

Digest of Cases 2007/08

Section E

Housing

	Introduction	1
E1-5	Allocations	1
E6-7	Homelessness	8
E8-10	Repairs	11
E11-12	Regeneration	15
E13	Private housing repair notices	18

Introduction

Although there has been a slight drop in the number of complaints received about housing in 2007/08 compared to 2006/07, they still account for a very large proportion of the complaints received.

Many of the summaries included here are about poor housing conditions and homelessness. Two cases (one of them listed in the Benefits section) involved young vulnerable applicants whose situation was not given sufficient consideration by the councils.

Other issues that attracted criticism were connected with allocations, repairs and regeneration. The faults included:

- failure to follow policies or to apply them in full;
- unreasonable delay;
- failure to carry out proper inspections or deal with poor quality accommodation; and
- failure to consider the particular needs of some tenants.

E1: Allocations

Woman on housing register became homeless – treated as new applicant – lost housing register priority

Key issues

This complaint highlighted a problem with a housing register and a choice-based allocations scheme that was used by a number of councils. Although the report deals with a complaint against one council, all of the councils that used the scheme were sent a copy so that they could check whether similar problems arose with their implementation of the scheme. It identifies the balance that has to be struck between applicants on the housing register and those who are homeless and in priority need. It also shows that there should be a match between practice and policy.

The complaint

Miss B complained about a council's handling of her housing application. She had been on the council's housing register since December 1999. She became homeless in December 2005. At this point the council effectively treated her as a new applicant, although its allocations policy did not state that this should be the case. When she was moved to long-term temporary accommodation she did not recover the housing register priority she had before.

The Ombudsman's investigation

To bring it in line with the Housing Act 1996, the council needed to make changes either to its allocations policy or to its practice of treating homeless applicants as new applicants, but it did not accept this until after Miss B had complained to the Ombudsman. Despite assurances that it had been done, the council failed to correct the error made in Miss B's case until it was pressed to so.

During the investigation the Ombudsman's investigator asked that the records of other homeless applicants be checked to see whether the practice applied in Miss B's case had been implemented across the council. This check identified what the Ombudsman called a significant and worrying proportion of errors in the assignment of priority dates to homeless applicants.

Outcome

Following the investigation the council agreed to make changes to its policy to bring it in line with practice, and to identify and correct any errors made in the priority dates of other applicants. The Ombudsman also recommended that the council carry out further sampling with a view to identifying applicants in similar circumstances to Miss B in order to establish whether the council's stated practice had been applied consistently.

The council also revised the procedures for its homeless persons unit and arranged training for officers.

(Report 06A14980)



E2: Allocations

Elderly person could not manage steps to home – failure to consider transfer request

The complaint

Mrs C was 86 years old, partially sighted, deaf and suffered from bronchial asthma and arthritis in all major joints. She lived with her daughter and granddaughter in a second-floor, three-bedroom maisonette which was reached from street level by three sets of 14 steps. There was no lift. She could not manage the stairs to reach the property or those within the maisonette to her bedroom and bathroom without assistance. Her daughter first applied for a transfer for the family in 2000.

The Ombudsman's investigation

Despite contact from Mrs C's daughter, from her MP and her local councillor, the council failed to consider the family's the need for rehousing properly. In January 2003 a housing office visited the

home and reported that Mrs C was “practically a prisoner in her own home”. However, the council continued to fail to consider the application properly. It informed the MP, in response to his enquiries in 2003, that, “every effort will be made to secure a ground floor property for them to move into”. However, the Ombudsman found no evidence to support this statement. Mrs C’s daughter continued to bid unsuccessfully for properties under the council’s choice-based lettings scheme.

In response to the Ombudsman’s enquiries the council first of all said that Mrs C stood no chance of being rehoused into a level access property because they all had gardens and she did not satisfy the criteria for a property with a garden. When it was informed that if this were the case then it would be fettering its discretion and possibly be in breach of Article 8 of the Human Rights Act, it changed its response, saying that it did in fact exercise discretion. The Ombudsman expressed serious concern about the accuracy of information he was given during the course of the investigation and reminded the council of the provisions of section 29(8) of the Local Government Act 1974. He said:

“I wish to remind the council and its staff that obstructing me in my work may be an offence which I can certify to the High Court.”

Outcome

During the course of the investigation the council reconsidered its position and the family was rehoused. The council apologised for providing misleading information to the Ombudsman. The Ombudsman was critical of the council for failing to take this action five years earlier. He said:

“The council has a limited housing stock and faces many competing demands for housing which far outstrip supply. I do not underestimate the difficulties it faces. But, because of this, it is particularly important that it ensures its policies properly address housing need, and that there is sufficient flexibility to take account of the special circumstances of housing applicants.”

He recommended the council to pay £10,000 to Mrs C. However, Mrs C died before the final report was issued and so the payment was made to her daughter. The Ombudsman also recommended that the council review all of its rehousing applications over five years to see whether others had been affected in a similar way by the failure to give them proper consideration, and to offer appropriate compensation to those affected.

(Report 06A10428)

E3: Allocations

Woman's bid for property allocated to someone else with lower priority – council lost information previously provided – local settlement not implemented

The complaint

Ms D complained that the council allocated a property to another applicant when it should have been offered to her.

The facts

Ms D was a sheltered housing officer and lived in accommodation tied to her job. She had two children. Ms D wished to leave her job and take up a university place that had been offered to her for September 2007, but was unable to do so until she was provided with alternative accommodation.

In September 2006 she bid for a property through the choice-based lettings scheme, but it was allocated to another applicant who had been on the housing register for less time than her. The council was unable to allocate the property to her because the allocations team did not have all of the necessary information, despite her having previously supplied this information to the council.

Local settlement

The council accepted that, but for its error, Ms D would have been allocated the property, and offered to give Ms D the opportunity to bid for suitable properties in the next six months with the assurance that it would prioritise her application so that she was successful. If Ms D was unable to bid for a property during that period because no properties that met her requirements became available, the council would consider whether to extend the period of this offer. If, however, properties became available which met her needs during this time and she did not bid for them the priority would not be reviewed.

In addition, the council offered to pay £350 compensation for Ms D's time and trouble.

Further complaint

Six months later Ms D complained that the council had failed to implement the terms of the local settlement agreed with the Ombudsman.

The council argued that, whilst it was able to prioritise Ms D's bids, it could not neglect the needs of other applicants with higher priority. It was explained to the council that all those applicants would have been behind Ms D if she had been offered the place the council mistakenly gave to someone else in September 2006. In these exceptional circumstances the council is not bound by its housing policy and the Ombudsman would almost certainly find maladministration because the

council was fettering its discretion to provide justice where it had accepted the fault and the consequences.

Outcome

The council subsequently agreed to settle the complaint by awarding Ms D priority so that she would be offered the next suitable property she bid for within the following six months. The council also agreed to pay a further £350 compensation in recognition of the fact that Ms D had missed 10 more properties and had to defer her university place for a year as a result of its failure to take action to fulfil the settlement agreed in April 2007.

(Case reference confidential)



E4: Allocations

Change to policy on restricted age of tenants in blocks – failure to follow cabinet instruction – elderly woman suffered nuisance from young person rehoused into flat above her

The complaint

Mrs E, a woman in her 90s, lived in a property with two ground floor flats and two first floor flats. She complained that the council unreasonably rehoused a young single woman into the flat above her, after it changed its rehousing policy and stopped restricting the flats in the block to people aged 50+ (first floor) and 60+ (ground floor).

What happened

As part of a citywide exercise, the council's cabinet had approved a review of the age restrictions on 52 blocks of flats in Mrs E's area. The report on which this decision was based set out good reasons for change. The cabinet was aware that altering the age restrictions could result in clashes of lifestyles between some young tenants and existing, older tenants. It resolved that the head of housing operations should decide the age designation for each block, taking into account the age of the existing tenants, the level of demand from older people, and the availability of properties for younger people.

Two years later, all 52 blocks were designated as 'general needs'. The council could not produce evidence to show who took this decision or that each block was considered against the criteria approved by the cabinet.

The Ombudsman's investigation

Mrs E was 90 years old when a vacant first floor flat in her block of four was allocated to a 17-year-old woman. She complained about this young tenant and visitors making noise late into the night and of being disturbed by them using the toilet in the early hours of the morning. The Ombudsman investigated a complaint from Mrs E about the way that the council had dealt with these problems and found no evidence of maladministration.

In the meantime the council allocated another flat in the block to a young man whose behaviour included firing a pellet gun at the young woman and her child, noise and abusive visitors. The council cautioned him after six days and served notice seeking possession of his flat within three weeks. He moved away within seven months of taking up the tenancy.

In early 2007 a local housing board reviewed the designation of the 52 blocks and recommended changing 26 of them to be for people aged 40+ or 60+ but Mrs E's block was not one of these. However, after receiving a draft of the Ombudsman's report, the council recommended that Mrs E's block should be designated for people aged 40+.

The Ombudsman's view

Sadly, Mrs E died while the Ombudsman was investigating her complaint. The Ombudsman said:

“Based on the accounts of third parties and council officers, I conclude that she spent much of the final years of her life very distressed, frightened and upset.”

The Ombudsman was critical of the failure by the council's officers to follow the cabinet's instruction to consider the age of the tenants in Mrs E's block, the level of demand from older people and the availability of properties for younger people, before deciding to designate the block as 'general needs'.

Outcome

The Ombudsman recommended that the council urgently finalise its decisions on all the outstanding redesignations, pay £500 to Mrs E's estate and £500 to the other elderly couple who lived in the block.

(Report 06C10044)

E5: Allocations

Intimidating approach to homeless applicant – filthy property – failure to make fit to live in

The complaint

Miss F was a young homeless single mother with a six-year-old daughter. She complained that the council allocated her a house that was so filthy and in such poor condition that it could not be lived in.

What happened

Miss F was accepted by the council as being homeless and in priority need, and was offered a property. When they visited the house, accompanied by a housing officer, Miss F and her mother and sister said they were met by an overpowering smell of urine when they entered, the house was filthy and the garden was seriously overgrown. A councillor who visited said the property was “stomach turning”, with human faeces on the walls, skirting boards and floors, and urine-soaked floor boards. Miss F accepted the offer because she was told that she would not be offered any other properties if she refused.

The council then:

- failed to repaint and clean the house before the tenancy started;
- left Miss F to clean the house and then three months later, when she had done a lot of work, accepted that it was not fit to live in;
- fitted a replacement kitchen on to smoke-blackened walls and without space for a washing machine; and
- failed to clear the severely neglected garden before the tenancy started and then threatened her with action because of its condition.

When the council eventually agreed to do the necessary work, the contractor estimated that it would cost over £11,500.

The Ombudsman’s view

The Ombudsman was critical of the council for making the offer of accommodation that was in such a poor condition. She said:

“I am appalled that any applicant for housing, particularly, as in this particular case, a young, single mother presenting as homeless and therefore likely to be vulnerable, should be invited to view a house in the dreadful condition in which this house clearly was.”

She was also critical of the failure to keep proper records, the failure to bring the property into an acceptable condition when it was aware of the problems, and the failure to respond properly to Miss F's reasonable requests and representations about the property.

Outcome

In accordance with the Ombudsman's recommendations, the council:

- reviewed its approach to homeless applicants;
- reviewed its procedures to ensure that no other homeless applicant was treated in this way; and
- paid Miss F £2,450 in recognition of the distress caused to her and the delay in making the property habitable.

(Report 05C02965)



E6: Homelessness

Family fleeing domestic violence – interim accommodation – delay in review – letters wrongly sent threatening eviction

The complaint

Ms G complained that the council did not offer her and her five children accommodation after she left her partner because of domestic violence, and that there was a delay in reviewing the case, during which time the council sent letters threatening eviction.

The law and Government guidance

The law and Government guidance sets out what a housing authority should do if it receives an application from someone who wishes to be considered as homeless and in priority need.

The council has to decide whether the applicant satisfies the criteria for being homeless and in priority need and inform the applicant of the decision. Authorities are guided to deal with enquiries promptly and, wherever possible, to make a decision within 33 working days. The applicant can then seek a review of the decision. The review must be carried out within a set period. If the council considers that the criteria are satisfied then it has a duty to secure accommodation. If the applicant is considered to be in priority need then the council also has a duty to provide interim accommodation while it makes enquiries into the homelessness case.

What happened

Ms G completed a homelessness application in January 2005 and informed the council that she was staying with her mother. In March 2005 she completed a further request for temporary accommodation and was offered a place at a homeless reception centre. She did not take up the place and the council decided it had discharged its interim duty to assist her. The council awarded her homeless priority and she was placed on the priority list for a four-bedroom property. However, no such properties were available, and in July 2006 Ms G made a further application for temporary accommodation. The council wrongly refused this on the ground that it had discharged its interim duty 16 months earlier.

A month later, the council granted a request for temporary accommodation because of the stress that Ms G was suffering. Within the week the council found her temporary accommodation in the private sector.

On 16 August Ms G refused an offer of a property because of its size and the distance to her children's schools. The council informed her that it considered that it had discharged its duty to house her. She immediately sought a review. The council should have responded to the request within 56 days – by 12 October – but in fact responded on 29 November and, before responding, sent her a notice to quit her temporary accommodation, giving an eviction date of 18 December. This caused Ms G and her children considerable anxiety and the council accepted that this should not have happened.

From 29 November, when Ms G received the response to her request for review, she had 21 days to appeal the decision. The council received the appeal on 18 December. But on 15 December a further notice to quit was sent with an effective date of 15 January 2007. This again caused her much anxiety. The council also failed to follow up medical and educational information about the family that Ms G had provided in August 2006. This information was considered in May 2007 and Ms G received notification that the council would make a further offer of suitable accommodation.

The Ombudsman's view

Had the request made in July 2006 for temporary accommodation been handled properly, if the council had considered the family's medical and educational needs properly, and if there had been no delays in dealing with the request for a review, not only would the stress of receiving notices to vacate have been avoided, but the family would also most likely have been rehoused shortly after a decision that the council could have made in September 2006.

Outcome

The council agreed to pay compensation of £2,500 for the shortfall in its service and to provide the family with a suitable offer of accommodation in an area of Ms G's choice as soon as possible. Ms G was rehoused in July 2007.

(Case reference confidential)



E7: Homelessness

Family's homelessness application after homes repossessed – lack of evidence for decision – failure to maintain records – delay

The complaint

Mr and Mrs H had four children: sons aged five, seven and 13, and a three-year-old daughter. They had mortgages on two properties, both of which had been repossessed by October 2005. On 27 October 2005 the family became homeless following eviction on repossession of their second property due to mortgage arrears. On 28 October 2005 they made a homelessness application to the council. They provided evidence of the eviction and evidence that they had dependents. Mrs H complained about the council's handling of their homelessness application.

What happened

The council and Mr and Mrs H do not agree on what happened next. The council said it was waiting for evidence of the circumstances of the eviction and that the Hs had refused an offer of bed and breakfast accommodation. Mr and Mrs H said they received no request for evidence and no offer of bed and breakfast accommodation. The council found a privately-rented property for the family on 13 January 2006. Between the end of October and 13 January the family had no settled accommodation and had to stay separately with friends and family.

On 18 January 2006 the council issued a 'not homeless' decision on the application of 28 October 2005.

The Ombudsman's view

Unless there are exceptional circumstances, the council should complete enquiries to establish whether the person is unintentionally homeless and in priority need within 33 working days. The council should notify the applicant in writing of its decision on whether the applicant is homeless or threatened with homelessness and is eligible for assistance. If the council decides it does not have a duty to secure temporary accommodation, it must give reasons for that decision. The notification letter must also include information concerning the appeals procedure.

The Ombudsman was critical of the council for failing to keep proper records, so there was no evidence that it had carried out proper enquiries on receipt of the homelessness application. He was also critical of the seven-week delay in issuing a decision on the application.

As a result, Mrs H, her husband and four young children spent 11 weeks, including the Christmas period, with nowhere to live other than with friends and relatives who could not accommodate them together as a family. In addition, Mrs H was denied the right of appeal against an unfavourable homelessness decision.

Outcome

The council paid Mrs H £3,000 in recognition of its failings. The Ombudsman also recommended that the council should satisfy itself that its operating arrangements for persons presenting as homeless were adequate.

(Report 06B07896)



E8: Repairs

Damage to decorations after council carried out repairs – failing to deal promptly with the claim – misleading wording in tenancy agreement

The complaint

Mr J was a council tenant. The council carried out repairs to his staircase and damaged the decorations in the process. A law centre complained on Mr J's behalf that the council refused either to redecorate or to pay a decorating allowance.

Background

The advice given to tenants by the council in its tenancy agreement said:

If something is damaged as a result of our repairs and you think it is our fault, you must notify us in writing within a period of 28 days from the time it was damaged or from the time you first became aware it had been damaged.

The law says that landlords must keep in repair the structure and exterior of their dwellings. Case law has established that landlords are obliged to make good damage that results from repair work.

What happened

The council refused to compensate the complainants or make good the damage caused by repair work until the Ombudsman's investigator showed the council's legal officer a photograph of the damage.

The Ombudsman's view

The Ombudsman found that the information given to tenants was misleading because it implied that the council or its contractors had to be at fault before compensation for damage would be paid. She was also critical of the council for failing to deal promptly with the claim and for acting on legal advice that was based on insufficient and incorrect information. She said:

If the combined tenacity of [the tenant] and [the law centre] could not get the compensation [the tenant] was due, what hope is there for other council tenants?

Outcome

The council paid £200 compensation to the tenant and agreed to review the misleading wording in the tenancy agreement. The Ombudsman also recommended the council to:

- provide clear explanations of its obligations, how tenants can claim compensation and guidelines on how compensation for such redecoration will be calculated;
- brief and periodically remind all relevant council and contractors' staff – including all workmen who carry out such repair works (including sub-contractors) – of these obligations;
- introduce procedures for the proper investigation and determination of such claims that require decision makers either to have visited the site or seen photographic evidence;
- inform all its tenants' associations of the findings and recommendations of this report; and
- advise the Ombudsman six months after publication of the report of the action taken.

(Report 07C01179)

E9: Repairs

Prolonged failure to identify and treat problems of inadequate heating and ventilation

The complaint

Ms K was a council tenant. The property she occupied with her young family had a number of defects including inadequate heating and ventilation that caused condensation in the principal living rooms. Ms K complained about the condition of her property and the adverse effect on her children's health for a number of years. She complained that the council did not properly investigate the problems she reported and did not take prompt and appropriate action to repair her home.

What happened

Ms K complained to the council that, despite a number of surveys, her home still had problems with heating and condensation. She applied for additional heating because her son suffered from asthma. The council had a policy that allowed for the provision of extra heating if there was

evidence that tenants had untreatable asthma, but it refused the application on the grounds that the property had adequate heating.

In December 2002 the family's health visitor sent a letter in support of the application for additional heating. The letter explained that Ms K's older son had been admitted to hospital and treated for pneumonia and both children suffered from coughs and colds. The application was not reviewed in the light of this information. The Ombudsman said that, if it had been, it was probable that Ms K would have been awarded additional heating early in 2003.

Ms K continued to complain about dampness and poor heating. There was no evidence of any full survey being carried out during that time to establish the cause of the problems. There was disagreement between officers as to the cause of the dampness and the repairs that would be needed to resolve the problems.

In 2005 a survey of the property identified serious defects (some of which might have been identified and resolved before the property was let to Ms K). There was then a delay in arranging remedial works, apparently due to the misleading assumption made by an officer that Ms K would have to leave the property and be rehoused. This error was not corrected for over 18 months. Some of the work was still outstanding in April 2007 and work to the exterior of the property was not completed until August 2007.

The Ombudsman's view

The Ombudsman found that the council had failed, over a very long period, to carry out proper investigations in response to Ms K's complaints about her housing conditions. As a result the family suffered damp and cold conditions for around seven years. He said:

The reality is that between 2001 and 2007 the only work completed by the council to mitigate the problems caused by damp/condensation was to install two extractor fans. Given the circumstances, that was wholly unacceptable.

Outcome

To remedy the injustice, the Ombudsman recommended that the council:

- apologise to Ms K and pay her compensation of £8,300 for the loss of her belongings (£1,300) and loss of residential amenity over a seven-year period due to unresolved disrepair; and
- arrange an independent structural survey of the property and, if further defects were found, remedy them without delay.

(Report 06B05370)

E10: Repairs

Overcrowding – new property not brought up to void standard – serious problems not rectified

What happened

Mrs L and her family had high priority for rehousing because they were overcrowded. She complained that a move to a new home was delayed by the council's failure to bring it up to standard, and that they wasted time and money in cleaning and decorating it.

The Ombudsman's investigation

The Ls were offered a house by the council's arms length management organisation (ALMO), and the property was to be brought up to void standard before they took up occupancy. The ALMO explained to the Ls that, due to budgetary constraints, that standard was not as high as it would wish, but that many of the problems identified could be rectified by the repairs team once the tenancy had begun.

It emerged, however, that the property had a serious problem with damp and problems with the roof, both of which had been underestimated during the void inspection. The Ls were unable to move into the property and had to hand back the keys after having spent time and money on cleaning and decorating it. The council sent a written apology. The property was then included in a scheme to bring a group of houses up to the decent homes standard. Although this meant there was a delay before the works were completed, it meant that more improvement works could be done.

The family had to stay in overcrowded conditions for a further 14 months. This was not, however, due to the poor void inspection. The council had given an assurance that the family would be offered the next available suitable property, but none had been available for them to rent from the ALMO during that time.

Outcome

The council agreed to give the property priority in the decent homes work programme, and paid Mrs L £790 compensation for:

- the costs, time and trouble involved in cleaning and decoration;
- distress, anxiety, and the dashed hopes of an early move that would have relieved the overcrowding; and
- her time and trouble in pursuing the complaint.

(Case reference confidential)

E11: Regeneration

Council purchased properties for demolition – zone to be regenerated reduced and properties sold on to housing association – Crichel Down Rules

The complaint

Mr and Mrs M, and Mrs N complained that the council misled them when it purchased their properties. They said they were led to believe that the properties were to be demolished, but they alleged that the council was negotiating to sell them on for considerably more money. They said that, if they had been aware that the houses were not going to be demolished, they would not have sold them to the council. When they tried to buy similar properties in the areas, prices were far in excess of what the council offered.

What happened

The complainants owned properties in a terrace in a council area that had been targeted for regeneration. During 2002 the council had secured funding under a Government initiative, the 'Home Zone Challenge Fund'. One of the options was the demolition of the terrace to make way for parking. The council had invited the property owners to sell their houses, which they were reluctant to do. They said they felt obliged to sell voluntarily, as they said they were told they would risk getting a lower price for their homes if the properties had to be compulsorily purchased.

Later in the year, when it became clear that the redevelopment budget would not cover all costs, the boundaries of the 'Home Zone' were reduced, so this particular terrace was no longer included for works. The properties were sold to a housing association for renovation, at a higher price than the council paid for them.

The Ombudsman's view

The Ombudsman did not share the complainants' view that the council had set out to mislead them. However, he found that the council had failed to keep any written records of its discussions with the complainants and had not confirmed anything in writing. It did not fully explain to them that they could get an independent valuation of their properties and failed to advise them about the implications of compulsory purchase orders. He also found that the council did not take the principles of the 'Crichel Down Rules' into account when it sold the properties. These provide that, when circumstances change after property has been purchased for a public purpose, the public body must act fairly to the person affected by the original purchase.

The Ombudsman said:

“Had the complainants been properly advised of their rights at the outset as they should have been, I believe there is a strong likelihood that they would not have sold when they did, or indeed at all.”

Outcome

The Ombudsman recommended that the council:

- pay to the complainants 75% of the profits made on the sale of their houses: in the case of Mr and Mrs M, £21,000; in the case of Mrs N, £13,125;
- pay £500 to each complainant household in recognition of their considerable time and trouble in bringing the complaint;
- consider making home loss payments of £3,100 plus interest to each of Mr and Mrs M's children; and
- review its procedures to ensure, as far as possible, that the maladministration identified does not recur.

(Report 05B13863 and 05C16360)



E12: Regeneration

Demolition and regeneration project – failure to secure other properties in terrace – theft and vandalism – contents of home destroyed – demolition started before sale completed

The complaint

The council wished to purchase Mrs P's home, as it was in a terrace of houses it wanted to demolish for a regeneration project. Mrs P complained that it:

- did not properly consider the valuation of her home;
- failed to secure vacant properties in the area, resulting in vandalism and damage to her property, and eventually in her property becoming uninhabitable; and
- entered her home without authority, causing further damage to her property and belongings.

What happened

The council made an offer to purchase the property but Mrs P did not agree with the valuation. While Mrs P was still living in the property, the council acquired other properties in the terrace. The council had a protocol designed to ensure that the properties, once acquired, were secured and checked on a regular basis until such time as the whole block could be demolished. Partial demolition was not planned until whole blocks were vacant and services disconnected.

The Ombudsman's investigation

The council was unable to provide evidence that it had properly applied this protocol. It was able to provide proof that requests were made to replace security boarding to properties close to Mrs P's home, but not that the work was completed. Mrs P's home was broken into and the central heating boiler stolen. Mrs P said this – and the general lack of maintenance and vandalism in the area – made the property uninhabitable, so she had to leave. She left her furniture in the property and stayed at her work (which had 'sleeping in' facilities).

After she left the property was vandalised. The council's contractor was asked by the police to ensure the removal of the contents as they were considered to be combustible. The contractor failed to check whether the property was privately owned, and the contents were removed and destroyed without any inventory or photographic evidence being taken and without any notice being given to Mrs P. Demolition of the block started before the council had purchased Mrs P's property, while she was still living there, leaving her property virtually valueless and Mrs P still having to pay her mortgage.

Outcome

This catalogue of errors led to the Ombudsman recommending actions to remedy the injustice to Mrs P, and the council agreed to:

- apologise to Mrs P for its failings regarding its treatment of her and her home;
- obtain an independent valuation of the property as it was prior to the vandalism and demolition work (the council then offered to purchase the property based on that valuation);
- pay £1,200 for the property that was removed and destroyed;
- make a payment equivalent to rent for a property similar to Mrs P's in the same area (agreed at a rate of £425 per month) for the period between November 2005 (when the contractors removed Mrs P's belongings) and the point when the council made a revised offer to purchase based on the independent valuation;
- pay Mrs P £750 for the distress caused; and
- confirm that Mrs P was entitled to claim any home loss and compensation payments due as if she had remained in her home until the purchase was complete.

(Case reference confidential)



E13: Private housing repair notices

Condition of privately-rented flat – ‘category 1 hazard’ – failure to take appropriate action – priority on council housing register

The complaint

A woman complained, on behalf of her daughter and her partner, about the council’s failure to take appropriate action after the couple’s privately-rented flat was found to be a ‘category 1 hazard’, and about its treatment of their priority for rehousing.

What happened

The couple were living with their respective parents who gave them notice that they had to leave. The council placed them in a high priority group for rehousing and gave assistance with a deposit that enabled them to find accommodation in a privately-rented flat. Although the couple were dissatisfied with the council’s actions (considering that they should have been given higher priority, that their priority should not have been reduced when they found a privately rented flat, and they should have had more assistance to obtain council accommodation), the Ombudsman did not uphold that part of their complaint.

Some months after moving into the flat the couple again sought the council’s assistance because of the poor condition of the flat. A senior housing standards officer inspected the property and informed the housing department that in his view the condition amounted to a ‘category 1 hazard’.

The Housing Act 2004 introduced a Housing Health and Safety Rating System (HHSRS). This is a system for assessing the condition of residential property. A ‘category 1 hazard’ triggers a duty on the council to take one of the following listed actions:

- serve an improvement notice;
- make a prohibition order which prohibits the use and occupation of all or part of the premises without the housing authority’s approval;
- serve a hazard awareness notice that sets appropriate remedial action to deal with the hazard;
- make a demolition order; or
- declare a clearance area.

In deciding which action to take, the council should aim to protect the occupant by removing – or at least reducing – the risk.

The Ombudsman's investigation

In this case the council, on learning the tenant was hoping to move and the owner intended to sell the property, took none of the range of prescribed actions. Instead it offered assistance to the tenants to improve the heating in the property. The Ombudsman's investigator advised the council that this was not sufficient to meet the duties set out in the Housing Act. The tenants endured a winter in the flat with inadequate heating.

In addition, the council failed to take action to review the tenants' position when given information about this and medical conditions that may have affected their priority on the council's housing list. The evidence suggested that they would have gained a higher priority had this reassessment been done.

Outcome

The council agreed to ensure housing staff were properly training in the HHSRS. It paid £500 to the couple in recognition of the failure to take proper action. It also backdated an award of higher priority to a date when it would have been awarded had there been a reassessment. The council made an offer of accommodation that the complainants refused. During the investigation the complainants moved away from the flat. The complaint was resolved without the publication of a report.

(Case reference confidential)