

201301753

Complaint against Caerphilly County Borough Council ("the Council")

The complaint

In summary, you complain:

1. That the Council's records do not reflect the fact that you have been on its housing waiting list since April 1988. The Council says it only has records of you being registered on its waiting list since September 1999.
2. That over the preceding 12 years the Council has not let properties on Street 1 in accordance with its lettings policy. You note that you are your mother's main carer so need to live close to her. You later informed me that due to your caring responsibilities for your mother you have been in receipt of carer's allowance for the past 17 years. I understand that your mother is a Council tenant.
3. About the pointing of your housing application. For example, you are dissatisfied that you have not been awarded medical points despite your epilepsy returning with the stress of your housing situation. As you faced being homeless, following the start of the investigation you moved to alternative private rented accommodation in the area. I understand from you that the rent the landlord was seeking was the cheapest you could find at the time.
4. About the Council's response to your complaint.

Investigation

5. As part of my investigation, information was sought from the Council including a copy of your housing file and the Council's computerised database entries. As my investigation has covered events that occurred sometime ago, not surprisingly as policies and procedures have changed over the years, the Council no longer has in its possession key policies such as its lettings policy amended in 2000. The earliest lettings policy the Council was able to provide to this office was amended in February 2003.

6. During my investigation, I visited the Council to look at your housing file which is kept electronically. I also met with you to discuss your complaint further. You and the Council were also given an opportunity to comment on my provisional findings.

7. Finally, although I have not included every detail investigated, I am satisfied within the remit of my investigation that nothing of significance has been overlooked.

A summary of the legislation/guidance/policies and procedures considered

8. I have considered relevant housing legislation and guidance as well as the Council's policies and procedures. In addition, I have had regard to the Ombudsman's powers and the restrictions that apply. Some of the matters considered are outlined in the attached appendix.

Relevant background information and events

9. I have reviewed your housing application file. The earliest housing application that it contains is dated **30 May 2002**. In that application, the Acting Estate Management Officer ("Acting EMO") dealing with your application made a handwritten reference to a September 1999 application. However, there is no evidence of this application on your file and the Council has confirmed to this office that it has been unable to locate it.

10. In your May application you set out your wish to be re-housed with your adult niece.¹ You highlighted that you had moved into your current address, a private rented property, as you and your partner had separated in November 2001. You noted that you looked after your disabled mother who lived in the adjoining property and this was why you needed to live in Street 1. Finally, you raised concerns about your tenancy and also ticked the box relating to being at threat of losing your present accommodation.

11. On 11 June, the Acting EMO wrote to you requesting further information including proof your niece resided with you and confirmation of the number of steps to the front and rear of the property. She said that your application would be suspended until this information was received.

12. You returned the Acting EMO's letter and the Council has date stamped it as being received on 17 June. You provided the requested information, but in addition, on the back of the letter you also noted that your four month contract with your landlord had ended. You expressed concern that you and your niece would be "out on the streets" if the property was sold, although you noted the

¹ The fact that your niece was residing with you meant you were eligible for family accommodation.

landlord's reassurances that you and your niece would not be asked to leave. You again highlighted that you were a full time carer for your mother and this was why you needed to live in Street 1. The Acting EMO's handwritten note on the letter said "add 4 points steps".

13. On 14 June, the Acting EMO completed a database entry in which she recorded:

"Check file for former arrears – application suspended – Mrs [A] has applied on her own – application suspended as previous partner is also entitled to time points if re-applies. If no response from Mr [B] within the next few months – application can be cancelled."

14. You returned a disclosure form to enable the Council to make further enquiries about your housing application on 20 June.² The following day, the Acting EMO wrote to your former social housing landlord, a housing association, ("the HA") requesting information about your tenancy including whether there had been any rent arrears.

15. In the section on the application form for housing staff to complete, the Acting EMO has recorded that you were on the General Needs waiting list and that your points assessment was 25 points (made up of 9 affordability points, 6 points for having a private landlord and 10 waiting time points). The Council's database was updated on 20 June.

16. The Council has provided me with a print off of its housing application notes screen (referred to as the "Application Screen"). This shows that the Acting EMO amended your application on the 20 June and that you had 29 points. The database entry noted that your application had been suspended until 20 June as enquiries were pending.

17. On 20 June, the Acting EMO sent you the Council's standard letter in which she noted that your housing application had been "assessed" in accordance with the Council's lettings policy and you had been awarded 25 points. A breakdown of your points allocation was not provided. However, the letter referred to further information about the way the points scheme worked being enclosed. You were also informed of the right to request a review of your application if you were dissatisfied with the way the points had been calculated. Finally, you were also advised:

"Your name may be removed from the Housing Register... if you do not reply to any letter sent to you regarding your application. You will be

² The Acting EMO's database entry for 20 June highlights that the information had been received and that she was awaiting a response from the Housing Association.

notified, by letter, if we intend to remove your name from the Register, and we will wait 28 days before we cancel your registration, giving you time to reply, giving reasons why you should remain registered.”

18. The Application Screen shows that in the “the Re-registration Action and Date” row, “Second Letter” has been inserted in the drop down box. In the adjoining box the date “21.08.2002” has been added. The print off also shows that on 11 September your application was cancelled and the reason cited was that the applicant failed to re-register (see paragraph 13). The Acting EMO is identified as the officer responsible for carrying out the amendments.

19. I have reviewed a selection of computer print offs of lettings and shortlisted applicants offered accommodation on Street 1 since 2000. From 21 October 2002 to 17 November only three bedroom properties became available. I note that on 16 December 2002, the Acting EMO allocated a two bedroom property which had become vacant on 18 November to an applicant with one child positioned third on the waiting list (“applicant 3”). Applicant 3 had been on the waiting list since 24 October 2001. The shortlist of applicants shows that there were two higher pointed applicants. However, the Acting EMO has recorded that the first applicant (with 39 points) wanted to be in a flat area and had not been offered the property. The second applicant, who had 35 points and had been on the waiting list since 24 May 2001, had been offered the property but subsequently refused it. Applicant 3 had initially been overlooked pending enquiries as it appears he had not responded to the offer letter. The fourth applicant (with 34 points), who had been on the waiting list since 9 April 2001, was overlooked because he had former rent arrears of over £1400 whilst it appears that the fifth placed applicant (with 33 points) had been overlooked pending enquiries again following no response to letters. Contact was made with applicant 3 on 9 December and a points check visit was arranged. I note that the offer was subsequently confirmed and the tenancy taken up. Between 2 June 2003 to 20 February 2006 only three bedroom properties became available for letting on Street 1.

20. On **28 February 2003**, the Acting EMO completed a database entry concerning your housing application in which she noted: “applicant has been reinstated”. The Council has provided me with a print off of actions undertaken on your housing application (which I shall refer to in this report as “Action List”). This confirms that the suspension on your housing application was removed. The entry records that you had 34 points.³

21. On 3 March, the Acting EMO wrote to the HA again repeating her request for information about your tenancy. The HA responded on 10 March and highlighted that while there had been no managerial problems with your tenancy there were outstanding rent arrears of £100.3

³ On 14 September 2002, if your application had not been cancelled you would have been entitled to a further 5 time points.

22. On 24 March, a database entry⁴ completed by another officer refers to your application being re-instated.

23. The Acting EMO wrote to you (on 28 March) to say that you had 34 points, although again the points were not broken down. Details of your outstanding rent arrears were also noted on the letter and you were advised that every effort should be made to clear these arrears before an offer of accommodation was made.

24. During the period 2004 to 2005, the database entries refer to re-registration forms being sent to you periodically and subsequently being returned by you.⁵

25. On **26 October 2005**, you wrote to the Council to inform them that your landlord was going to increase your rent. You highlighted that the accommodation would no longer be affordable and you would have to move. You also raised concerns about not receiving an offer of accommodation with regards to Street 1, despite vacancies occurring. You again highlighted your caring responsibilities.

26. On 9 November, the Council wrote a series of letters to you. In the first letter, the fact that your niece no longer formed part of your housing application was noted. The housing officer dealing with your application added that this had resulted in your removal from the list for family accommodation and your placement on the list for single persons accommodation. The housing officer also noted that your time points had been removed in accordance with the Council's lettings policy and that you now had 19 points.⁶ A summary of how your points had been calculated was provided. In the second letter, the housing officer said that in the event of your rent increasing you should contact Housing Benefit for further information. In relation to Street 1, the housing officer explained that because of the shortage of family accommodation such properties were allocated to families only. The housing officer suggested that you contacted her if you wished to discuss your application further. The final letter was the Council's standard housing application letter which referred to your points breakdown and the review process.

⁴ A separate print out noted your application was reinstated and re-registration confirmed. The database entries were made at 2.31pm.

⁵ The only re-registration letter that your housing file contains for this period was dated 10 October 2005. On this form you have deleted your niece's name.

⁶ Your points were made up of 4 points for steps front/rear, 6 points for having a private landlord and 9 points for affordability. There was no evidence of the Council carrying out any enquiries to establish when your niece was no longer part of your application.

27. There is a housing re-registration letter signed by yourself on **28 November 2006** which the Council has date stamped as being received on 13 December.⁷ Periodically, between **17 December 2007 to 6 February 2009**⁸ the database entries refer to re-registration letters being sent and re-registration being confirmed.

28. A database entry (dated 20 October 2009) noted, amongst other matters, that you had been advised over the telephone to add more areas as there were no single persons accommodation in your chosen area.

29. In the intervening years up to **2011**, there are further database references to you responding to re-registration of your housing application, although again no documentary evidence of this exists on your file.

30. On **3 January 2012**, a database entry indicated that as your re-registration form had indicated a change in your circumstances a housing application to detail that change had been sent to you.

31. On the form (dated 31 October), you said that you wished to make a joint housing application with your partner. In response to question 15, state of repair, you detailed in the relevant section (as well as on a separate sheet of paper) some of the difficulties you were experiencing with your landlord, which included outstanding disrepairs. You also documented associated safety concerns. Amongst the disrepairs you highlighted were: the hot water not working; a small gas leak that had been present for over a year and; for a seven year period having a cracked front bedroom window and a large hole in the kitchen ceiling caused by a leaking boiler. You highlighted the impact that the disrepair issues, coupled with the stress of the landlady saying that she was going to sell the property, had had on your health. You again reiterated that you were a carer for your mother and so needed to live close to her. In terms of areas you ticked your chosen area only and a handwritten note next to it referred to Street 1.

32. Your housing file contains the housing officer's housing application assessment sheet in which she noted the actions to be taken on your housing application. One of the steps noted "Loss of waiting time pts [points] changed from S/P [Single person] to G/N [General Needs] as of 5.11.12".⁹ The housing officer also noted "Advise [applicant] to contact [Environmental Health] with regards to condition of property". You were awarded 12 points (6 points for having a private landlord; 2 points for steps to front of property and 4 points for leaking windows/doors.

⁷ This was one of only two forms signed re-registration forms on your housing file; although the Action List details re-registration letters being sent out and confirmed.

⁸ Amongst the documentation you provided was the 30 January 2009 annual review letter.

⁹ There was no indication that the officer had considered exercising discretion in relation to your time points on your housing file.

33. The Council sent you a number of letters on 7 November including a request for further information, a standard housing points letter advising you had 14 points, and a letter asking you to contact the Environmental Health Department ("EHD") concerning the condition of your rented property.¹⁰

34. On 22 November the Council sent you a follow up chaser letter. The Council noted that if you did not respond your application might be cancelled.

35. On **2 January 2013**¹¹ the Council wrote to say your housing application had been cancelled as you had not responded to its request for information. You were informed that arrangements would be made to remove your name from the housing list. The review details were set out in that letter.

36. You wrote to the housing officer on 4 February, and referred to a telephone call¹² that had taken place between an Independent Housing Advice Agency and the housing officer that day to establish why you had no time points. You noted that the housing officer had said that she would investigate the matter. In your letter, you asked the housing officer to confirm in writing what she had found out. A database entry noted that the Council reinstated your housing application (on 13 February) after completing its enquiries. On 8 March, in response to a letter from the Council (dated 20 February), you wrote to the housing officer expressing disappointment with your points allocation and the removal of your time points. You again referred to the length of time you had been on the waiting list and asked for an explanation. The Council responded on 15 March. In a later letter (dated 26 March) you not only emphasised your caring role again but made further reference to the outstanding disrepair in your private rented accommodation.

37. On 17 April you attended at the Council where a housing options enquiries form was completed. I have examined the form and note that in the section relating to whether an applicant is homeless or threatened with homelessness, the section 21 notice box has been ticked. I also note that questions designed to establish the extent of the Council's homelessness duty were also completed. The section relating to disrepair and property condition was left blank. The notice to quit ("NTQ") (dated 8 April) that you received from your landlady is on your housing file. At this interview, you were given advice about the validity of the NTQ.

38. On 21 April you wrote to the Council concerning your epilepsy. You asked if you could widen your area from just Street 1 to the whole of your chosen area. Shortly afterwards (on 24 April) you again wrote to the Council setting out your

¹⁰ This letter was not on your housing file but was amongst the documentation you provided to this office.

¹¹ This letter was not on your housing file.

¹² There was no record of such a telephone call on your housing file. In your response to the draft report you explained that you had been present when the Housing Adviser from the Independent Housing Advice Agency had contacted the housing officer.

caring responsibilities. Your housing file contains your Special Housing Needs form¹³ that you completed in order to apply for medical points on the grounds of depression and epilepsy. Your housing file also contains a supporting letter (dated 3 May) that a disability support group wrote on your behalf, where your caring responsibilities are mentioned, together with a letter from your Assembly Member ("AM") to a Member of the Council detailing your imminent homelessness.

39. On 22 April your housing officer wrote¹⁴ to you. She referred to your recent correspondence and Housing Options interview where you had disclosed that you were a registered carer for your mother. You were asked to provide further information in terms of your caring responsibilities.

40. On 23 April the Council's Housing Advice Centre wrote to you to say that it had been informed that you might be a person that was homeless or threatened with homelessness. You were asked to arrange an appointment for a homelessness officer to determine, amongst other matters, what duties the Council owed to you under the relevant homelessness legislation.

41. On 24 April the Council wrote to you to explain when medical points are awarded. You were asked to complete and return the Special Housing Needs form which you subsequently did. The Council wrote to you (on 1 May) setting out what would happen next.

42. On the same date it seems that the housing officer referred your case to the EHD.¹⁵ I have had sight of the correspondence sent to you and your landlady from the EHD concerning arrangements to visit the property. Following a visit from an Environmental Health officer your disrepair points were increased from 4 to 20 points (as you obtained an additional 8 points for a leaking roof and 8 points for severe damp).

43. I have reviewed a series of internal Council e-mails including those between the Area Housing Manager and the Public Sector Housing Manager ("the PSH Manager"). In one e-mail (dated 10 May), the PSH Manager suggested that the Council use its discretionary powers to reinstate your time points if it would improve your housing prospects. In a subsequent e-mail the PSH Manager was informed why even with 49 points your points were insufficient for an offer in your chosen area.

¹³ The form is date stamped as being received by the Council on 29 April.

¹⁴ This letter was not on your housing file but was amongst the documentation that you provided to this office.

¹⁵ Details of the referral were not on your housing file.

44. On 13 May the Council sent you its standard housing points letter to say you had 49 points made up of 8 points for a leaking roof; 8 points for severe damp; 4 points for leaking windows/doors; 4 points for steps front and rear; 6 points for private landlord; 9 points for affordability code and 10 points for providing support/care.

45. On 21 May the Council's Area Housing Manager wrote to you and your partner. She advised that your application was registered with the Council in September 1999. She also said:

"...I can confirm that you have not been passed on the list for any vacancies but because you have limited the areas where you require housing and the properties do not become available often, applicants with higher points are offered before you".

46. Between 23 May to 1 August 2013, your housing file contains various correspondence relating to your housing complaint including a response letter that the PSH Manager sent to your AM (dated 23 May). In this letter the PSH Manager detailed the low turnover of housing stock in your chosen area and the limited number of council housing in the area. He also noted that since August 2012 the Council had only had one nomination request for a two bedroom property that the HA owned in the area. Referring to your housing position, including the NTQ, he suggested that you contacted the Housing Advice Service on a more formal basis.

47. In the PSH Manager's (stage 2) response letter of 1 August to you, he noted in terms of time points that "you will lose these time points if your circumstances change and you move from one waiting list to another i.e. single to couple."

48. Having detailed some of the lettings that had taken place on Street 1 the PSH Manager concluded:

"I can confirm that I have reviewed our records and I am satisfied that your application has been dealt with in accordance with the Allocation Scheme and you have not been overlooked for any properties that have become available in your chosen area."

The Council's evidence

49. The Council in its formal response said that with regards to your claim that you had been on the waiting list since April 1988 it held no record to indicate that this was the case. The Council said that following re-organisation in 1996 its

Housing Department had implemented a new computer system in 1997. Any applications registered at that time were transferred to the new system with applicants retaining their effective dates. The Council said that there was no record of your application being transferred to the new system, which suggested that you did not have an active application registered at that time. It noted that you had indicated that you had paperwork confirming that you had applied for housing in 1988 but to date had been unable to provide the Council with these records.

50. The Council said that all its records had been checked and the information available showed that your application was registered with the Council with effect from 14 September 1999. However, the Council acknowledged that it had been unable to find a copy of this particular application. It later confirmed that apart from a database entry on 1 October 1999¹⁶ there were no database entries detailing activities on your housing application between 14 September 1999 and 31 May 2002.

51. The Council again confirmed that the allocations that you queried in relation to Street 1 had subsequently been checked and that you had been advised that they had all been allocated to applicants with a greater number of points than your application was awarded at those specific times.

52. The Council explained that with regards to medical points that following the return of the Special Housing Needs Form in April 2013, your case had been assessed by a housing occupational therapist in April 2013 who had been unable to recommend additional points for disability arising as a direct result of your then accommodation. The Council noted that you had been advised of the outcome. The Council noted that it had sent you a Mental Health Questionnaire (on 28 August) as the main issues seemed to revolve around your mental health. At the time of the Council's formal response to this office it said the completed form had not been returned.

53. In response to further enquiries, the Council confirmed that the only signed re-registration forms that it had on your housing file were those dated 10 October 2005 and 28 November 2006. It said that it was possible that you had responded to other re-registration letters by telephone. The Council said that although Housing Services has no case management/file recording policy and procedure in place in respect of telephone calls, an officer would be expected to note any relevant information arising from such a call.

¹⁶ This entry noted that Street 1 was your choice in your chosen area.

54. The Council once again clarified its position on the circumstances when time points are removed following a change in an applicant's status. It said that in accordance with its letting scheme, when an applicant moves from the Single Person's waiting list to the General Needs waiting list "any time points accrued are removed."

55. In my discussion with the PSH Manager, he highlighted that the changes in terms of time points had been introduced because applicants would be on one list for a considerable period of time and would then move to another list and overtake applicants in greater need. He noted that applicants could request a review of their points and that it was at that stage that officer discretion came into play and consideration was given to whether the applicant had made a strong enough case for the retention of their time points. If a person did not request a review then their time points were not reviewed. The onus was on applicants to trigger the use of an officer's discretion.

56. On the homelessness front, the Council confirmed that your letter (dated 26 October 2005), did not trigger any homelessness inquiries at that time. It said that you had stated that your rent was about to be increased and you would need to move if the Council did not pay the extra rent. The Council indicated that it had not made a decision concerning the increased rent at that time. You were advised to contact the Housing Benefit section for further advice on this.

57. The Council added that the information you provided in your application in October 2012 again did not trigger any homelessness inquiries. Following the Housing Options interview on 17 April 2013, conducted at its Area Housing Office, the completed form was passed to its Housing Advice Centre who then wrote to you inviting you to contact them to arrange an appointment to discuss your situation but you did not make an appointment.

58. In conclusion, the Council said that it acknowledged that your application had been registered with the Council since 1999. However, it noted that you had always restricted your choice for housing to one particular street in your chosen area. The Council noted that there are only 36 council owned properties in this street and of these only eight are two bedroom properties. During the time your application had been registered there had been several changes in your circumstances which affected your award of points and the type of property you were eligible for. The Council indicated that from the information available it was satisfied that you had not been treated to your detriment at any time and had not been overlooked for any appropriate lettings.

59. Following further enquiries the Council confirmed that it was unable to locate its 2000 lettings policy or any of its lettings policies in the intervening period including 1997. The Council also highlighted that it could not say with absolute certainty whether the social factor criteria detailed in its 2003 lettings

policy would have been the same in 2002. Likewise, it could not say definitively how it would have dealt with your former rent arrears in 2002. During my visit to the Council it also highlighted that following changes to its IT database it was no longer able to access some of the earlier letters that it would have sent to you.

60. The Council was asked to provide details of lettings for a random sample of council lettings that had occurred in Street 1. In relation to a three bedroom letting that occurred in 2008 ("the 2008 letting") when the applicant was positioned 9th on the waiting list the Council commented as follows. It said that during the time you have been on the waiting list it had operated different computer processes and systems which explained the different types of shortlist print outs. In addition, at the time of the 2008 letting all lettings were dealt with by a centralised allocations team. At this time, the allocation team provided the relevant housing officer with a list of applicants in batches of five at a time. While the Council was able to provide the second batch of five shortlisted applicants (with the 9th applicant's details on it), the Council said it was unable to locate a record of the first batch of five shortlisted applicants.

61. The Council also advised that it had been unable to provide shortlists for three of the lettings highlighted as these tenancies had since ended and the paperwork subsequently destroyed in accordance with the Council's normal policy.

Analysis and conclusions

62. You have complained about the Council's handling of your housing application. You have also complained about the way it has let properties on Street 1 over the preceding 12 years. Finally, you remain unhappy with the Council's response to your complaint.

63. My investigation has revealed shortcomings in the Council's administration of your housing application. As a consequence, I consider that there were periods when your application was not dealt with as efficiently and effectively as it should have been. The failings that I have identified include instances of poor record keeping. This has meant evidence to substantiate activities that have occurred in relation to your housing application have not always been on your housing file. For example, I would expect to find evidence of a response to a re-registration letter as it demonstrates, by way of an audit trail, that the applicant remains eligible for housing under the Council's lettings policy. However, there were repeated examples of this information not being available. Given the instances of poor administration that my investigation identified, I cannot totally discount the possibility that you submitted an application earlier than 1999. However, that said, I do not consider it unreasonable for you to have to provide the necessary evidence in support of what you say. I understand that this

information is no longer available to you. To the extent set out in this report, I consider that there were failings in record keeping in respect of your housing file. These failings amounted to maladministration. I have therefore **upheld** this aspect of your complaint.

64. I consider that a reasonable council, in discharging its statutory function, will consider the facts contained in the housing application and assess those facts against its lettings policy. This may mean seeking further information from the applicant. While I acknowledge that the review avenue is open to an applicant to have their points corrected, the review process should not be seen as a substitute for proper management of an application.

65. I am of the view that it would have been reasonable for the Council to have directed its mind to whether you were entitled to social factor points much sooner than in fact occurred. This did not happen. I would also have expected, given the disrepair issues that you raised, for Housing Services to have made the referral, rather than expecting you to contact the EHD (see paragraph 33). This is particularly so given the Council's letting policy, and the fact that Housing Services and the EHD work within the same Council. As a consequence, there was a delay in proper consideration being given to your social factor and disrepair points. While I consider that there have been failings in the pointing of your application I have taken into account the following. Between 2 June to 31 October 2003, only three bedroom properties became available in Street 1. It seems that you would not have been eligible for three bedroom accommodation in this street. Between 31 October 2005 to 31 October 2012, your changed circumstances meant you would only have been considered for single persons accommodation. From October 2012 (when your changed circumstances meant you again became eligible to go on the general needs register), I note that you still only wished to be considered for Street 1. The only property that became available after this date was a three bedroom property (let on 17 December 2012). On the evidence available, I do not believe that the Council's failings caused you personal injustice for the time periods detailed in this paragraph. I have therefore **not upheld** this aspect of your complaint.

66. I note that in 2002 your housing application was wrongly cancelled (see paragraphs 13 and 18) and I have concluded, based on the evidence, that the circumstances that led to this happening amounted to maladministration. The effect of this was that you were not on a shortlist of applicants when a two bedroom property became available (see paragraph 19). With your time points you would have had 34 points. However, I cannot say, in the absence of the pertinent policy, whether you would have satisfied the criteria for social factor points at that time. Again, given that there were failings in terms of the Council following up your tenancy reference with the HA, I am unclear how the Council would have addressed this or indeed your former tenant arrears, if these had

been known at the point when the two bedroom property in Street 1 became available. A degree of uncertainty therefore exists as I cannot rule out the possibility that if your housing application had been dealt with properly that you might have been in a position to be housed at that point. However, the nature of the failings coupled with the absence of the relevant lettings policy means I am unable to be definite in my conclusions.

67. The Council's lettings policy uses the word "normally" (see paragraph 76) to show it has the discretion **not** to remove time points in situations such as yours when an applicant becomes part of a couple and moves from the single persons list to the general needs register. Repeatedly both in correspondence to you and this office (see paragraphs 47 and 54), the Council has failed to recognise the discretionary aspect of its policy and treated it instead as a blanket policy by referring to "will" in relation to the removal of time points. In cases such as yours at the point when the decision to remove the time points is being made (see paragraph 32), I would expect to find evidence that the officer had considered applying discretion. In the event that discretion was not applied, I would expect the officer to document fully the reasons for not doing so having taken into account the individual merits of an applicant's case. It seems to me that only applying discretion if an applicant requests a review of their points amounts to a failure to properly exercise the duty to reach an individual decision on each case. As such it is tantamount to a council fettering its discretion.

68. In terms of your medical points, I have considered the Council's actions and on the evidence I have considered it appears that the Council took the appropriate steps to consider and advise you about the basis on which medical points are awarded. However, it is likely from a homelessness perspective that the sort of health issues you were raising would be one of the factors that a council carrying out homelessness inquiries would need to consider in examining suitability and whether it was reasonable for a homeless applicant to remain in their accommodation.

69. I have outlined the supporting case law and guidance on homelessness (see appendix). This highlights when a council's homelessness duties may arise and how it may affect an applicant's housing application. It also clarifies that a formal homelessness presentation is **not** required to trigger a council's homelessness duty. I consider that there were instances when the Council's homelessness duties were triggered in your case (arguably at paragraph 25 and more definitely at paragraph 31), since you were raising issues about the suitability of the accommodation and whether it was reasonable for you to continue to occupy it by reason for example of affordability or disrepair. I am also of the view that the Housing Option interview amounted to a homelessness determination (see paragraph 37) as the extent of the Council's homelessness

duties were being considered. I am satisfied on the evidence that I have considered that the Council, in failing to recognise its homelessness duties had been triggered, failed to fulfil its homelessness duties as set out in the homelessness legislation which includes the issuing of a section 184 homelessness decision letter containing certain information. To that extent I consider that the Council was maladministrative. I would stress that even if a homelessness duty is triggered this does not mean that a council has to then provide permanent accommodation. However, depending on the outcome of any homelessness inquiries it may affect the pointing of an applicant's housing application. To the extent set out in this report, I have **upheld** this aspect of your complaint.

70. Finally, in view of the failings I have identified, I consider that the Council when responding to your complaint was not as robust, transparent, or open as it could have been in acknowledging failings around the administration of your housing application. As a consequence, you have had the additional inconvenience and distress of having to complain further to this office. I have therefore **upheld** your complaint.

Recommendations

71. I **recommend** that:

- (a) Within **one month** of the report being finalised, the Council's Acting Chief Executive should apologise to you for the failings that I have identified. In addition, the Council should in recognition of the impact of those failings on you, which includes the uncertainty as to whether you may have been offered accommodation in 2002, make a payment to you of £500
- (b) Within **one month** of the report being finalised, the Council's Housing Services should remind its housing allocation staff of the importance of ensuring, where supported by the facts, enquiries are made where necessary to ensure applicants' housing applications are correctly pointed in accordance with its lettings policy
- (c) Within **one month** of the report being finalised, the Council should provide appropriate training to relevant housing staff on the Council's Corporate Records Management Policy
- (d) Within **two months** of the report being finalised, the Council's Housing Services should develop guidance on the factors for consideration when considering applying discretion in relation to the removal of time points

- (e) Once the guidance is in place, the Council's Housing Services should remind its housing allocation staff of the need to consider applying discretion at the point when the discretionary decision on the removal of time points is being exercised. Housing allocation staff should also be reminded of the need to demonstrate that discretion has been considered
- (f) Within **three months** of this report being finalised, if it has not already done so, the Council's Housing Services should provide training to relevant housing staff, including allocation staff, on the circumstances when the Council's homelessness duties may be triggered and the steps that should be taken. The Council's Housing Services should also review its documentation to satisfy itself that it supports the early recognition of when the Council's homelessness duties may be triggered and thus engaged
- (g) The Council should within the timescales specified within the recommendations provide documentary evidence to this office of compliance with the recommendations above
- (h) Finally, in the interim period before the Council's Housing Services introduces its new lettings policy in 2015, where its housing allocation staff have reason to review a housing application that has had time points removed, the application should be reviewed against the guidance developed at (d) above.

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

Maureen Campbell-Taylor
Senior Investigator

10 October 2014

FOOTNOTE

This letter constitutes a report under s.21 of the Public Services Ombudsman (Wales) Act 2005 and is issued under the delegated authority of the Ombudsman.

Appendix

72. As part of my investigation, I have considered the legislation relating to the Ombudsman's powers and the restrictions that apply. The role of the Ombudsman is to investigate complaints that a listed authority such as a council has been guilty of maladministration and service failings and as a result the complainant has suffered injustice. The legislation does not say what is meant by maladministration but it is taken to mean that a listed authority has acted incompetently or improperly when it comes to its administrative functions.

73. I have also considered the Ombudsman's guidance on the principles underpinning "Good Administration"¹⁷ which emphasises, amongst other matters, the importance of listed authorities creating and maintaining reliable and usable records as evidence of their activities.

74. Furthermore, I have reviewed previous Ombudsman's cases including public reports¹⁸ relating to lettings and homelessness where there has been a failure by a council to recognise the triggering of its homelessness duties or inadequacies in the way that a council has dealt with an applicant's housing application.

75. A local housing authority ("LHA") when allocating its housing stock has to work within the relevant housing legislation,¹⁹ and take account of Welsh Government guidance²⁰ on how its lettings policy should operate. In addition, although not detailed in the legislation, administratively, a LHA when carrying out its statutory function must make such enquiries as will allow it to be satisfied that it has properly discharged its role.²¹

76. The Council uses a points based system to help determine priority, with those applicants in greatest need generally getting the highest points. I have reviewed the Council's lettings policy which has been amended over the years in response to changes in legislation and guidance. Broadly, as well as pointing applicants based on needs, the Council's lettings policy details:

- How changes in an applicant's circumstances may affect their time points. For example, the February 2003 amended lettings policy said that in the case of childless couples, where a single person formed a relationship with a partner prior to rehousing, they would "normally" be required to re-apply as a family without carrying forward any of the time in need points accumulated during the period as a single person. In the converse

¹⁷ Public Services Ombudsman for Wales (March 2008) Principles of Good Administration.

¹⁸ Case reference 200602563 issued 4/9/2008; case reference 200600749 issued 16/4/2008; case reference 200902138 issued 15/6/2011

¹⁹ The Housing Act 1996 as amended.

²⁰ Code of Guidance for Local Authorities on Allocation and Homelessness (April 2003) updated August 2012.

²¹ R v Islington LBC ex p Thomas (1997) 30 HLR 111 QBD.

situation, where a relationship breakdown occurs, each applicant retained their time points. Where an applicant was no longer eligible for family accommodation prior to an offer of a tenancy, they would have to re-apply as a single person and would be granted the time in need points accumulated during the period as a single person. The 2013 amended lettings policy in this area while it has sought to clarify aspects of the policy remains substantively unchanged

- The Council's annual review of applicants on its waiting list
- What happens if a housing application is cancelled
- The criteria for awarding private sector disrepair points and when a referral to the local Environmental Health Office will occur.

77. Homelessness legislation, accompanying guidance²² and case law details a LHA's homelessness duties. In terms of homelessness, there is no explicit requirement for a person who is homeless or threatened with homelessness to make a homelessness application.²³

78. If, and case law supports this, a LHA has reason to believe that an applicant **may** [my emphasis] be homeless,²⁴ or threatened with homelessness, then it **must** [my emphasis] make inquiries sufficient to satisfy itself as to whether the applicant is eligible for assistance. In addition, the council must also determine whether it has any duty to the applicant and the extent of that duty.²⁵ For example affordability and disrepair issues may raise issues about the suitability of the accommodation and whether it is reasonable for the applicant to occupy it. A LHA when deciding whether accommodation is reasonable to occupy, may have regard to the general housing circumstances that exist in the area that the applicant wishes to be housed.²⁶ The threshold for the triggering of a LHA's homelessness duty is low.²⁷

79. Once it has completed its inquiries, a LHA **must** [my emphasis] inform the applicant in writing of its decision and, provide the reasons for reaching that decision²⁸ ("the section 184 homelessness decision letter"). The applicant must also be informed of their appeal rights and the time limits for making an appeal.²⁹

²² Code of Guidance for Local Authorities on Allocation and Homelessness (April 2003), updated August 2012.

²³ Paragraph 12.2 of the Code of Guidance for Local Authorities on Allocation and Homelessness (April 2003).

²⁴ Housing Act 1996 (as amended) s.175.

²⁵ Housing Act 1996 (as amended) s184(1)

²⁶ Housing Act 1996 s177(2)

²⁷ ²⁷ *Aways & Ors, R (on the application of) v Birmingham City Council* [2007] EWHC 52 (Admin) 26 January 2007.

²⁸ Housing Act 1996 s184.

²⁹ Housing Act 1996 s202.