hyn i adlewyrchu'r ffaith fod Ms A wedi byw gyda bygythiad o drais am gyfnod o 9 mis yn y cyfnod yr oedd hi'n ddigartref o'i chartref (pwynt d) paragraff 171 yr Adroddiad).
- 2.6.5 Y dylai'r Cyngor, cyn pen 3 mis i ddyddiad yr Adroddiad, adolygu cynnwys ei lythyr safonol sy'n rhoi gwybod am nifer y pwyntiau a roddir i ymgeiswyr, a hynny er mwyn sicrhau ei fod yn cydymffurfio'n llawn â'r gyfraith (pwynt e paragraff 172 tudalen 47 yr Adroddiad).
- 2.6.6 Y dylai'r Cyngor, cyn pen 3 mis i ddyddiad yr adroddiad, gynhyrchu canllawiau trefniadol ysgrifenedig ar ddigartrefedd a materion gosod tai sy'n cydymffurfio'n llawn â'r gyfraith, y canllawiau perthnasol a'i bolisi gosod ei hun (pwynt f paragraff 172, tudalennau 47 a 48 yr Adroddiad).
- 2.6.7 Bod y Cyngor, wedi hynny, yn rhoi hyfforddiant i'r holl swyddogion perthnasol ar y trefniadau newydd a phwysigrwydd cadw cofnodion cywir (pwynt g paragraff 172 yr Adroddiad).
- 2.7 Mae ei Swyddogion yn derbyn argymhellion yr Ombwdsmon gan gynnwys y symiau a nodwyd a'r ffurf iawndal ariannol (£1,617.09 a £1,500.00) a byddent yn argymhell bod aelodau yn penderfynu derbyn yr argymhellion hyn hefyd.
- 2.8 Dylid nodi, ers cyhoeddi'r adroddiad, fod Ms A wedi derbyn cynnig o denantiaeth gyda'r Cyngor mewn ardal o'i dewis. O ganlyniad, mae'r swm o £1,617.09 y cyfeirir ato yn 2.7 uchod wedi cymryd i ystyriaeth yr argymhellion a wnaed yn 2.6.2 a 2.6.3 uchod ac mae wedi ei addasu i gymryd i ystyriaeth unrhyw ffioedd sy'n ddyledus gan Ms A fel y mae'r Ombwdsmon yn ei ganiatáu ym mharagraff 171 tudalen 47 yr Adroddiad. Mae'r swm o £8,828.36 wedi cael ei weithio allan fel swm nad oes modd ei adennill, sef y gwahaniaeth rhwng y rhent a fyddai'n ddyledus a'r amser pryd gododd y ffioedd ym mis Rhagfyr 2009 hyd nes y cafodd Ms A ei hailgartrefu a'r swm y byddid wedi ei godi ar Ms A fel tenant y Cyngor dros yr un cyfnod.

2.9 Mae argymhelliad yn 2.6.5 uchod eisoes wedi ei weithredu ac yn cydymffurfio â'r gyfraith.

3.0 Casgliadau o Gamweinyddu

3.1 Mae'r adroddiad yn casglu bod camweinyddu systemig wedi digwydd fel sydd wedi ei ddisgrifio ym mharagraff 2.3 uchod. Fel y cadarnhawyd eisoes, mae eich swyddogion yn derbyn y casgliadau bod camweinyddu wedi digwydd ac maent yn argymhell i'r Cyngor llawn ei fod ef hefyd yn eu derbyn.

3.2 Mae diffyg trefniadau priodol, trefniadau gwael ar gyfer cadw cofnod a methiannau gweinyddol oll yn gyfystyr â chamweinyddu.

3.3 Mae methiant i ystyried yr holl wybodaeth berthnasol ac i roi sylw priodol i'r nifer o bwyntiau a gafodd cais Ms A hefyd yn gyfystyr â chamweinyddu. Er bod eich Swyddogion yn credu nad yw Ms A wedi ei hamddifadu o gynnig o lety diogel gyda'r Cyngor ym mis Medi 2005, nid oedd swyddogion yn gallu rhoi digon o dystiolaeth o hynny i fodloni'r Ombwdsmon ac mae hyn hefyd yn dangos eto bod y trefniadau ar gyfer cadw cofnod yn ddiffygiol.

3.4 Mae eich swyddogion yn dadlau bod cynnig o lety 'Gwely a Brecwast' wedi ei wneud ar lafar i Ms A ond ei bod wedi gwrthod y cynnig oherwydd ei fod yn anaddas. Mae'r ffaith nad oedd y cynnig wedi ei ffurfioli'n ysgrifenedig a'r ffaith na roddwyd gwybod i Ms A am ei hawl i ofyn am adolygiad o addasrwydd hefyd yn gyfystyr â chamweinyddu a gwaethygydd pethau ymhellach oherwydd cam-ffeilio'r ffurflen gais.

3.5 Wrth dderbyn y casgliadau yn yr Adroddiad bod camweinyddu wedi digwydd, bydd y Cyngor llawn, yn ddiau, yn dymuno cymeradwyo bod y Pennaeth Gwasanaeth (Tai) yn sicrhau:

3.5.1 Bod canllawiau trefniadol ysgrifenedig ar faterion gosod tai a digartrefedd yn cael eu cynhyrchu o fewn yr amserlen a bennwyd - canllawiau a fydd yn cydymffurfio'n llawn gyda'r gyfraith, canllawiau perthnasol, a'i bolisi gosod ei hun.

3.5.2 Bod yr holl swyddogion perthnasol yn cael hyfforddiant cynhwysfawr ar y trefniadau newydd â phwysigrwydd cadw cofnodion cywir.

3.5.3 Bod tystiolaeth yn cael ei darparu i'r Ombwdsmon gyda hyn a bod y Cyngor wedi derbyn ei argymhellion, wedi ei gweithredu'n llawn ac o fewn yr amserlenni a bennwyd.

4.0 Pennu lawndal

- 4.1 Mae'r Ombwdsmon hefyd wedi pennu swm o iawndal o £1,500.00 ar gyfer Ms A. Yn ogystal mae eich swyddogion wedi gweithio allan bod gan Ms A hawl i £1,617.09 yn seiliedig ar argymhellion yr Ombwdsmon yn 2.6.2 a 2.6.3 uchod a'r addasiad i gymryd i ystyriaeth y ffioedd sy'n ddyledus gan Ms A.
- 4.2 Mae eich swyddogion yn credu fod y swm o iawndal yn adlewyrchiad digonol o'r anghyfiawnder i Ms A a'i theulu o ganlyniad i gamweinyddu'r Cyngor. Mae eich swyddogion felly yn argymhell bod y Cyngor yn derbyn argymhellion yr Ombwdsmon ar gyfer digolledu Ms A.

5.0 Argymhellion

- 5.1 Argymhellir i'r Cyngor llawn ystyried Adroddiad yr Ombwdsmon a phenderfynu fel a ganlyn:
- 5.1.1 Derbyn a chytuno gydag Adroddiad yr Ombwdsmon, ei gasgliadau a'i argymhellion.
- 5.1.2 Derbyn yr argymhellion ym mharagraffau 171 a 172 yr Adroddiad (tudalennau 47 a 48) ac awdurdodi eich swyddogion i weithredu'r argymhellion hynny o fewn yr amserlenni a bennwyd gan yr Ombwdsmon.
- 5.1.3 Awdurdodi'r Prif Weithredwr i gynnig ymddiheuriad ysgrifenedig i Ms A a'i theulu am y camweinyddu.

Papurau Cefndir

Dim

ATODIAD

The investigation of a complaint by Ms A against
Isle of Anglesey County Council

A report by the Public Services Ombudsman for Wales

Case: 200902138

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Introduction

This report is issued under section 16 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report accordingly refers to the complainant as Ms A. Any relevant employees of the Council involved in the events surrounding the complaint, are referred to by their job titles.

Summary

Ms A's complaints concerned how the Council dealt with her housing applications and the affordability of her current temporary accommodation. In early 2000, when Ms A was a private sector tenant, she applied to the Council for housing. She said that she had made a number of contacts with Housing Services over the years to try and progress her applications and had raised issues of overcrowding, disrepair and anti-social behaviour. Ms A complained about the length of time she had been waiting to be offered a Council house; particularly as the Council had accepted that it owed her a full homelessness duty in November 2004. Ms A was placed in a succession of temporary accommodation from June 2009. She complained that she was not made aware that the charge for her accommodation was likely to increase as a result of funding changes.

The investigation found serious shortcomings in the way that the Council dealt with Ms A's homelessness and housing applications. Although the Council accepted that it had a homelessness duty towards Ms A, there was no evidence that she was formally offered temporary accommodation before June 2009. The Council subsequently misfiled her homelessness application and it was not progressed for a period of four and a half years. In addition, the Council repeatedly failed to consider all of the available information relevant to Ms A's housing applications in accordance with its Allocations Policy. This led to her not being offered a Council property in September 2005. The investigation also uncovered serious deficiencies in the Council's record keeping. Whilst recognising the Council's later efforts to minimise the impact on applicants of increased charges for its temporary accommodation, the Ombudsman felt that the Council should have had greater regard, at an earlier stage, to its Homelessness Strategy. This was particularly relevant for working applicants who might not qualify for housing benefit.

The Ombudsman found systemic maladministration. He recommended that the Council apologise to Ms A and her family for its failings and offer her a redress payment of £1500. He also made a number of recommendations for further action by the Council, including the production of up to date written procedures on housing allocations and homelessness and further training for relevant officers.

The Complaint

1. Ms A's complaints relate to the Council's administration of her housing application and the private leasing scheme through which the Council secured her temporary accommodation after finding her statutorily homeless. Ms A specifically complained firstly, about the length of time she waited to be allocated housing from the Council's housing waiting list and secondly, about the suitability of her temporary accommodation, on the grounds of affordability.

My Investigation

2. The Council sent me its formal observations on the complaint. One of my Investigators met with Ms A at her home to discuss her complaint. The Investigator also inspected the Council's files and documents and interviewed relevant Council officers. Whilst the report does not refer to each and every detail or document considered, I am satisfied that nothing of significance has been overlooked during the investigation. Finally, an opportunity has been given to the complainant, the Council and all those interviewed during the course of this investigation to comment on a draft of this report. Their comments have been taken into account in completing the report and finalising its conclusions.

The Relevant Law and Guidance

3. The Homelessness Act 2002 placed a duty on local housing authorities to put in place a published strategy for homelessness prevention within twelve months of the Homelessness Act coming into force. Thereafter, the strategy should be reviewed every five years.

4. Part 6 of the Housing Act 1996 as amended ("the Act"), governs the way in which councils allocate housing. It states that local housing authorities must have a published scheme for allocating housing. They must give reasonable preference to certain people such as applicants living in poor conditions or in medical need as well as people who are homeless and people owed certain duties under Part 7 of the Act. Until 2009 the courts have held on a number of occasions that local housing authorities were acting irrationally by having allocation schemes which did not effectively prioritise different degrees of need, whether within categories, across categories or where applicants fell within more than one category of reasonable preference. In 2009, the House of Lords

identified that, beyond the requirement to accord a reasonable priority to those in the reasonable preference categories, Part 6 of the Act left it largely to local housing authorities to determine how their allocation schemes should deal with applicants in more than one preference category, or how to prioritise between applicants in different categories.¹

5. When an alteration to an allocation scheme is made, reflecting a major change of policy, a local housing authority must ensure that those likely to be affected by the change are notified of it within a reasonable period and given an explanation of the effect of the change.² Guidance for local housing authorities on housing allocations (“the Code”), produced by the Welsh Assembly Government (“WAG”), explains that a major policy change would include any amendment that affects the relative priority of a large number of people being considered for social housing. Where a local housing authority is adopting a major policy change it is necessary for each potential applicant to be informed personally by letter.³

6. The Act places a duty on a local housing authority to consider every application made to it for an allocation of housing.⁴ There is a requirement to inform applicants that they have the right to certain general information including:

- Information that will enable them to assess how their application is likely to be treated under the scheme, and, in particular, whether they are likely to fall within the reasonable preference categories; and
- Information about whether accommodation appropriate to their needs is likely to be made available and, if so, how long it is likely to be before such accommodation becomes available.⁵

7. Local housing authorities are also required to inform applicants that they have rights about certain decisions which are taken in respect

¹ R (Ahmad) V Newham London Borough Council [2009] UKHL 14. As referred to in Luba, J. and Davies, E., 2010, *Housing Allocations and Homelessness: Law and Practice*. 2nd ed. Bristol: Jordans. p.150

² Ibid. s168 (3).

³ *Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness*, Welsh Assembly Government. April 2003.

⁴ Ibid. s166 (3).

⁵ Ibid. s166 (2) & s15.

of their application, including the right, on request, to a review of a decision.⁶

8. Part 7 of the 1996 Act places a duty on local housing authorities to make enquiries into certain applications for accommodation made to them to establish whether an applicant for housing is homeless. This is the case even if the applicant does not explicitly apply as “homeless”, providing that the local housing authority has reason to believe that the applicant may be defined as homeless under the Act.⁷ The content of a general housing application or evidence provided by third parties could, if it discloses particular housing need, give a local housing authority “reason to believe” that the applicant may be homeless.

9. The Act states that a person shall be treated as homeless in circumstances where they have accommodation which it would not be reasonable for them to continue to occupy.⁸ Such circumstances would include situations where there may be domestic violence or other violence against the applicant or others who normally reside with them.⁹ In determining either whether it would be, or would have been reasonable for a person to continue to occupy accommodation, the local housing authority may have regard to the general housing circumstances prevailing in the local area.¹⁰

10. Where a local housing authority has reason to believe that an applicant may be homeless, it must satisfy itself by making the enquiries necessary to establish, whether the applicant is eligible for assistance. Where a local housing authority is satisfied that an applicant is eligible, it must also determine whether any duty and if so, what duty, is owed under Part 7 of the Act.¹¹ Pending a decision as to the duty, if any, owed under Part 7, the local housing authority has an interim duty to accommodate an applicant in a case of apparent priority need.¹² The Act defines an applicant with whom either dependent children reside or might reasonably be expected to reside as a person with priority need.¹³

⁶ Ibid. s167 (4A) & s16 (4).

⁷ Ibid. s183 (as amended).

⁸ Ibid. s175 (3).

⁹ Ibid. s177 (1).

¹⁰ Ibid. s177 (2).

¹¹ Ibid. s184.

¹² Ibid. s188.

¹³ Ibid. s189 (1) (b).

11. Once its enquiries are complete, where a local housing authority is satisfied that the applicant is eligible for assistance, homeless, in priority need and not intentionally homeless, in essence it has a duty under section 193 of the Act to make “suitable accommodation” available or to secure that some other person does so.¹⁴ It should communicate its decision in writing¹⁵ and if finding against the applicant, it should inform the applicant of the right to request a review of that decision.¹⁶ Once a local housing authority accepts such a duty, it cannot change its mind, even if the applicant’s circumstances change.

12. The duty to provide suitable accommodation is an ongoing duty that can only be brought to an end by the fulfilment of the statutory grounds set in section 193, which includes the situation where the applicant makes himself intentionally homeless. The Act defines what is meant by becoming intentionally homeless:

“A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy.”¹⁷

13. When an offer of accommodation is made to discharge a duty under section 193 of the Act, the local housing authority must ensure that the applicant is informed of the possible consequence of refusal and of the right to request a review of the suitability of the accommodation.¹⁸ The local housing authority may, but is not obliged, to require an applicant to pay for the accommodation that it provides.¹⁹

14. The suitability of the accommodation offered, is governed both by the Act²⁰ and also by the Homeless (Suitability of Accommodation) (Wales) Order 1996 (“the Order”). Regulation 2 of the Order provides

¹⁴ Ibid. s193 & s206.

¹⁵ Ibid. s184.

¹⁶ Ibid. s202.

¹⁷ Ibid. s191 (1).

¹⁸ Ibid. s202 (1)(f)

¹⁹ Ibid. s206 (2) (i).

²⁰ Ibid. s210.

that in determining whether accommodation is suitable for an applicant, the local housing authority should have regard to the issue of affordability.

15. The Code, to which a local housing authority must have regard, also notes that local housing authorities should avoid placing applicants who are in low paid employment into accommodation where they would need to resort to claiming benefit to meet the costs of that accommodation.

16. In addressing the issue of whether or not interim accommodation was suitable on the grounds of affordability, the court has previously held that:

“A housing authority which accepted that it owed a full housing duty could only discharge that duty by providing accommodation that was suitable at the time when the duty was accepted and continued to be suitable thereafter. If the accommodation was not suitable, because it was not affordable, the applicant could not make himself intentionally homeless from it... The authority had discretion as to how much rent it should charge and was not bound to charge the market rent. It should not do so if it was apparent that the applicant could not afford to pay the rent or could only afford to pay it for such a short period that it was inevitable that he would be evicted....”

17. In giving the judgement in this case, Miss Geraldine Andrews QC commented further:

“As the duty to provide suitable accommodation is a continuing one, the question of suitability must be addressed at the time when the accommodation is provided, and presumably reconsidered from time to time to take into account any material changes to the needs and circumstances of the applicant and his or her dependents.”²¹

²¹ R (on the application of Monique Best) v Oxford City Council, [2009] EWHC 608 (Admin).

The Council's Policies and Procedures

The Homelessness Strategy

18. The Council's current Homelessness Strategy has been in place since April 2007. It states that the Council is committed to developing a long term homelessness strategy focussed on prevention. Prevention is further defined as:

- "Advice, information, tenancy and crisis support including debt counselling and advice;
- Securing the availability of accommodation in various sectors, including affordable housing of all tenure, emergency accommodation, refuges, and other supported housing;
- Access to support services and outreach."

The Housing Allocation Policy

19. The Council, in common with other local housing authorities, uses a points-based system to prioritise housing need. Eligible applicants are awarded points to reflect their housing needs and other factors. The higher their points, the greater their housing need. Under more recent policies, housing need points are awarded for homelessness, local connection and the condition of the property. There were three policies covering the period of Ms A's complaint.

The Council's Housing Allocation Policy between November 1999 and February 2004

20. Under this policy, the Council maintained a priority housing list. Within this list, applicants considered to be in need of emergency re-housing were prioritised for Council housing stock and were not pointed. Thereafter applicants with 20 or more need points were grouped according to the type of accommodation required and the degree of priority they had been awarded. Applicants with less than twenty points were advised that they were not on the priority housing list as they were not considered to be in housing need. Under this policy points were awarded for:

- Overcrowding – in order to give priority to families whose houses are too small, points were awarded for each bedroom deficiency to ensure separate bedrooms were available for:

- Husband/wife or similar partnership,
- Each person aged 18 years or over,
- Children aged 8 or over of different sex from children of any age,
- no more than two persons should occupy one bedroom - **10 points for each bedroom deficiency.**
- Lack of Services – Where applicants lived in houses which lacked services the following points were awarded...
 - No hot or cold water supply - **10 points.**
 - Unsatisfactory Housing Conditions – A Grants Assessment Officer would visit an applicant who lived in a house which was unsuitable or in need of repair. Renewal grants were available for leaseholders, private landlords or private tenants. If private landlords were not willing to accept grant support, the Council could use its statutory powers to make the improvements. Points were only awarded in those case where there were no grants available because of financial restrictions; where it was unreasonable to expect a tenant to remain in a property or the leaseholder could not afford to meet their contribution to the cost of the work. **In such cases, up to 20 points could have been awarded.**
- Waiting Time – If an applicant had been on the housing register for a period of time, this was acknowledged by giving them an additional point per year up to a maximum of five points.

21. This policy stated that the Council would acknowledge an application for housing within ten working days of receipt and give the applicant the following information:

- Whether or not they had been accepted onto the Priority Housing list,
- Whether or not they satisfied the Council's local connection criteria...
- The number of points they had been awarded.

22. The applicant's award of points would also be re-assessed in the light of any new information and the applicant would be advised in writing of any subsequent changes to their award.

The Council's Housing Allocation Policy between 1 March 2004 and 31 October 2007

23. This policy sought to ensure that people in the greatest housing need had the highest priority for being re-housed in the area of their choice. It stated that eligible applicants (including transfer applicants) were awarded points to reflect housing need and other factors.

Applicants had the right to have decisions about matters to be taken into account in processing their application reviewed.

24. It provided for the following need points:

- Homelessness - The applicant was homeless/threatened with homelessness unintentionally - **50 points**; or
- Homelessness - The applicant was homeless, unintentionally and in priority need as a result of violence or threats of violence likely to be carried out - **60 points**.
- Unsatisfactory Housing Conditions - Disrepair and unfit property (applicants who were living in a property which was unfit or in disrepair would receive a visit from an Environmental Health Officer) - **up to 20 points**.
- Local Connection - for each year that an applicant has had his/her place of work or only or principal home in Anglesey - **three points per year up to 10 years**.
- Up to **20** additional points would have been awarded if the applicant had his/her place of work or only or principal home in the parish that they wished to be re-housed - **two points per year up to 10 years**.

The Council's Housing Allocation Policy between 1 November 2007 and 30 June 2010

25. This policy sought to ensure that people in the greatest housing need had the highest priority for being housed or re-housed in the area of their choice. Eligible applicants were awarded points to reflect housing need and other factors as follows:

- Homelessness - The applicant was homeless/threatened with homelessness unintentionally - **20 points**: or

The applicant was homeless, unintentionally and in priority need as a result of violence or threats of violence likely to be carried out - **30 points**; or

The applicant had been placed in temporary local authority or private accommodation under Section 193 (2) of the Housing Act 1996 (as amended) - **20 points**. This category would also attract 5 points for every six months spent in temporary accommodation up to a maximum of two years.

- Unsatisfactory Housing Conditions - Applicants who were living in poor housing conditions - **up to 20 points**.

The assessment would be undertaken by an Environmental Health Officer using the Housing Health and Safety Rating System risk assessment framework. Rating scores would be calculated for each hazard identified based on the severity of each hazard, and the potential of each hazard to cause injury to the occupiers:

Rating Score;

- **5-25 5 points,**
 - **30-45 10 points,**
 - **50-65 15 points,**
 - **Over 70 20 points.**
-
- Local Connection - for each year that an applicant had his/her place of work, or had his/her only or principal home in Anglesey - **up to three points for each year up to 10 years**.
 - Up to 10 additional points could be awarded if the applicant had his/her place of work, or principal home in the parish that they wished to be re-housed for a period of 10 years - **two points per year up to 10 years**.

26. This policy stated that the Council would acknowledge a housing application within 5 working days of receipt and that applicants would receive a written decision on their application within 30 working days. The decision would enable applicants to establish their prospects of being re-housed. Applicants were required to notify the Council of changes in their circumstances in writing and periodic reviews of the housing register were also undertaken. On request, applicants had the right to be informed of any decision about the facts of their case which

had been or were likely to be taken into account in considering whether to make an allocation to them.

27. Throughout this report, further references to “the Policy” are references to the allocations policy that was in effect at the relevant time.

The Council’s Private Leasing Scheme

28. The private leasing scheme (“the PLS”) has been operational since 2004. The aim of the PLS is to offer temporary accommodation to applicants for whom the Council has accepted a full homelessness duty. Applicants are accommodated within the scheme via a non-secure tenancy agreement until such a time as the Council is able to fully discharge its homelessness duty, usually by offering the applicant a property from the housing register. At the outset of the scheme, the charges for the accommodation were closely aligned to rents in the private sector. From December 2007, the Council reduced the charges to reflect Council rents for the same size and type of property. The funding for the PLS was derived from a subsidy made available by the WAG, who in turn received funding from the Treasury.

29. In January 2009, the Treasury announced that it was reviewing the future of the subsidy. In the meantime, the WAG agreed to underwrite the level of subsidy required on a monthly basis until the Treasury confirmed its intentions.

The Background Events

The First Housing Application Form

30. The first application form was completed by Ms A on 20 February 2000, and was stamped as received by the Council on 22 February 2000. It contained details of the household including her 11 year old son, her ten year old daughter and her mother. The response to question 3C, dealing with the amenities, indicated that there were three bedrooms in the house. In response to question 4, dealing with disrepair, Ms A stated that there was damp in all three bedrooms of the house. On the form, Ms A said that she had lived in Ynys Mon for the last 13 years and had worked locally for the last five. She also said that the house was too small as she now had her mother living with her and that she would consider any housing estate in Ynys Mon. An officer of

the Council has recorded in the section marked for office use that the application was entered onto the housing register on 24 February 2000 and that 15 points were awarded.

31. Ms A also completed a special needs questionnaire dated 20 February 2000. Ms A noted that she needed larger accommodation and that there was a lot of damp upstairs. An undated, hand written note on the front of the form records:

“No medical condition assessed in Special Needs Housing Panel, 0 points.”

32. An internal memo dated 15 February 2000, from a Housing Surveyor to the Principal Housing Officer, noted that an assessment of Ms A’s property had been undertaken and the following defects were found:

1. Severe condensation in the first floor back bedroom and small bedroom.
2. No hot water to bath or kitchen due to disrepair.
3. Gas cooker has not been checked in three years.
4. Overcrowding, ten year old daughter sleeping in same room as her grandmother.

The assessment proposed an award of 10 housing points.

33. A further undated internal memo from the same Housing Surveyor to the Principal Housing Officer, noted that the housing condition points should be amended to nil because the gas cooker had since been checked and the landlord had fixed the taps, so hot water was readily available.

34. A home visit inspection form dated 19 March 2002 recorded damp/condensation in all three bedrooms and the bathroom but otherwise confirmed the information previously given. Under general comments, the Visiting Officer has noted the following:

“[Ms A] would like to move to a bigger roomed property if possible as her mother lives with the family and shares a bedroom with her

daughter... There is still dampness/condensation problems there..."

35. An internal memo dated 21 March 2002, from the Visiting Officer to the Principal Housing Officer, noted that an assessment of Ms A's property had been undertaken and proposed an award of five housing points for dampness.

36. On 11 November 2002, Ms A submitted a medical assessment form with a covering letter and supporting documentation. In addition to the medical issues highlighted, the covering letter also noted the following:

"Another reason I am wishing to be re-housed is that I have been having trouble with my next door neighbour. I have not mentioned this to the doctor as they are busy enough. I will be visiting the police soon as this man [Mr X] has frightened my children and myself once too often..."

37. A copy letter dated 15 January 2003 indicates that the Council wrote to Ms A to advise that her application had been assessed by the Council's Medical Specialist. She had not been awarded medical points and that her points total remained at five.

38. On 20 January 2003, Ms A submitted a written appeal against the decision not to award medical points. The letter reads:

"I have visited the housing office many times over the last four years and I have lived in damp rooms and have been overcrowded, I have had several visits from the Council and have never been offered any form of desent [sic] housing. On my last visit to the housing office I explained that my son had been sleeping in my living room for several weeks this is a total embarrassment when I have family or friends come to visit."

39. The application notes system recorded information received on 14 February 2003, that Ms A's mother had passed away in July 2002.

40. On 11 March 2003, the Council received a letter from the Assembly Member for Ynys Mon in support of Ms A's housing application, on medical grounds. The Director of Housing and Social Services replied to the letter on 20 March 2003.

41. The application was assessed again by the Council's Medical Specialist on 9 April 2003. On the same day, Ms A was advised in writing that she had not been awarded medical points therefore her points total remained at five.

42. The application notes system recorded on 17 November 2003 that the application was passed to the Visiting Officer to carry out another visit. There is no further information indicating why another visit was requested. An internal memo dated 16 January 2004, from a Housing Surveyor to the Visiting Officer, noted that an assessment of Ms A's property had been undertaken and the following defects were found:

1. Severe condensation, black mould growth in the first floor back bedroom, small front bedroom and bathroom. Moisture detected in the wall,
2. Black mould growth in the hallway and moisture detected in the wall,
3. External windows to the rear of the property had not been adequately sealed, exposing expanding foam allowing moisture penetration into the house.

43. The assessment proposed an award of 15 housing points. The application notes system recorded on 20 January 2004 that 15 points had been awarded by Environmental Services.

44. On 21 January 2004, the Council received a letter from Ms A's doctor in support of her housing application, on medical grounds. The application was assessed again by the Council's Medical Specialist. On 6 February 2004, Ms A was advised in writing that she had not been awarded medical points therefore her points total remained at 15.

45. The application notes system recorded on 20 February 2004 that Ms A telephoned the Council and said that she wished to be considered for any town or village within the catchment area of her children's school.

The Second Housing Application Form

46. The second form is dated 16 June 2004. The form contained Ms A's personal information and detailed her household as her 15 year old son and her 14 year old daughter. The response to question 4, dealing with disrepair, specified that the address had:

“serious disrepair/ damp – my son does not sleep in bedroom 3 as I worry about his health – The three bedrooms in this property have serious damp – I have had many visits from environmental health.”

47. An officer of the Council has recorded that the application was entered on the housing register on 2 July 2004 and 45 points were awarded. An additional award of 14 points would be made if Ms A was being considered for a property in a parish of Anglesey with which she had a local connection (see para 24 above).

48. The Council wrote to Ms A on 5 October 2004, with reference to her recent completed application form, to advise her that based on the information provided and in accordance with the Policy, she had been awarded 45 points. The letter did not refer to the possible 14 local connection points that she might also be entitled to (see above).

The Homelessness Application Form

49. The Council's records show that the Homelessness Officer completed a homelessness application for Ms A on 18 October 2004. There is no further information relating to how the meeting between Ms A and the Homelessness Officer came about. Enquiries were commenced into her application for assistance on the same day. The application form contained the personal details of Ms A and her household. The reasons for an investigation into threatened or actual homelessness were recorded as follows:

“For some time applicant has lived in property that is damp and in disrepair. However, incidents of ongoing harassment began approx 1 year ago, and threatening behaviour. Events have recently come to a head when neighbour began to threaten to kill,

and threw brick threw [sic] the window, and it has now become unbearable to live their [sic].”

50. The response to the question dealing with the applicant’s eligibility for assistance, is written “yes”. The questions on the form dealing with the need for temporary accommodation have been left blank. On 17 November 2004, the Council received written confirmation from the Police that due to the volatile nature of the suspect, Ms A was considered to be at high risk of suffering further violence.

51. The Council, having concluded that Ms A was unintentionally homeless and in priority need, notified Ms A in writing of its decision on 17 November 2004. The decision letter reads:

“If you are unable to secure your own accommodation pending the offer of Council owned property then please contact this office. The Council will then seek to arrange temporary accommodation for you (and your family). Unfortunately, the only type of accommodation that the Council would be able to arrange would be ‘Bed & Breakfast’. If in the meantime you are able to arrange your own accommodation, could you please inform the Allocations Officer so that your records can be updated accordingly.”

52. Also on 17 November 2004, there was an entry made on the housing application notes system that Ms A’s disrepair points were being cancelled. There was no further explanation given.

53. An undated e-mail on the homelessness file recorded that Ms A attended at the Housing Services’ reception and spoke with the Senior Homelessness Officer. She complained that she was still suffering from harassment and that the property was still in a state of disrepair because of serious damp problems. The Senior Homelessness Officer contacted Environmental Services to see if they could undertake an inspection which might end up with Ms A getting some disrepair points.

54. There is no further information relating to Ms A’s homelessness application either on the homelessness or housing application file until June 2009.

55. During the intervening period, on 5 September 2005, the Council allocated a three bedroom Council property in Ms A's area of choice. The successful applicant had been awarded 80 points.

56. A home visit inspection form dated 8 March 2006 recorded the following under the heading, 'General Comments':

"Requested to call here again regarding disrepair. Situation is very much the same with dampness/condensation in evidence in most rooms. Already been allocated 15 disrepair points. She is not too keen on a further visit from environmental health which will result in another letter to the owner..."

57. There is no further information indicating why another home visit had been requested.

The Third Housing Application Form

58. The third form was completed by Ms A on 20 January 2007. It sets out her personal information and detailed her household as her 18 year old son and her 17 year old daughter. The response to question 4, dealing with disrepair, detailed the following:

"I have been complaining about this property for nine years, it has chronic damp - my daughter is constantly visiting the doctor and my son has to sleep downstairs as the damp has ruined another bed."

59. An officer of the Council has recorded that the application was received on 22 January 2007. In the box indicated for housing needs points, "80?" has been entered.

60. On 26 January 2007, a record was made on the application notes system that the application had been passed to the Visiting Officer to carry out a visit concerning the condition of the property.

61. An internal memo dated 28 February 2007, from the Visiting Officer to the Principal Housing Officer, noted that an assessment of Ms A's property had been undertaken and the following defects found:

“Severe dampness in the hall, bathroom and one bedroom.”

62. The assessment proposed an award of five housing need points and an additional note has been made that whilst Environmental Services could grant more points, the tenant did not want them involved.

63. There are no further entries on the application notes system after this date. There is no further information relating to the housing application within the paper file until June 2009.

The Offer of Accommodation and the Increase in Charges²²

64. On 27 March 2009, the WAG issued the following advice to all councils:

“In the light of the uncertainty of funds, we advise you to prepare to implement alternative arrangements for the continuation of those private leasing schemes that would be affected. We ask you not to implement any alternative arrangements unless and until we advise otherwise.”

65. On 8 June 2009, the Council made Ms A a final written offer of a non-secure tenancy at 1 Green Street. It advised that it considered the accommodation to be suitable, taking into account the provisions of the Homelessness, (Suitability of Accommodation) (Wales) Order 2006 and that by making such an offer it would discharge its duties under Section 193 of the Housing Act 1996. Ms A was also advised that she had the right to request a review of the suitability of the accommodation in writing and within 21 days of her first viewing of the property.

66. On 15 June 2009, Ms A was assigned a weekly non-secure tenancy at 1 Green Street made available to her through the Council's PLS at a weekly charge of £61.87.

67. On 28 July 2009, the Council received written notice from the owner of 1 Green Street that they wished to withdraw from the Council's PLS.

²² Throughout this report the Council and the Housing Advice Agency have referred to the charges for temporary accommodation as 'rent' and homeless applicants housed in temporary accommodation as 'tenants'.

68. On 29 July 2009, the Council gave Ms A four weeks written notice to vacate 1 Green Street. The notice also stated that the Council continued to owe her a duty under section 193 of Act and that it was in the process of trying to secure alternative accommodation.

69. On 14 August 2009, the WAG announced that the leasing subsidy was to be discontinued by the Treasury and that it would cease to underwrite the subsidy with effect from 4 October 2009. The letter reads:

“In practice, those local authorities are able to use leasehold accommodation for temporary housing through maximising the use of Housing Benefit subsidies.”

70. On 20 August 2009, the Council made Ms A a final written offer of a second non-secure tenancy at 2 Blue Street. It advised that it considered the accommodation to be suitable, taking into account the provisions of the Order and that by making such an offer it would discharge its duties under Section 193 of the Act. Ms A was also advised that she had the right to request a review.

71. On 7 September 2009, Ms A was assigned a weekly non-secure tenancy at 2 Blue Street made available through the Council’s PLS at a weekly charge of £61.87.

72. On 6 October 2009, the Council’s Executive considered a report setting out a proposal to put in place alternative funding arrangements for the PLS. At point 2.10 of the report it states:

“Those currently in receipt of housing benefit would have their benefit entitlement recalculated and increased proportionally as a matter of course. Those tenants not currently in receipt of housing benefit would be visited by a Housing Officer/Welfare Officer to establish whether they would now become entitled and ensure there is no hardship to the household.”

73. The Executive agreed to raise the PLS weekly charge in line with the actual rent paid to the landlord, plus a management charge²³ of £60.00 per week²⁴ to take effect from November 2009.

74. During October 2009, the Council wrote to Ms A giving her four weeks notice of an increase in her rent from £61.87 a week to approximately £174.23 a week with effect from 16 November 2009. The letter also said:

“I appreciate that at present you do not receive any help towards your rent payments in the form of Housing Benefit and that this increase may cause financial hardship to you and your household.

The Council has endeavoured to contact all tenants who are in your position with a view to discussing the matter before sending out this letter. If the Council have been unsuccessful in contacting you personally by telephone, I would be grateful if you would contact either [the Principal Housing Officer] or [the Accommodations Officer] to discuss the matter.

You will also be offered assistance to complete the enclosed Housing Benefit application form. Arrangements can be made for an officer to call with you at your home between 9.00 am – 5.00 pm Monday to Friday. Alternatively you can make an appointment to visit the Welfare Benefits Advice Officers based at the [Local Advice Centre]...

To maximise your household income, the Welfare Benefits Advice Officer will also ensure that you are in receipt of all the state benefits you are entitled to.”

75. On 9 November 2009, a Housing Advice Agency wrote to the Council on Ms A’s behalf concerning its intention to increase the charge

²³ Management charges are the associated costs to a council of administering a PLS. Where a tenant is entitled to housing benefit, this element of the rental charge may be met by all or some of their housing benefit entitlement.

²⁴ £60 was the maximum weekly level of housing benefit subsidy that could be claimed to cover the management charge.

for her accommodation. The letter said that the Council's notice of increase was not dated and added that:

“it does not give her the prescribed information about terminating the tenancy by a notice to quit and so is not legally valid and the rent cannot be increased until the correct notice has been served upon her.

Furthermore, [Ms A] is understandably concerned about the £60 'running costs' of the [PLS] that is due to be charged in addition to the weekly rent. Please could the Council confirm in writing the basis of these costs and how they can be considered to constitute 'rent'.

76. In an e-mail to the then Head of Housing Services on 13 November 2009, the Housing Advice Agency also noted the following:

“We also have concerns about the reasonableness of applying such a large service charge to some of the most vulnerable households. Whilst for many this may be covered by housing benefit, the escalation of the arrears debt and potential homelessness will be extremely rapid should any problems occur with the administration of housing benefit.”

77. On 20 November 2009, the Council wrote again to Ms A giving her four weeks notice of its intention to increase the charge for the accommodation from £61.87 to £169.04 a week with effect from 21 December 2009. The letter advised Ms A that if she was unhappy with the rent increase she had a right to terminate her tenancy. It also advised:

“If you are not currently in receipt of housing benefit, you will have to complete a new housing benefit application form (enclosed).”

78. On 24 November 2009, Ms A made a formal complaint to the Council about the increased charges and the way in which the PLS had been administered.

79. In an e-mail to the Principal Housing Officer on 26 November 2009, the Housing Advice Agency requested a review of the suitability of Ms A's accommodation. With reference to the £60 a week management charge, it also asked the Council to provide "justification for and reasonableness of passing these on to tenants, particularly those who are not in receipt of housing benefit."

80. On 2 December 2009, the Council responded to the Housing Advice Agency. The Council said that whilst it was prepared to carry out a review of the suitability of Ms A's accommodation, before pursuing a review, she should formally apply for housing benefit to establish that she would not qualify for financial assistance. The letter did not address the Housing Advice Agency's concerns about the management charge.

81. On 23 February 2010, Ms A made her complaint to me.

What the Complainant Had to Say

82. Ms A said that she approached her private landlord on a number of occasions over the years about the disrepair but that no steps were taken to deal with either the damp or the mould. The landlord would ask his agent to inspect the property and the agent blamed the disrepair on condensation dampness caused by Ms A. Ms A said that she was intimidated by the agent and did not want him to visit the property. This explained why she had been reluctant for the Council's Environmental Services to become involved with the matter.

83. Ms A said that the damp was so severe in the small bedroom occupied by her son that she used a dehumidifier in his room during the winter months and would still have to take steps to dry out his duvet most days. She also had to purchase a new bed for him because the old one became rotten with mould. Eventually, she did not think it possible for him to continue sleeping in the bedroom because she was concerned for his health and from around 2004, he mostly slept in the lounge.

84. Ms A explained that the family started to experience incidents of harassment and anti-social behaviour ("ASB") during 2002, when her daughter was aged 11. The perpetrator of the ASB was a neighbour and was well known in the local area for causing a nuisance to

residents. Initially, he had simply pestered her daughter but his behaviour deteriorated and he became verbally abusive and stole from her. He also threatened other members of the family with violence and caused damage to the house and car.

85. Ms A said that she telephoned the Council many times to enquire about specific empty properties and vacancies in other areas. At least twice a year she visited the Council's Offices to ask about the progress of her application and on more than one occasion she took her son's bedding with her to demonstrate how damp the conditions were in his bedroom. Ms A could recall being asked to complete forms about whether or not her circumstances had changed but said she had not been advised of her housing need points for years.

86. Ms A explained that upon receipt of the notice of the increase in charges from the Council, she did as the letter advised and sought advice on her entitlement to housing benefit at the Local Advice Centre. She said that an advice worker had carried out an assessment based upon both her and her son's income and established that she would not be entitled to any housing benefit. Although it was his only permanent home, in reality her son was unlikely to contribute towards the rent because he rarely stayed overnight at the property. Ms A said that she had previously claimed housing benefit when she was a student and was still repaying an overpayment from that time. The whole experience had put her off claiming benefit at all.

87. Ms A described herself as homeless and in a worse situation than ever because of the rent arrears. She said that she has never been, "so stuck". She had no hope of clearing the rent arrears; the Council would not consider making her an offer of a Council house and she had no financial references to secure a privately rented property. She felt that the Council should have given her more information about the future financing of the PLS in order that she could have considered her options before accepting an non-secure tenancy.

88. When asked, Ms A said that she would have accepted the Council property offered to another applicant in September 2005. She said that the property "would have been ideal" as it was within the catchment area of her children's school.

What the Council had to Say

89. In its formal response to me, the Council confirmed that Ms A had been registered on its housing register since 20 January 2000 when she was living in privately rented accommodation. At that time, her housing application had been assessed in accordance with the Council's Policy and she was awarded a total of 10 points for disrepair. In February 2004, following an inspection of the property carried out by an Environmental Health Officer, Ms A was awarded a further five points for disrepair bringing her total to 15. In March 2004, the Policy changed and as a result, Ms A was awarded a further 30 points for local connection bringing her total to 45.

90. On 18 October 2004, Ms A presented as homeless to the Council, claiming that she was suffering from threats and harassment from a youth in her local area. Based on this information, a homelessness application was recorded by the Council's Homelessness Officer. Enquiries with the Police confirmed that Ms A was a victim of crime and that they considered her to be at high risk of suffering further violence. Consequently, the Council accepted a full housing duty towards her and Ms A was informed of the Council's decision in writing on 17 November 2004. Following that decision, Ms A's housing application was reviewed. She was awarded a further 50 homelessness points, but in accordance with the Policy, her 15 disrepair points were removed bringing her total to 80. The points allocation was insufficient for Ms A to be considered for the offer of a Council property.

91. The Council explained that in 2004, the Council's Homelessness Team could be described as "fire fighting" in terms of its operations. The Team comprised a Homelessness Officer and a Senior Homelessness Officer. There was no computerised system in place for managing applications which were kept in manual files and homelessness applications for the year reached a record high of 637 compared to 186 three years previously. At that time, the only temporary accommodation the Council was able to offer Ms A was emergency bed and breakfast accommodation. The Council said that Ms A considered this to be unsuitable for her and her family and she opted to remain at home. It would appear that Ms A's application once completed, was misfiled and

the Council lost sight of the homelessness duty owed because she had not been placed in temporary accommodation.

92. The Council has recorded one further contact between Ms A and the Homelessness Team before 2009. The record is undated but at some time between November 2004 and October 2005, Ms A went to the Housing Services' reception to complain that she was still suffering harassment and that the property was in a bad state of disrepair. The Senior Homelessness Officer asked Environmental Services to visit the property and carry out an inspection. No inspection took place as one had been undertaken in 2004 and disrepair points had already been awarded.

93. The Council explained that Ms A came to the attention of the Senior Homelessness Officer in May 2009 when he knocked on her door whilst canvassing in his role as Parliamentary candidate. Upon his return to work he made some further enquires and established that Ms A was still classed as 'statutorily homeless'. The Council decided to approach Ms A with an offer of temporary accommodation in a PLS property. It said that it did so for the following reasons:

- it had failed to discharge its housing duty towards Ms A following her homelessness application and still had a legal duty to provide her with suitable accommodation,
- Ms A was still living in accommodation that she stated was substandard due to disrepair,
- there were suitable empty PLS properties available for Ms A to occupy.

94. The Council noted that there was no longer any physical threat to Ms A. The perpetrator of the ASB had been imprisoned on 19 June 2006 for breach of an ASBO and upon completion of his sentence, he was deported.

95. With regard to Ms A's complaint about the increase in her rent, the Council said that it had not known what the financial situation regarding the PLS would be and therefore it was not in a position to relay any information relating to the future of the scheme to tenants. It was not until late September/early October, having liaised with the Housing

Benefit Section that Housing Services was in a position to decide on the new rent levels.

96. As requested by my Investigator, the Council provided details of the allocations made from the housing register of three bedroom properties in Ms A's selected areas. After 17 November 2004 when the homelessness decision was made, the next allocation to an applicant with less than 105 housing need points was made on 5 September 2005.

The Council Officer's Comments at Interview

The Accommodations Officer

97. The Accommodations Officer had, by the time of the interview changed his job title and role. Formerly, he had been responsible for administering the Council's PLS but in February 2010, he took up the role of Senior Rent Arrears Officer. He had however, come into contact with Ms A in both capacities.

98. When interviewed, the Officer said that at the time of joining the Homelessness Team in October 2005, the Council had approximately 15 PLS properties and the service was under development. When he left the role, he was managing approximately 200 PLS properties. There were no written procedures for him to follow and he had to develop systems of working as the service grew.

99. When asked how he would go about allocating a PLS property, the Officer explained that when the Council accepted a homelessness duty for an applicant, he would receive a copy of the homelessness decision letter. He would then liaise with the homelessness officers to establish the applicant's preferred area of choice and, if a letting was available in that area, he would tell the homelessness officers who would make the offer of accommodation. Whilst he would also offer available property out of the applicant's area of choice, if the applicant refused the offer he would not make arrangements to move them in. Those applicants would remain on his waiting list. When an offer of accommodation was accepted, he would arrange for the necessary documentation, such as the tenancy agreement to be finalised, and for the applicant to be signed onto the scheme by the Estate Management Officer.

100. The Officer explained that after the Council was notified by the WAG that the subsidy for PLS accommodation was going to be withdrawn, he conducted an exercise to work out how the Council's PLS tenants would be affected. 132 tenants were identified who would not be affected by the rent increase because housing benefit would cover the full rent or any shortfall. 34 tenants were identified who were paying their own rent in full.

101. Before the first rent increase letters were sent out, the Officer along with the Principal Housing Officer, tried to contact tenants by telephone to explain that there would be a letter on its way informing them of a rent increase and why. After the first letters had been sent, the Council realised that the notices were invalid because they were not dated. A second letter was then sent giving another four weeks notice of the rent increase. In effect, all PLS tenants had a two month window to decide whether they wanted to stay or to give notice to the Council that they were going to move out. A number of tenants did contact the Council and were encouraged to attend either the Council's Housing or Benefits Office. The Council's Benefit Take-up Officer was involved and visited tenants who were unable to attend. The Local Advice Centre also helped tenants to complete benefit application forms.

102. When asked, the Officer said that there were tenants for whom affordability was a problem but not many because the Council found that most of the PLS tenants who had been paying their own rent were entitled to housing benefit. Of those remaining, many found alternative private accommodation that was cheaper as this was the only other option apart from looking at the housing need points and trying to offer a Council property. The Officer did not know if any tenant was offered a review of the suitability of their accommodation before the rent increase notices were issued.

103. In his capacity as Senior Rent Arrears Officer, the Officer said that he had met with Ms A twice in April 2010 to discuss the level of her arrears and the Council's notice to quit. During these interviews, he had given her general advice about the availability of housing benefit in order to try and help her. The feedback he got from Ms A was that there was no point making a claim because she was working many hours and

generally her wages were quite high and she would not qualify. The Officer recalled that Ms A mentioned moving to another private sector property and that she was trying to save up for a deposit. He was unable to discuss the allocation of a Council property with Ms A because, as he understood it, she could not be allocated a house because of the rent arrears.

104. When asked, the Officer explained that there were a number of tenants who had accrued arrears but not at the same level as Ms A. Either the arrears were manageable or the tenants had taken appropriate steps to bring the level of arrears down. When asked whether affordability was an ongoing issue the Officer replied that this was a possibility because the rents were so high. The Officer confirmed that Ms A had no rent arrears whilst living at 1 Green Street and that she had one week of rent arrears prior to the rent increase at 2 Blue Street.

The Senior Homelessness Officer

105. The Senior Homelessness Officer had been in post since November 2003. At the time of his appointment, the Homelessness Team comprised of two officers, himself and a Homelessness Officer who he had responsibility for. The WAG made more funding available in 2005, and the Team was developed to include a Housing Advice Officer to work on homelessness prevention and an Accommodations Officer to develop the PLS scheme and allocate emergency accommodation.

106. The Officer explained that the Homelessness Team was not responsible for the allocation of Council housing. It allocated temporary accommodation and liaised and communicated with the Lettings Team. The Officer said that all applications for housing made to the Council were now screened by the Housing Advice Officer for potential homelessness.

107. The Officer said that at the time of Ms A's homelessness application, the Council was being bombarded with homelessness applications. There were abuses of the system taking place because it had become public knowledge that you could receive additional housing need points if you presented yourself to the Council as homeless. He said that it was interesting to note the number of applicants who had stayed where they were because they did not get a Council house

straightaway and the Council did not hear anything from them afterwards. It was not possible to know how many cases were genuine.

108. The Officer said that he was not directly involved with Ms A's homelessness application although a record on the file did show that he saw her at some point between November 2004 and October 2005 when she came to the Housing Services' reception to complain about the condition of her property. When asked how he was able to be so precise about when Ms A called to the Housing Services' reception, given that the record of the visit is not dated, the Officer explained that the PLS accommodation that could have provided Ms A with an immediate solution to her housing problem did not become available until October 2005. Following the visit, he tried to progress Ms A's housing application by making a referral to Environmental Services for an assessment of her housing need points for disrepair.

109. At the time of Ms A's homelessness application, the Council only held manual records. By the time of the interview, the Team had a database that had been in operation for three years but it did not have a facility for recording notes. He expected officers to place a record of applicant contact on the manual file and there was no record of any other contact by the Homelessness Team with Ms A. He was not personally aware of regular visits by Ms A to the Council's Offices.

110. When asked about Ms A's missing homelessness file, the Officer explained that at the time of her homelessness application, it was not possible to trawl through the manual files by hand to identify applicants that had not been offered temporary accommodation. In reality, the Council would wait for contact from the applicant for any further intervention to take place. He said that had the Team been made aware of the fact that Ms A's circumstances remained unresolved, it would have taken action earlier. In this case Ms A's file had been moved into storage without being transferred onto the database and could not be found when Ms A first came to their attention in 2009. The file was found later, after a manual trawl of the stored records.

111. The Officer explained that the Team was guided in its work by the housing legislation and that there were no written procedures for officers to follow. There was no policy or guidance in place about when or how

to allocate available temporary accommodation although the Team tried to prioritise the most urgent cases. The Officer said that during an initial homelessness interview, the Homelessness Officer would have offered Ms A emergency bed and breakfast accommodation. This was the only temporary accommodation available to the Council at the time and this was confirmed in the subsequent decision letter.

112. The Officer explained that a copy of the homelessness decision letter would go to the Lettings Team in order that any additional homelessness points could be awarded. The Officer said that the Lettings Team should be informed where there was a threat of domestic violence. He believed that additional homelessness points could be awarded where there was domestic violence involved, but he was not certain about other general violence.

113. The Officer explained that in October 2005, the rents charged for PLS properties were closely aligned with rents charged in the private sector. However, new rents for PLS properties were set by the Council in December 2007, commensurate with the rent charged for the equivalent Council accommodation. The Officer said that on occasions in the past, the Team had experienced problems with PLS tenants who were not on benefits having to pay considerably more by way of rent and that the new rents seemed to be fairer. The Officer confirmed that the rents charged since December 2009 were slightly higher than the Local Housing Allowance and that the charges were in accordance with the new subsidy guidelines.

114. The Officer said that the Team had been aware that the subsidy arrangement for the PLS was under review and that the WAG was continuing to underwrite existing arrangements. However, there was never any indication that the subsidy would suddenly be withdrawn and he was not aware of the report to the Council's Executive setting out the proposal to change the funding arrangements. As far as the Team were concerned, they were providing Ms A with an ideal solution to her housing situation and they would not have looked to place her in an "invidious" situation.

115. The Officer concluded his interview by stating he had considerable sympathy for Ms A and that what had happened had been very unfortunate.

The Allocations Officer

116. The Allocations Officer had been working as a Housing Assistant for the Council since October 1996. It was her role to administer the common housing register and to allocate vacant Council properties to applicants on the register. She also nominated applicants on the register to those housing associations who participate in the Ynys Mon Housing Partnership. She frequently handled housing application forms and carried out the pointing of applications.

117. The Officer explained that the Lettings Team comprised herself and one other officer. During busy periods the Council had also employed temporary staff who carried out pointing of housing applications.

118. When asked, the Officer said that she was guided in her work by the Council's Policy. Whilst the Lettings Team had kept a file of procedures and copies of standard letters, this had not been regularly updated. The file did not contain detailed procedures on how to go about awarding points for disrepair or how to point an application form.

119. The Officer explained that the Council operated a computer system for dealing with housing applications. Each applicant had a unique reference number. Details were input manually from the housing application form. The housing need points set out in the Policy, were represented on the computer system by a series of codes. The person inputting the application would mark the corresponding codes and the system calculated the total housing need points. In addition to the information input from the application form itself, the system also had the capacity to record application notes on a diary screen. These entries could be viewed by any member of staff accessing the housing application and could be printed off as a paper record if required. Where housing need points were reviewed and updated, the system would overwrite a previous calculation and a historical record would not be retained. Unless a note had been made in the diary, there was no manual record of a pointing assessment.

120. When asked about the procedure for reviewing applications on the register, the Officer explained that a review should have taken place every 12 months but in practice it sometimes took place after 18 months. The housing computer system was used to produce a review letter for everyone on the waiting list for completion and return by the date specified. The letter asked whether the applicant wanted to stay on the housing register and whether their circumstances had changed. The Officer could not say how long the Council retained the returned review forms for but she said that they were not kept in the applicant's manual file. The Officer could not recall whether a review of the applications on the register had taken place when the Council's allocations policy changed in November 2007. The Officer confirmed that Ms A's application form dated 15 June 2004 was not a review form issued by the Council. It was a standard housing register application form.

121. When asked about her involvement with Ms A, the Officer said that she recalled her homelessness application and that she had some dealings with her on the reception in respect of her housing applications. The Officer also remembered that there was some discussion with the Homelessness Team about re-housing Ms A in her local area because she was fleeing harassment. She explained that the two teams shared an open plan office and that frequent discussions took place between them.

122. The Officer explained that an award of housing need points for homelessness was prompted by receipt of a copy of a homelessness decision letter from the Homelessness Team. A review of the applicant's housing need points would then take place. She recalled Ms A being awarded 50 homelessness points and 30 local connection points but that she was not awarded points for disrepair.

123. The Officer explained that at the time of Ms A's homelessness application, the homelessness decision letters did not give a reason for the homelessness decision. The letters had since changed and they now gave a reason. The Officer said she was not aware that the Police had provided written advice to the Homelessness Officer that Ms A was living with a threat of violence. She said that she was just aware that she was fleeing harassment.

124. When asked if she would have made the pointing decision differently if she had known about the threat of violence, the Officer said that because she did not see or consider the detail of the homelessness application itself, she would still have needed something in writing from the Homelessness Team to say that Ms A was supposed to have had 60 points instead of 50. The Officer confirmed that when making the pointing decision, 60 points would have been awarded where there was a threat or act of any violence and not just domestic violence.

125. When asked, the Officer explained that there was a time when applicants who had been awarded homelessness points, would not have any other housing need points. It was not the case now but would have been the case at the time Ms A's points were reviewed after the homelessness decision in 2004. When asked where it stated this in the Policy, the Officer said that it must be down somewhere because she had written it in her notes to bring to the interview.

126. The Officer said that a notification letter should always be sent to an applicant when housing need points were awarded and she would expect to see a copy of the letter on the file. Although the template for the notification letter had changed over the years, the Team routinely used a photocopy of a standard letter with blank spaces provided for the points award to be written in by hand. The Officer could not explain why there was not a copy of such a letter on the file notifying Ms A of her revised points award following the homelessness decision.

127. The Officer was asked to explain why a home visit to Ms A had been undertaken on 8 March 2006. The Officer said that all she could think of was that Ms A had complained. Sometimes such home visits were recorded in the computer diary, sometimes they were not. It would depend upon whether Ms A had visited the Housing Services' reception. The Officer said that she was in the habit of entering a note on the computer diary in these circumstances but that she would not then print a copy of the entry and place it on the file.

128. At the end of the interview, a printed copy of the computer diary for Ms A and four versions of the standard points award letter (dated December 2004, May 2007, April 2009 and June 2009 respectively),

were made available to my Investigator. The Officer also confirmed that it did not state in the Policy that applicants who had been awarded homelessness points should not have any other housing need points. However, this was the procedure in the office at the time. The procedure changed when the Policy was revised in 2007.

The Visiting Officer

129. This Officer had carried out this role for nine years. He supported the work of the Lettings Team by visiting housing applicants in their homes and he was often asked to assess the condition of accommodation in order to award housing need points for disrepair.

130. The Officer explained that he could award a maximum of five housing need points for unsatisfactory housing conditions. If he felt that the condition of the accommodation warranted more points he would refer the matter on to Environmental Services for a qualified Environmental Health Officer to carry out an assessment of the accommodation. When asked, the Officer explained that he adopted a common sense approach to the direction he would take. Matters that were beyond his level of knowledge or hazardous to the occupants, such as more serious damp or involving electricity, would be referred on.

131. The Officer said that he could not specifically recall having visited Ms A. When asked to consider the photographs provided by Ms A of the damp in her former home, the Officer said that if he had been asked, his assessment would have been that the damp was significant and the property was in a more serious state of disrepair. That being the case, he would have referred the matter on to the Environmental Services for an assessment.

132. The Officer said that before undertaking a home visit he would check the Council's records to see what previous housing need points had been awarded for disrepair. It would not be unusual to be asked to undertake repeat inspections in order to re-assess the same disrepair matters.

133. When asked to consider the home visit inspection forms dated 8 March 2006 and 28 February 2007 relating to Ms A's housing application, the Officer confirmed that he had completed the forms but

that he could not recall discussing the involvement of Environmental Services in this matter with Ms A. The Officer said that if Ms A was reluctant to allow the Environmental Services to visit, then he probably would not have submitted a visit request. The Officer confirmed that there had been no change in the Council's procedure for awarding disrepair points over the period in question. He agreed that if the condition of a property had not improved since a previous inspection, he would expect the points awarded for disrepair to stay the same. He could not explain why, having previously been awarded 15 points for disrepair by the Environmental Services, he only awarded Ms A five housing need points following his visit on 28 February 2007.

The Principal Housing Officer

134. The Principal Housing Officer had been employed by the Council within its Housing Services since 1997 and had been undertaking her current role since April 2005. She had operational management responsibility for approximately 20 staff including the Homelessness Team, the Allocations Team, the Rent Arrears Team and the Estate Management Team.

135. When asked about her previous involvement with Ms A, the Officer said that she spoke with Ms A on the telephone in December 2009, after the Council had notified all PLS tenants of the rent increase. The Officer recalled that Ms A made clear her intention to fight any increase in the rent and that she would be asking a Housing Advice Agency to help her.

136. The Officer explained that Housing Services was in the process of commissioning a new IT system. As a result, there had been an opportunity to undertake a comprehensive review of the policies and procedures for allocations and there was a new policy in the process of being finalised. She understood that the new IT system would facilitate better recording of and access to information across the Service.

137. When asked, the Officer said that she would expect every applicant contact with the Lettings Team to be recorded on the computer diary but due to the number of enquiries received, it was not possible to place a record on the applicant's file. Because the Homelessness Team did not have access to a computer diary or notepad, officers kept a

paper record of all applicant contact on the applicant's file. If an applicant made contact via another part of Housing Services, a memo or an e-mail would be sent. The Officer said that she was not personally aware that Ms A had ever visited the Council's offices with her son's bedding.

138. When asked, the Officer explained that when an applicant indicated on a application form that they had disrepair problems, the Visiting Officer would call and ask to be shown the areas of concern. Because the Visiting Officer was not trained in environmental health issues, it was decided that he could award a maximum of five housing need points for disrepair. If there was sufficient reason for concern, he would then make a referral to Environmental Services who could award more points. Where Environmental Health Officers found serious disrepair, they also had the authority to contact private landlords to insist that they carry out remedial works. Where remedial works were carried out, Environmental Services would send another memo to the Lettings Team to advise that the disrepair points should be removed. Although the Officer could not recall exactly when, she said that there had been a change in the procedure. Where tenants stated that they did not want Environmental Services to become involved in the matter, no housing need points would be awarded.

139. The Officer could not recall whether or not a review of the housing register was undertaken when the Policy was revised in March 2004. She said that a change in the Policy would not normally trigger a review of the housing register. However, a change in the Policy would have triggered a change in the IT system to re-calculate the points change as necessary. When asked if the Allocations Team would have notified applicants when their points had changed, the Officer confirmed that they would not. The points would only have been changed on the Council's computer records so that they were up to date as far as any allocation of property was concerned. Where a review of the register had been undertaken, she would expect to see a review form in each applicant's manual file. The Officer speculated that Ms A was not awarded additional points for the threat of violence following her application in 2007 because the allocations officers were aware that the perpetrator of the violence had been sent to prison. She agreed that this

information was not recorded anywhere but said that it was common knowledge and had been reported in the local press at the time.

140. When asked about Ms A's homelessness decision letter, the Officer said that the Council had recognised a long time ago that its homelessness decision letters were not sufficiently detailed. She could not recall exactly when, but the procedure had changed and reasons for the homelessness decision were now given in the text of the decision letter. The Officer agreed that had it been made clear in the homelessness decision that Ms A was at risk of violence, an award of 60 points under the Policy would have been triggered.

141. When asked what preparations the Council had made in view of the continuing uncertainty regarding the funding for its PLS accommodation, the Officer said that initially these matters would have been dealt with at a more senior level. She was aware that the Council made a written representation to the WAG expressing its concern that the subsidy was at risk. According to the Officer, the rapid withdrawal of the subsidy was unexpected. At the time, a document proposing reform of the housing benefit subsidy for temporary accommodation was still out for consultation. The Council was reliant on guidance coming from the Department for Work and Pensions for a steer in terms of what rents could be charged and what could be claimed back via housing benefit before it could notify tenants. The Officer stated that she did not contribute to the report to the Council's Executive proposing the alternative funding arrangements for the PLS.

142. When asked about the rent increase for PLS tenants, the Officer explained that when she knew that the rents had to go up, she conducted an exercise to identify how many PLS tenants were paying their own rent. In the majority of cases, the Council had been able to resolve any issues with affordability, by encouraging tenants to apply for housing benefit. Others who would not have qualified for benefit were encouraged to extend their areas of choice so that they had a better chance of being accommodated from the housing register. The Council also offered help to find alternative rented accommodation in the private sector and made bonds available.

143. The Officer said that the Council would not have shied away from an individual request for a review of the suitability of the accommodation at the time of the rent increase. However, it did not offer everyone a review because of the numbers and the potential workload involved. The Officer confirmed that subsequently the Council had taken action against some PLS tenants for non-payment of rent. In her experience, having then gone through the benefit assessment process, it had become apparent that these tenants had the means to pay the increased rent but were reluctant to do so.

144. The Officer concluded her interview by stating that it was rare that a person who had been found homeless did not rigorously pursue their homelessness application with the Council. The Council now had procedures in place to ensure that nothing like this could happen again and she was confident that this had not happened to anyone else.

The Council's Comments on the Draft Report

145. The Council, in accepting my findings, acknowledged that Ms A's housing applications had been mishandled. It attributed this to a combination of factors: administrative errors; lack of clarity regarding the application of the Policy; inadequate IT provision to support officers in their respective roles leading to an over-reliance on manual systems with a higher propensity for human error; and a high turnover of staff within both the Homelessness and Lettings Teams.

146. The Council advised further that since 2007, details of all homelessness applications had been held on a database which removed the risk of applicants being 'lost' in the system, as had happened to Ms A. Furthermore, the homelessness decision letters had been amended and now contained details of the reason for accepting the homelessness duty.

147. The Council was also in the process of procuring a new Housing IT system with a view to implementation by the end of this financial year. The new system would include comprehensive housing allocation/advice and homelessness modules which are intended to streamline both processes, thus minimising the likelihood of future errors.

148. The Council also accepted that with hindsight, “prospective [PLS] tenants should have been advised about the possibility of a rent increase before signing up to a new tenancy.” However, on the basis of the WAG’s advice and guidance, it believed that tenants on low incomes would qualify for housing benefit, thus ensuring that the accommodation remained affordable.

149. It said it was evident to Housing Services, prior to the rent increase being notified to tenants, that affordability would be an issue. Therefore, arrangements were put in place to advise and assist tenants to maximise benefit entitlements and to secure more permanent housing solutions. The availability of this advice and assistance was reinforced in the rent increase notice. However, Ms A chose not to avail herself of the assistance available, despite repeated invitations to do so.

150. The Council accepted that there were administrative errors in pointing Ms A’s housing applications. However, it did not accept that this would have prejudiced the offer of permanent accommodation that was made in September 2005. It said that Ms A had previously advised the Allocations Officer that she did not want to be considered for a property on this particular estate, therefore the offer may not have been made to her on this occasion. The Council acknowledged that there was no documentary evidence to support this view.

Analysis and Conclusions

The Council’s Procedures and Record Keeping

151. Over the period of Ms A’s housing applications, the Council’s Housing Services did not have up to date, written procedural guidance in place for either its allocations or its homelessness officers to follow. My investigation also found that there were inadequacies with the record keeping. The catalogue of failings is lamentable. Within the Lettings Team, there were instances when contact with Ms A was not recorded; internal correspondence was not dated; copies of letters and review forms were not retained and the rationale for decision making was not documented. Consequently, there is no reliable, audit trail of the housing need points that were awarded to Ms A. Within the Homelessness Team, the lack of IT support clearly had an adverse effect on its ability to manage and prioritise cases effectively and most

significantly, Ms A's homelessness file was misplaced. In my view, these failings amount to systemic maladministration and I have no doubt, in the absence of appropriate procedures and robust record keeping, that Ms A's applications to the Council have not always been dealt with as they should have been.

The Manner of Dealing with Ms A's Applications

152. In its written observations, the Council said that upon receipt of her first application in January 2000, Ms A was awarded 10 points for disrepair. The Council has not provided any evidence that this application was acknowledged or that Ms A was notified of the level of points awarded to her application, as the Policy requires, before the points award letter sent to her in January 2003.

153. There was also evidence on the application form that Ms A's accommodation was overcrowded. The application form made reference to the fact that her mother was sharing a bedroom with her daughter. The record of the home visit subsequently undertaken by the Housing Surveyor also notes overcrowding as an issue. From the information I have seen, and that was available to the Council, Ms A's accommodation was deficient by one bedroom. An additional ten points were plainly merited and they were not awarded in accordance with the Policy (see paragraph 20 above). This award would have resulted in Ms A's application being placed in the priority need group for a period of time. I have not been able to identify the period because the second memo from the Housing Surveyor, proposing that disrepair points should be reduced to nil, has not been dated and there are no diary notes indicating that the points were re-assessed.

154. Ms A wrote to the Council in November 2002 and advised that she wanted to move for medical reasons. She also said that she was experiencing ongoing incidents of ASB that were frightening her children. Whilst the Council referred the medical matters on to its Medical Specialist, there is no evidence that any consideration was given to the matter of ASB.

155. Ms A then submitted a letter of appeal in February 2003. In accordance with the Policy, the letter should have prompted a review of her housing application and a written response from the Senior Housing Officer within 10 days. However, there is no evidence that such a review took place.

156. Additionally, whilst the Council despatched points award letters on 15 January 2003, 3 September 2003 and 6 February 2004, none of these letters reflect the additional points that should have been awarded to Ms A for each year that she had been waiting on the housing register.

157. Had the Council acted in accordance with the Policy, it is likely that Ms A would have received additional housing points and that a review of her housing application would have taken place, however I cannot say that this would have resulted in Ms A being offered alternative accommodation.

158. Following the Council's homelessness decision in November 2004, there is clear evidence, both from the records and the testimony of officers, that Ms A was not awarded points under the Policy to which she was entitled. The homelessness decision letter that prompted a re-assessment of Ms A's housing need points failed to detail the continuing risk of violence to Ms A in her current accommodation. From the interview with the Senior Homelessness Officer, it is clear that he was uncertain of the significance of this information for Ms A's housing application. Consequently, when carrying out a review of Ms A's housing need points the Allocations Officer awarded Ms A 50 points because she did not have sufficient information to award her the 60 points that were merited in accordance with the Policy (see paragraph 24 above).

159. Upon carrying out the re-assessment of Ms A's housing need points, the Allocations Officer also removed the 15 points that had previously been awarded for disrepair. At interview, the Allocations Officer said that this was the adopted procedure at the time because the homelessness points available under the Policy were so high. However, the Policy did not state that a household that qualified for reasonable preference could not also qualify for additional points for other aspects of housing need.

160. The Council maintained that Ms A was not housed from the housing register because she did not have a high enough award of housing need points to be made such an offer. I am not persuaded from the evidence that can be a reasonable conclusion. The investigation has established that the Council repeatedly failed to consider all of the available information that was relevant to Ms A's applications in accordance with the Policy. Consequently on 17 November 2004, Ms A should have been awarded 105 housing need points when she was in fact awarded 80. The Council's failure to properly assess Ms A's award of housing need points was maladministrative and had serious consequences for Ms A and her family. From a review of the housing allocations that were made in this period, if Ms A had been awarded the correct number of points, an offer of secure Council accommodation, in an area of her choice would have been made on 5 September 2005. The Council has subsequently said that the offer may not have been made to Ms A on this occasion because she had previously advised the Allocations Officer that she did not want to be considered for this particular estate. However, I have seen no evidence to support the Council's view and Ms A has confirmed to my Investigator that she would have accepted the offer had it been made.

161. The Council also maintained that upon submission of her homelessness application, a verbal offer of temporary bed and breakfast accommodation was made to Ms A that she considered to be unsuitable. However, there is no record that a verbal offer of temporary accommodation was made to Ms A or of her reasons for refusal. Although reference has been made in the Council's homelessness decision letter to the availability of bed and breakfast accommodation, it does not contain a clear offer of accommodation with the right for Ms A to request a review of its suitability. The Council said that it lost sight of its homelessness duty because Ms A was not placed in temporary accommodation and her application was misfiled. This is entirely unacceptable. In my view, the Council lost sight of its duty because it failed to make any offer of temporary accommodation and because the continuing risk of violence to Ms A was not translated into any sense of priority by the Council for urgent re-housing. This too was

maladministration and resulted in Ms A not receiving an offer of suitable temporary accommodation for a further period of four and a half years.

162. In the absence of any independent corroboration, it is difficult for me to comment on the entirety of Ms A's assertions about the number of occasions when she made contact with housing staff to try and progress her housing application over the years. However, in her appeal letter of 20 January 2003, Ms A noted a previous visit to the housing office during which she explained that her son had been sleeping in the living room for several weeks. At interview, the Allocations Officer also said that she recalled dealing with Ms A at the Housing Services' reception. However, there are no computer diary entries to record that her application was ever discussed with her in person or that she received any advice about how to improve her application and the chances of an offer of accommodation. Moreover, I am not persuaded that a record of every contact by Ms A with the Homelessness Team would have been placed on her homelessness file in view of the fact that for a long period of time, there was no record of her application and the file had been misplaced.

163. Finally, the Council has been unable to provide me with any evidence that a pro-active review of Ms A's housing application was ever undertaken. Where it had re-assessed Ms A's points award, in the light of new information or a change in the Policy, it did not always advise her in writing of any subsequent changes to her points award. Where the Council provided Ms A with points award notification letters, they were not sufficiently detailed to enable her to assess how her application was likely to be treated under the scheme and they did not advise her of her right, on request, to a review of the decision. Consequently, Ms A was not in a position to challenge the Council's decisions with evidence that may have brought about a different result. I consider that there has also been a systemic failure by the Council to keep the information relevant to Ms A's application up to date and to act upon it.

The Issue of Affordability

164. Ms A complained that the Council increased her rent to a level that was not affordable. The Council has the discretion to charge for its temporary accommodation and it is not my role to determine whether or not the new level of rent was affordable for Ms A. She also said that the Council should have told her about the possibility of increased charges before making her an offer of temporary accommodation. I note that the Council has acknowledged that with hindsight homeless applicants should have been advised about the possibility of increased charges before being offered a non-secure tenancy. I accept that the Council took reasonable steps to minimise the financial hardship for its working non-secure tenants after it had resolved to increase its charges and that Ms A did not fully engage with this process. However, on a more general note, given that homeless applicants are often the most vulnerable, I am concerned that the Council appears not to have given sufficient consideration to its Homelessness Strategy (central to which is the issue of affordability), when proposing alternative funding arrangements to its Executive. In particular, it did not set out fully the provisions it would put in place to assist working tenants who might not qualify for housing benefit and for whom this type of accommodation may no longer be suitable. These concerns were also raised by the Housing Advice Agency at the time of the increase in charges. I have been provided with no evidence that the Council addressed these concerns at either a strategic or operational level and I would ask the Council to consider further my comments.

The Injustice to Ms A and her Family

165. Ms A's housing applications were dealt with poorly by the Council. Had her applications been assessed properly, she would have received a higher points award as early as November 2004. Had the Council properly allocated the correct points for the continuing threat of violence and for disrepair, Ms A and her family would have been well placed to be considered for a permanent home before the end of 2005. This is evidenced by the information about allocations made by the Council of suitable properties within the areas of Ms A's choice (see paragraph 96 above). Whilst the investigation has considered the evidence of allocations of housing made from the Council's own housing stock, in view of the fact that the Council operates a common housing register, I cannot entirely discount the fact that a nomination to another registered

social landlord within the local area might have secured an offer of suitable accommodation at an earlier time.

166. The failures that have been identified throughout this report have undoubtedly caused Ms A and her family personal injustice. Following her homelessness application, the family continued to live with the threat of violence for an unnecessarily prolonged period from September 2005 until June 2006 because the Council failed to properly assess Ms A's prioritisation for an allocation of housing. Although the family continued to live with poor housing conditions, I accept that the Council offered to be proactive in addressing the disrepair and that it was unable to progress the matter due to Ms A's unwillingness, because of her concerns about her landlord's agent, to allow the Council to do so.

167. Had Ms A's housing application been properly dealt with in 2004, it seems likely to me that she would not have needed the Council's offer of temporary accommodation in June 2009 and the unfortunate series of events that occurred thereafter would not have happened.

Recommendations

168. It is pleasing to note that the Council is in the process of procuring a new Housing IT system and that it had already taken steps to remedy some of the failings identified by my investigation. However, in view of the serious and protracted nature of the maladministration identified, it is necessary to make a number of recommendations to help improve its future service and also to remedy the injustice caused to Ms A and her family.

169. Despite the fact that my preliminary findings were shared with the Council at an earlier stage in this investigation, I was extremely disappointed to learn it had recently resumed possession proceedings against Ms A because of the level of her rent arrears. The Council's continuing action fails to recognise the earlier maladministration on its part and can only serve to further the injustice that Ms A has continued to suffer because her housing applications were not initially dealt with as they should have been.

170. The underlying principle of my approach to remedying injustice is to ensure that the public body restores the complainant to the position

they would have been in but for the maladministration identified and the consequential injustice. In my view, had the pointing decision made immediately after Ms A's homelessness application been taken properly, Ms A would have been housed in a Council property and paying a Council rent from 5 September 2005. The recommendations I have made below are intended to reflect the injustice subsequently arising for Ms A and her family because she was not.

171. I recommend that the Council should:

- a) Offer to Ms A and her family the tenancy of the next available, suitable Council property in her area of choice.
- b) From the time of the increase in charges in December 2009 until Ms A is re-housed, charge an amount equivalent to the rent for the three bedroom Council house that she should have been offered.
- c) Calculate the total rent paid by Ms A to both her private landlord and the Council from 5 September 2005 to date. Offer as redress any rent or charges paid by Ms A exceeding the rent she would have paid for the three bedroom Council house in the same period.
- d) Offer to Ms A and her family a written apology for the failings I have identified and the sum of £1,500 as redress. This is to reflect the fact that Ms A lived with a threat of violence for a period of nine months whilst she was homeless from home.

Finally, subject to the recommendation made at point b), the Council may, if it chooses, offset any charges owed by Ms A from any sum of redress at c) and d) above.

172. I further recommend that the Council should:

- e) Within three months of the date of this report, review the content of its standard points award notification letter to ensure that it fully complies with the law.
- f) Within three months of the date of this report produce written procedural guidance on allocations and homelessness that fully

complies with the law, relevant guidance, and its own allocations policy.

- g) Thereafter, provide training to all relevant officers on the new procedures and the importance of accurate record keeping.

173. I expect the Council to provide evidence to me in due course that having accepted my recommendations, it has implemented them fully and within the timescales indicated.

174. I am pleased to note that in commenting on the draft of this report the Council has agreed to implement these recommendations.

Peter Tyndall
Ombudsman

15 June 2011