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PUBLIC SERVICES OMBUDSMAN FOR WALES
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The investigation of a complaint by Mr A against Caerphilly County Borough Council

A report by the Public Services Ombudsman for Wales
Case: 201400849

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Introduction

This report is issued under section 21 of the Public Services Ombudsman (Wales) Act 2005 ("the PSOW Act").

In accordance with the provisions of the PSOW 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 therefore refers to the complainant as Mr A.

Summary

Mr A has post traumatic stress disorder ("PTSD"), and is disabled. He complained to the Ombudsman about Caerphilly County Borough Council ("the Authority"). He said that, between July 2013 and February 2014, he was homeless but the Authority removed him from the housing list "without a valid or legal reason" and refused to explain its decisions to suspend his application and remove him from the list. He said that, despite numerous requests, the Authority failed to provide the information he requested. He also said he had been victimised for making a complaint to the Authority.

The investigation considered evidence from Mr A and the Authority, along with relevant legislation, guidance and protocols. The Ombudsman **upheld** Mr A's complaint because he found repeated failings in the way the Authority considered his housing application. The Authority failed to properly consider Mr A's homelessness status and failed to recognise the threshold for homelessness inquiries, as set out in the relevant legislation. Further, there was delay in the Authority's consideration of Mr A's application and it was suspended several times without him being informed.

The investigation also criticised the Authority's consideration of Mr A's mental and physical health conditions (as part of the application process). As a result of the way in which the Authority assessed Mr A's health conditions, it took far longer to process his housing application than for an equivalent application from an able-bodied person. The investigation concluded that the time taken by the Authority to consider Mr A's housing application was out of kilter with the aims of the Equality Act.

The Authority's record keeping and its handling of Mr A's complaints was also flawed. However, the Ombudsman did not find evidence that the Authority victimised Mr A. I did conclude that it should have made more effort to communicate with him in a way that he was more able to adapt to.

The Authority accepted the report and agreed to:

1. Give Mr A an unreserved apology for its failure to comply with the relevant legislation and statutory guidance when assessing his housing application.
2. Make a payment to Mr A of £1000 in recognition of the impact of those failings, which included the uncertainty as to whether he would have been

offered accommodation if the Authority had commenced homelessness inquiries and assessed his application properly.

3. Immediately reassess Mr A's housing application, ensuring that assessment fully complies with legislation and statutory guidance. Mr A must then be given a written decision that fully complies with legislation and guidance.
4. Formally remind staff:
    a) to comply with housing legislation and statutory guidance.
    b) that they must maintain appropriate contemporaneous records of all contact with housing applicants.
5. Consider whether the staff involved in this case would benefit from additional communications training from a mental health organisation.
6. Undertake a review of the Housing Department's record keeping methods, to ensure that the records maintained:
    a) comply with legislation.
    b) enable officers to support existing tenants and new housing applicants effectively.
7. Include the Special Housing Needs form and Occupational Therapy assessment processes in the Equality Impact Assessment which will be completed as part of the preparation for the introduction of the Authority's new Allocation Scheme.

The complaint

1. Mr A said that, between July 2013 and February 2014, he was homeless. He complained that Caerphilly County Borough Council ("the Authority") removed him from the housing list "without a valid or legal reason" and it also refused to explain its decisions to suspend his application and remove him from the housing list. He said that despite numerous requests, the Authority failed to provide the information he requested. He also said that he had been victimised for making a complaint to the Authority.

Investigation

2. I obtained comments and copies of relevant documents from the Authority and considered those in conjunction with the evidence provided by Mr A. Both Mr A and the Authority were given the opportunity to see, and comment on, drafts of this report before the final version was issued. I have not included every detail investigated in this report but I am satisfied that nothing of significance has been overlooked.

3. I am issuing this report under the authority delegated to me by the Ombudsman under paragraph 13(1) of Schedule 1 to the PSOW Act.

Relevant legislation, statutory guidance and protocols

4. During the investigation I have considered:

- The Housing Act, 1996 (as amended) ("the Act").
- The Homelessness Act, 2002.
- Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness (Welsh Government) 2012 ("the Code of Guidance").
- Housing Allocations and Homelessness, Ombudsman's Special Report, February 2006.
- Principles of Good Administration, the Ombudsman, March 2008 ("the Ombudsman's Guidance").
- The Equality Act 2010 ("the EA").
- Technical Guidance on the Public Sector Equality Duty Wales ("the Technical Guidance").

- The Authority's:
    a. Housing Allocation Scheme ("the Allocation Scheme")[1]
    b. "Explaining Homelessness" publication (February 2007)
    c. "What should I do if I am homeless or might become homeless soon?" publication (February 2007)
    d. "Guidance Notes - Homelessness Decisions & Appeals"
    e. "Guidance for staff assessing and registering Applications"
    f. Housing Reviews and Appeals procedure ("the Appeals Procedure")
    g. Strategic Equalities Plan
    h. Corporate Complaints Policy ("the Complaint Process").

5. A summary and extract of the relevant legislation guidance and protocols is at Appendix 1.

The background events with comments from Mr A and the Authority

6. On 5 June 2013, the Authority received Mr A's housing application form ("the Application"). On this Mr A stated that he was disabled with post traumatic stress disorder ("PTSD"), Chondromalacia patellae[2] and osteoarthritis in both legs and ankles. He also stated that he owned[3] a property that he was not living in which he had let it on a tenancy agreement ("House 2"). He also stated that his relationship with his ex-partner had broken down. She was "allowing him to stay at her home until July 2013". He gave her address as a "care-of" address ("House 1").

7. The Authority's records show that the Application was assessed and Mr A was awarded a total of 22 points, being:

8 - relatives or friends
4 - shared bathroom
3 - shared toilet
4 - inadequate cooking facilities
1 - shared living room
2 - limited privacy

[1] All versions spanning the events - there being no material change between versions relating to the extracts quoted in this report and the level of points awarded to the application.
[2] Chondromalacia patellae is damage to the patella cartilage. It is like a softening or wear and tear of the cartilage. The damage can range from slight to severe.
[3] The form asked whether the applicant owned or had a financial interest in a property that he was not living in.

8. The assessment also noted that more information was needed from Mr A about his marital status and the ownership of House 1. The records show that the Application was suspended on 10 June (and reactivated on 17 June).

9. On 12 June, Mr A told the Authority that he was not married and that his ex-partner owned House 1.

10. Mr A said that in July he asked the Authority for a health questionnaire and a mental health questionnaire ("MHQ") as they had not been given to him. He said he also told the Authority that he was homeless and he was given another housing application form to complete.

11. The Authority's records show that on 16 July Mr A told officers that he was "NFA" (no fixed abode).[4] The records also show that he was sent a special housing needs form ("SHN form") to complete. The covering letter said that additional points may be awarded to reflect difficulties his medical conditions may cause him in his existing home. The letter said that points would only be awarded where there was a "clear link between physical health and unsuitable housing". It also said that he was not required to provide supporting medical evidence from his GP or any other medical professional.

12. The records show that the Application was suspended on 16 July (reactivated on 5 August and suspended again that same day).

13. The Authority received Mr A's SHN form on 19 July. Mr A stated on the SHN form that he was homeless. He also gave details of his PTSD and his disabilities. He said he used a walking stick outdoors and he had difficulty with stairs but could negotiate a maximum of 12 stairs on his backside.

14. On 22 July, the Authority received a further housing application form from Mr A ("the Amended Application"). The Amended Application did not include the statement that he was "staying with ex-partner until July 2013". In all other respects the form was the same as the original Application. The Amended Application was again awarded 22 points (for the same categories as paragraph 7).

[4] No fixed abode is a legal term generally applied to those who do not have a fixed geographical location as their residence. This term is applicable to several groups, including people who could be considered to be homeless.

15. In its comments on the draft of this report, the Authority said that the application Mr A submitted in July ("the Amended Application") was treated as an amendment to the earlier Application. It also said that this form did not state that Mr A was NFA, nor did it give information about where he was living. The Authority said that the Amended Application did not indicate that Mr A was threatened with homelessness within 28 days. It said Mr A was legally entitled to occupy House 2. The Authority said he did not tell the Authority that he was unable to secure entry into House 2, nor did he say that the accommodation was not reasonable for him to occupy.[5]

[My comment: although Mr A had provided information about his marital status and the ownership of House 1 on 12 June, the assessment of the Amended Application also noted that this information was still needed]

16. The records show that the Amended Application was suspended on 5 August (and reactivated on 16 September).

17. On 5 August, the Authority sent three separate letters to Mr A. The first letter included a summary of his housing application. The summary did not include any information about his health. The letter said that his name may be removed from the housing register if he ceased to be eligible for housing or if he did not reply to any letter sent to him regarding his application. The letter said that if the Authority intended to remove him from the register he would be notified by letter and given 28 days to respond. The second letter again asked for details of his marital status and the ownership of House 1. The third letter told Mr A that, based on information he had provided, he may find it helpful to receive further housing advice.

18. In its comments on the draft report, the Authority accepted that Mr A did not provide contradictory information about House 1. It also accepted that it was not appropriate to keep asking for details of his marital status and the ownership of House 1. The Authority said it would apologise to Mr A for this.

[5] s175 the Act. Code of Guidance, Chapter 13. Appendix 1.

19. On 6 August, in an e-mail to the Authority, Mr A said he had been told several times that it would take two to six weeks to assess his SHN form. He said that, even though he was homeless, he had again been told that the assessment had not been completed. He said that if he had not been applying for extra points for his disabilities his application would already have been assessed. Mr A said the Authority was treating him differently to an able-bodied person. He repeated these concerns in a letter on 7 August.

20. On 7 August, an Occupational Therapist ("the OT") reviewed Mr A's SHN form. The evaluation noted: "Mr A states that he is homeless" and "as Mr A is currently of no fixed abode I am unable to recommend the award of additional points for physical difficulties arising as a direct result of the current accommodation".

21. On 8 August, the Authority e-mailed Mr A. It said:

> "I can confirm that you have been awarded 22 points ... being that you live with your ex-partner. If this is not the case and you are homeless, then we would require proof in the form of either a letter from your employer, a letter from the Benefits Agency stating that you are being paid as NFA or letter from at least 2 people that you stay with throughout the week stating that you do not live there on a permanent basis. We also need to know who owns [House 1]. We have received your SHN form in relation to your medical conditions and this should be assessed by our Occupational Therapist within the next four weeks. Should you be homeless and require immediate assistance then you will need to contact [council officer] on 01443 873522 to arrange a Housing Pathways Interview to give you advice on securing accommodation..."

22. On 12 August, the Authority advised Mr A that his request for additional points had been rejected because his "No Fixed Abode status" did not allow the Authority "to evidence a clear link between his physical/ mental health and unsuitable housing." He was told that if he wanted to ask for a review of the decision he should do so within 21 days. He was also told that unless he provided additional medical information it was unlikely the decision would be changed.

23. On 14 August, Mr A complained to the Authority. He said:

- The summary[6] failed to take his homelessness and disabilities into account.
- The Authority had asked for information he had already supplied.
- He had been told by officers that it would take two to six weeks for the OT to consider his application. He said that this was unacceptable as an able-bodied person would not have to wait this period of time to be assessed.
- He had received the Authority's decision that his request for additional medical points had been rejected because of his "No Fixed Abode status". He said he was being victimised.

24. On the same date, the Authority's records indicate that it had confirmation from HM Land Registry that Mr A did not own House 1.

25. Mr A said that by August he had not been given a MHQ to complete.

26. On 5 September, the Authority responded to Mr A's complaint. It said that:

- The decision not to award any further points in respect of the SHN form was explained to him on 12 August. The response said there was an appeal mechanism in place, "but as the 21 day limit had expired this option was no longer open".
- If he was NFA the Authority would need evidence from him confirming this.
- The information he gave about House 2 in his Applications needed clarification. The Authority requested the address of the property and details of his financial interest in the property. It said the information was required before it could give "further consideration" to offers of accommodation as it **could** (my emphasis) affect his eligibility for housing.
- a letter[7] would be sent to him that day detailing exactly what information was required so that he could be considered for offers of accommodation.

[6] 5 August 2013.
[7] The Authority did not provide a copy of this letter.

- A Housing Pathways appointment, in relation to his homelessness status had been arranged for him for 13 September.
- The Allocations Scheme complied with all relevant legislation including the Equality Act 2010.
- The Authority took 19 days to assess the SHN form. An able bodied person would not require a SHN assessment and "...therefore any comparison between an able and less able applicant is an irrelevance ..."
- If Mr A was not satisfied with the result of the investigation he could ask for the complaint to be progressed to Stage 2 of the Complaint Process.

27. In its comments on the draft, the Authority said that applicants were not formally notified that their application was "suspended". It said the e-mail of 5 September informed Mr A that his application was suspended. It said that staff wrote to Mr A several times to ask him for information about why he could not live at House 2. They also reminded him that his eligibility for housing could be affected. It said this was the usual practice at the time. The Authority accepted that this could have been explained more clearly to Mr A and it would apologise for this. It said that it now writes to applicants to clearly state that their application is suspended. Applicants are also then notified if their application is to be cancelled and they are given 28 days to respond.

28. In its comments, the Authority also said that the use of the word "irrelevance" appeared to have been misunderstood, but perhaps the original correspondence could have been differently worded. It apologised for any confusion caused.

29. Mr A told the Authority that he was not satisfied and he wanted to take his complaint to the next stage. The Authority duly escalated it to Stage 2.

30. On 9 September, the Authority e-mailed Mr A. The e-mail said: "... possibly not enough attention has been given to your homelessness situation throughout the various e-mails...". The Authority explained that being an ex-serviceman would not affect any housing points awarded. However, if he were to apply to the Authority as homeless, it would take being an ex-serviceman into account, as that group was given priority status in terms of homelessness and he could be considered to be in priority need. Mr A was

advised to contact the Authority's Housing Advice Centre to make a homeless application. If he preferred, an appointment could be made for him and, if needed, emergency accommodation could be provided while investigations into his homelessness status were completed.

[My comment: The Authority gave a copy of this e-mail with its comments on the draft of this report; it had not been provided previously.]

31. The Authority's records indicate that on 10 September it had confirmation from HM Land Registry that Mr A owned House 2. Also on that date, Mr A told the Authority that his daughter occupied House 2. He said that as he was homeless he would give her notice to leave at the end of the month. The Authority told him that once he had returned to the property (as owner-occupier) it would look at his ability to cope in the property and re-assess his application for housing.

32. The Authority's records[8] include an entry dated 11 September. It said that an email had been sent to Mr A "during the Stage 1 complaint" to advise him that the Authority could not offer him accommodation due to his financial interest in House 2.

33. In his complaint to this office, Mr A said he had not received an email on 11 September and, despite several requests, the Authority had not given him a copy of it. In its comments on the draft report, the Authority said that the e-mail was sent on 5 September (above). It apologised for the confusion.

34. The Housing Pathways appointment did not go ahead on 13 September. In its comments on the draft report, the Authority said Mr A refused the Housing Pathways interview.

35. The Authority's records include an internal e-mail dated 20 September which highlighted that a MHQ should have been sent to Mr A when he made his application and also when another officer requested it on 6 September.

36. The records show that the Amended Application was suspended on 24 September (and reactivated on 2 December).

[8] The computerised records.

37. On 24 September, the Authority provided the MHQ. The covering letter said that Mr A was NOT (the letter's emphasis) required to provide supporting medical evidence. Mr A returned the completed MHQ on 27 September. He gave details of his medical and mental health conditions, including the PTSD. The MHQ form's "Consent" section indicated that the Authority would not normally contact medical practitioners, but it may do so "in exceptional circumstances". Mr A gave consent for contact to be made only in respect of the PTSD.

38. An internal email dated 30 September confirmed that on 12 June the Authority received information from Mr A (that he was not married and that his ex-partner owned House 1). The email also said that as the information was "contrary to what he was telling [officers] by phone it was re-requested".

39. The Authority's records include an internal email dated 1 October which said that it appeared that the suspension of Mr A's application was made clear in the stage 1 [complaint] response.

40. On 2 October, the Authority gave Mr A a stage 2 response to his complaint. In addition to giving a general overview of the progress of his application, the response:

- said the Authority did receive information from him (about his marital status etc) on 12 June but, "as this contradicted what he had told officers during phone calls", it was necessary to ask Mr A to confirm the information.
- apologised that scheme leaflets and a list of properties to rent were not enclosed with his points notification letters. Those were enclosed.
- confirmed that it was normal for it to take between two to six weeks for an application to be assessed by the OT. It said it was important that all necessary information was taken into account to ensure that any offer of accommodation met an applicant's needs.
- said the information given to him in the 12 August letter was correct. As he had told the Authority he was homeless, there was no property for him to be assessed against, so points for physical disability could be awarded.

- said the application had been reviewed and, as he had told the Authority he was homeless, points previously awarded for living with relatives/ friends etc had been removed and instead 25 points for 'No Fixed Abode' status had been awarded.
- said his application would not "be actively considered" until the information previously[9] requested as proof was provided.
- said the Authority was satisfied that it had made reasonable adjustments to ensure that any allocation was fit for purpose. If Mr A disagreed, he would need to provide evidence of how he felt he had been treated differently.
- apologised for the delay in sending the MHQ and confirmed that it had now been sent.
- confirmed that Mr A had been advised that when he returned to House 2 the OT could assess his ability to manage at that property.
- advised Mr A to notify the Authority as soon as possible of his move to House 2 or explain why he would be unable to occupy the property should it become vacant.

41. On 3 October, Mr A's housing application points were updated to 25. This change in points recognised his NFA status. On the same date, the Authority wrote to Mr A reminding him that he had been asked to provide information (it did not specify what information had been requested). It said that if he failed to provide the information his application may be cancelled.

42. The Authority's records show that on 7 October, Mr A phoned the Authority to explain that he could not provide evidence to support his NFA because he was staying in bed and breakfast ("B and B"), not with friends and not claiming benefits. The records note that when he was asked to provide receipts for the B and B stay he ended the call.

43. On 15 October, the records show that Mr A's MHQ was received and passed to Gofal.[10]

44. The records indicate that on 16 October, in response to a query from Mr A, the Authority told him that it did not directly have a "priority need" category for the housing waiting list as it was a points-based system.

[9] 8 August email.
[10] Gofal is a mental health and wellbeing charity.

However, it also said that there was a priority need category for certain people under homelessness. [11]

45. On 13 November, Mr A underwent a housing allocations mental health assessment with Gofal. The assessment noted that Mr A was homeless and "sleeping on someone's sofa". It also noted that there had been a decline in Mr A's mental health due to his unsettled living conditions and housing problems. It recommended a referral to the Gofal Crisis team and also said that Mr A would benefit from having a settled, secure home.

46. The records indicate that on 18 November Mr A's housing application had 35 points.

47. On 13 December, the Authority emailed Mr A. It said that his application had 35 points (25 for NFA and 10 for the MHQ). It reminded him that in September he had told the Authority that he had given the occupants of House 2 two months notice to leave the property. The Authority said two months had passed, and it wanted Mr A to explain why he was not now able to occupy his own property. It said that if he had a property to return to he would no longer be NFA and 25 points would be removed from his application. The email quoted paragraph 4.11.3 of the Allocation Scheme in support of its position. In his response,[12] Mr A said he had not given notice to the occupants as there was still a month left on the tenancy. He also said he would be unable to occupy the property because of his disabilities.

48. In its comments on the draft report, the Authority acknowledged that Mr A's health was a relevant factor in whether it was reasonable for him to occupy House 2. However, the Authority said it was not told until 13 December that, because of his disabilities, Mr A could not occupy House 2.

49. The records[13] show that the Authority cancelled his housing application on **5 February 2014**.

50. On 6 February, Mr A told[14] the Authority that his application had been suspended from the housing list on 24 September, but that he had not been

[11] Code of Guidance Chapter 14, see Appendix 1
[12] By email on 13 December.
[13] The records do not include a copy of the letter to Mr A. The cancellation is referred to in the computerised records.
[14] By email.

told about the suspension or been given any information about the appeal process at the time. He also said his application was suspended again on 17 December but again he had not been given any information about the appeal process. He said he believed the suspension was still in place.

51. The Authority's records included confirmation[15] from the Service Personnel and Veterans Agency that Mr A received a 40% War Pension in respect of an injury to his right ankle, PTSD and chondromalacia patella.

52. On 14 February, the Authority asked Mr A to confirm that he had given notice to the occupants of House 2. Mr A told[16] the Authority he had not given notice to his tenant because he was unable to live at the property. He said the bathroom, toilet and bedrooms were upstairs and it was also at the top of a steep hill.

53. In its comments on the draft report, the Authority said this was the first time Mr A had provided this information.

54. On 18 February, the Authority's records show that Mr A requested a review of the Authority's decision to cancel his application. On the same date, the records show that the response to his review request was that an initial review of his application had been completed and the decision to cancel his application had been upheld.

55. In comments on the draft of this report, the Authority said that the correct appeals procedure was followed immediately. As this was an informal review there was no report prepared and the outcome letter represented the investigation undertaken.

56. On 27 February, the Authority offered Mr A a named member of staff as a single point of contact with the Authority.

57. On 5 March, Mr A advised the Authority that he was no longer homeless.

58. On 28 March, Mr A complained to the Authority about its "failure to make reasonable adjustments". Mr A indicated that during phone calls with

[15] Dated 13 February 2014.
[16] In his response on 17 February.

officers he sometimes became agitated as a result of his condition. As a reasonable adjustment, he wanted the Authority to advise officers to terminate phone calls if that happened.

59. On 17 April, the Authority told Mr A that it accepted he had a disability. It confirmed that he had been told that he should write to the Authority, rather than contact it by phone. It said Mr A had previously refused the reasonable adjustment of using a single point of contact.

60. On 25 April, the Authority told Mr A that he had not given the Authority sufficient information about his PTSD symptoms in order for it to make reasonable adjustments. The Authority said it had suggested that Mr A use a single point of contact. It said that the suggestion did not put Mr A at a disadvantage because he was still able to contact the Authority. The Authority said it did not accept that Mr A had been the subject of discrimination.

61. On 1 May, Mr A asked the Authority to arrange an OT assessment at House 2.

62. On 6 May, Mr A complained to the Ombudsman.

63. On 18 June, the Authority told this office that it had not commenced homelessness inquiries or given Mr A a written decision in relation to his homelessness status. The Authority said that it had (on that date) offered Mr A dates for an OT assessment to take place at House 2.

64. On 25 July, the Authority told me that Mr A had never been removed from the Housing List. It said that the initial letter sent to him, as with all other applicants, said that his application would be suspended or cancelled if he did not provide the relevant information. He was advised on 5 February 2014 that this had happened. He asked for a review which was then completed.

65. In comments on the draft of this report, the Authority said that it should have explained that Mr A had never been excluded (rather than removed) from the Housing List. It apologised for the confusion.

66. The Authority said that it believed it had fulfilled all statutory duties to Mr A. It said that Mr A had applied for housing and was appropriately assessed according to the allocations scheme. A MHQ questionnaire was completed and assessed. Mr A stated that he was homeless and was therefore advised to contact the Housing Advice centre. An appointment was made for him to attend the Housing Advice centre but he cancelled this and did not attend. Mr A had not formally presented as homeless, in addition the information he gave as part of his housing application did not suggest that he was homeless and therefore the Authority had no homelessness duty towards him. If he wished to present as homeless another appointment could be arranged for him at the Housing Advice Centre.

67. The Authority said that his application had been awarded points in line with the allocation scheme, but it was waiting for information (from Mr A) about why the property he owned was not suitable for him to live in. It said that it planned to arrange an OT assessment when he was well enough to attend. Once the assessment was completed, Mr A's application would be considered and, if appropriate, he would be placed on the Housing List for properties to be offered to him.

68. Mr A said[17] that he had undergone surgery on 7 October and he had been unable to walk until mid November. He said it had been difficult to arrange the OT assessment because:

- of his own situation
- the ill health of the tenant of House 2
- the Authority had cancelled the OT assessment.

69. In its comments on the draft report, the Authority said it had not cancelled the OT assessment.

70. Mr A said he continued to live with family and friends. He said that due to his disabilities and recovery from surgery, the situation was very difficult. He also said that he had been unable to find suitable adapted private rented accommodation.

[17] Email dated 10 December 2014.

71. The Authority said[18] it had been corresponding with Mr A for some months but, as he was recovering from surgery, the OT assessment had not been completed. It said that as Mr A had not been able to confirm a date, the OT assessment would not take place until January 2015. The Authority said that Mr A had not been offered a property.

Comments on the draft of this report

Mr A's comments

72. In February 2015, Mr A said that the recommended financial redress did not properly recognise the way the Authority treated him. He said he was forced to sleep outside in freezing temperatures; he was discriminated against because of his disabilities and victimised for making a complaint. He said he had lost all of his self – esteem and his mental and physical disabilities had suffered setbacks. He said his request for help under the "Armed Forces Covenant" was ignored by the Authority and the Authority's "Armed Forces Champion" ignored his requests for help with his housing issues.

73. In March 2015, Mr A said that even though he was now homeless again, the Authority had still not offered him emergency accommodation or help. He said the Authority "just kept putting new barriers in his way".

The Authority's additional comments

74. The Authority submitted detailed comments on the draft of this report. It also gave some 600 pages of e-mails between the Authority and Mr A. It said that these were either, provided previously but were given again to "clarify its comments on the draft"; or related to the offer of an OT assessment; or were e-mails sent since July 2014. Where appropriate the Authority's comments have been reflected above, the remainder is summarised here.

75. The Authority said that there were "certain failings" in the way it handled Mr A's housing application.

[18] Email dated 15 December 2014.

76. It said Mr A made an application to be added to the housing list and his Application stated that he was only able to stay with his ex-partner until July 2013. The Authority said it deals with these matters under two different processes. It said his application was first assessed under its Allocations Policy and secondly it was necessary to consider whether or not to commence inquiries in accordance with the homelessness duty under Part 7 of the Housing Act 1996.

77. It said it did not consider that his application was a "homelessness application" because on the basis of the information he gave it "eventually reached a decision that he was not homeless or threatened with homelessness". It acknowledged that Mr A was never notified of that decision.

78. The Authority said that as a result of "new legislation which has been introduced" it now writes to applicants about information required regarding their homelessness and whether or not inquiries need to be made.

[My comment: the Authority has not provided details of the new legislation it referred to]

79. The Authority accepted that it is not for a housing applicant to "prove their case". It said, however, that information is always needed from the applicant for a decision to be made, but it would also make any available checks such as with the benefits agency or land registry.

80. The Authority said it tried to obtain more information from Mr A by inviting him to attend interviews. Staff initially thought that, because Mr A did not attend these interviews, no homelessness inquiries were required. It accepted that an applicant does not need to attend an interview to make a homelessness application. However, it said basic details were required to enable inquiries to be made in line with the Code and that Mr A refused to provide these details.

81. It accepted that Mr A had a disability which may be affecting his ability to communicate and therefore it had attempted to make reasonable adjustments to enable effective communication, such as appointing a

member of staff as his single point of contact. It said Mr A had refused to use the single point of contact and had "not fully engaged" in the proposed adjustments.

82. The Authority said it still considered that Mr A was not homeless or threatened with homelessness as defined by s175 of the Act and Chapter 13 of the Code. It said that, based on the information he gave, the duty to make inquiries was not triggered. It also said that it did not make a determination under s184 of the Act and therefore Mr A did not have a statutory right of appeal under s202 of the Act. It said that the only legal remedy available to Mr A would have been judicial review.

83. The Authority said that Mr A did not initially give evidence that his ex-partner had asked him to leave House 1 in July 2013 and he also gave conflicting information about his circumstances.

84. The Authority said it would first consider preventing homelessness. It said "the only way to complete inquiries" was to send an OT to assess House 2. It said it had been attempting to carry out this assessment since 14 February 2014 but Mr A had not agreed to any appointments offered. It said that, more recently, Mr A was not able to attend two appointments that had been offered to discuss his stated homelessness because he was in hospital. Mr A was asked to contact the Authority when it was convenient for him to attend, but he has not done so and the position remains unchanged.

85. The Authority said it would only be able to reconsider whether or not the duty to make inquiries was triggered once the OT assessment had been completed. It said it had repeatedly explained to Mr A that his housing application would only be reinstated when the OT assessment had been completed because he would not be offered accommodation while he owns a property which he could occupy. The Authority said Mr A has never provided evidence and had not allowed an assessment of House 2. He would not be offered a property until he does so. Therefore the suspensions of his application have not led to him missing out on offers.

86. It said that the report appeared to confuse the Authority's duty to provide accommodation to someone who is homeless, with the requirements of its Allocation Policy. It said "the assessment of whether or not someone

was in priority need[19] ...was only required as part of inquiries once a homelessness application had been accepted." It said this did not apply to Mr A, and this was explained to him on 9 September and 16 October 2013.

87. The Authority said it was fully aware of its Equalities duties and has been complying with them since the legislation came into force.

88. It said that, when necessary, it had to obtain additional information from applicants otherwise specific needs could not be identified. The Authority said that the process of obtaining and assessing additional information (via the SHN form and an OT assessment) was "...an entirely reasonable and proportionate step as the balancing factor against those who do not have a protected characteristic is that they cannot gain the extra points the assessment could provide...". The Authority said this was not indirect discrimination. It said it is justified because it enables applicants with disabilities to be given additional points and therefore they would be offered accommodation sooner. It said that disabled applicants who were waiting for an OT assessment were still made offers of accommodation based on the points they had (without any additional points an OT assessment may give).

89. The Authority said there was no unreasonable delay in the assessment of Mr A's SHN form. It also said that, in any event, as Mr A had not provided the information about House 2, he would not be offered any accommodation.

90. The Authority said Mr A did not use his right of appeal in relation to the SHN form neither did he request a review of his application, he made a complaint. Therefore, the use of the complaints process was appropriate. It said that, as a result of his complaint, his application was fully reviewed and he was awarded additional points.

91. The Authority said that, in accordance with new legislation, a new allocations policy and common housing register will be introduced in April 2015. The updated Allocations Policy will be subject to an EIA[20] and this could include a review of the SHN form and OT assessment processes

[19] Code of Guidance Chapter 14, see Appendix 1.
[20] An Equality Impact Assessment is a systematic assessment of the likely (or actual) effects of policies on people in respect of disability, gender, including gender identity, and racial equality.

92. The Authority also gave me a copy of a training presentation entitled: "Mental Health Awareness" ("the Training"), which was recently delivered to council staff by Gofal. The Training explained how to recognise general symptoms of mental health issues such as depression, anxiety disorders and eating disorders. It also looked at how to support and help friends, colleagues and other people who maybe suffering from these conditions.

Analysis and conclusions

Mr A's housing application

93. I am concerned about the way the Authority dealt with Mr A's housing application. I consider that it was maladministrative. I have outlined my reasons for this conclusion below.

94. Mr A's first housing application (5 June 2013) gave the Authority enough information to indicate that it should provide him with both a SHN form and a MHQ questionnaire. However, Mr A had to ask the Authority several times to provide both. It did not give the SHN form until 16 July and the MHQ questionnaire was not given to him until 24 September. Those delays were unreasonable. As a result of the delay, Mr A's application was not awarded points for his mental health status until 18 November, that delay was also unreasonable.

95. Mr A said that despite him giving information about House 1 on 12 June, the Authority repeatedly asked him for the same information. The Authority's records suggested that the repeat requests were made because he gave contradictory information by phone. I have reviewed the records; I am satisfied that the Authority received the 12 June email. Further, I have found no record of Mr A giving contradictory information about House 1. The Authority has since accepted that it should not have repeatedly asked for the information and that Mr A did not provided contradictory information about House 1. It said it would apologise to Mr A.

96. The Authority told[21] Mr A that it would not award health points because he was NFA. Mr A then complained about this and other issues. I am concerned that, on 5 September, the Authority told him that he could not

[21] 12 August.

appeal this decision because the time limit had expired. When he complained on 14 August the time limit had not expired. I do not think the Authority's view, that his complaint was not an appeal against the decision, was reasonable. The decision letter said a request for a review of the decision must be made in writing, Mr A wrote to ask the Authority to address his concerns. I accept that it later awarded 25 NFA points as a result of his complaint. However, it took until 3 October to do so. That is unsatisfactory.

97. The Authority has maintained that the 5 September e-mail to Mr A clearly stated that, due to his financial interest in House 2, it could not offer Mr A accommodation. I have looked carefully at that e-mail; it is not clear. The e-mail asked Mr A to provide information about his financial interest in House 2, because it **could** (my emphasis) affect his eligibility to join the housing register. It also said a letter would be sent detailing exactly what information was required. The Authority did not give me a copy of that letter and its records make no other reference to it. There is therefore no evidence that this letter was sent, or that the consequences of Mr A failing to provide information about House 2 were clearly explained to him.

98. Furthermore, this was the first time (5 September) the Authority had asked Mr A to provide any information about his interest in House 2. All previous requests related to House 1. This is despite Mr A clearly stating that he owned House 2 on his Application (June), and that it was let on a tenancy agreement (thereby indicating he was not living / could not live in it).

99. The Authority said the suspension of Mr A's application was made clear in the 5 September e-mail. Again, I disagree; it was not made clear. Further, if, as part of the stage 1 complaint response, the Authority intended to advise Mr A that it had suspended his application, it should have given him 28 days to reply to the notice. It did not do so. The Authority accepted that this could have been explained more clearly to Mr A. It said it would apologise for this.

100. I am concerned about the number of times the Authority's records note that Mr A's application was suspended without him being told. As he was not notified of the suspension, he would not have been aware of his statutory right to request a review of the decision.[22] That is unsatisfactory.

[22] Code of Guidance 4.167, s167 the Act, Appendix 1.

101. The Authority has since said that, at the time, applicants were not formally notified that their application was "suspended". As a result, applicants would not have been aware of their right to request a review. That is a systemic failing which is unsatisfactory. However, I acknowledge that the Authority has since revised its procedures and applicants are now properly notified.

102. The records show that Mr A's application was cancelled on 5 February 2014. On that occasion, the Authority did advise him and he appealed on 18 February. The records show that the decision to reject his appeal was reached on the same date. I am concerned that, given the importance of this decision, the Authority's procedure is so informal as to not require a record to be made of the decision making process, it is poor administrative practice. Consequently, I conclude that the procedure did not comply with the Ombudsman's Guidance which says that public bodies should take reasonable decisions, based on all relevant considerations and should also keep proper and appropriate records.

103. The Authority initially told me that Mr A had not been removed from the Housing List. The evidence suggests otherwise; the records show that his application was cancelled in February and there is no record that his application was given any proper consideration after 18 February. The Authority has since said that Mr A has not been excluded from the Housing List, but his application will not be considered until he allows the OT assessment at House 2 to go ahead. In other words, the Authority is saying that the application is again "suspended". That being the case, my comments about the Authority's handling of the appeal (paragraph 99) above are reinforced.

104. Many of the e-mails the Authority provided recently were sent since July 2014 and were related to the OT assessment. Therefore, over 18 months since the Authority first told Mr A it would need to look at his ability to cope in House 2, and some eight months after the Authority told this office[23] that it was trying to arrange the OT assessment, it has not been completed. That is of great concern.

[23] 18 June 2014.

105. The Authority indicated that Mr A's refusal to allow an OT assessment caused the delay. However, the records show that this was only partly the case. In some instances the Authority has not accepted Mr A's suggested dates; on other occasions Mr A has been in hospital. It is therefore somewhat unfair for the Authority to suggest that Mr A was solely responsible for the situation.

The Special Housing Needs form

106. As part of his housing application, in addition to the normal application form, the Authority's procedures required Mr A to complete a special housing needs form (SHN form).

107. I am not satisfied that, when it considered his SHN form, the Authority complied with the Code of Guidance[24] which required it to contact health professionals (if there is a need to take account of medical advice). When he was sent the SHN form[25] Mr A was advised that he was not required to provide supporting medical evidence. Then, on 12 August, he was told that his application would not be awarded health points because the Authority could not "evidence a clear link between his physical/ mental health and unsuitable housing." He was told that if he requested a review of the decision it was unlikely that it would change unless he gave additional medical information. Based on the evidence I have seen, Mr A had given all the information about his health that he had been asked to provide. I have seen no evidence to indicate that he had previously been asked to provide any other information. I have also not seen any evidence that the Authority contacted any health professionals, other than the OT, during its consideration of Mr A's application. The OT could not explicitly consider the conditions he had described.

108. Mr A was then told that it would take two to six weeks for the SHN form to be assessed. He said that he was being discriminated against because an able bodied person would not have to wait.

109. The Authority said the SHN form was assessed on 7 August, so there was no delay in considering the information on the form. I agree that the form was reviewed on that date. However, Mr A's physical and mental health

[24] Ibid 4.20 and Chapter 14
[25] 16 July.

was not assessed on 7 August. From the records, it seems that the decision that was reached was that his health could not be assessed because he was NFA.

110. With reference to the time taken to assess the SHN form, the Authority told Mr A there was no discrimination because able bodied applicants did not need to complete the form. It said that any comparison (able-bodied to disabled) was "an irrelevance". It later accepted that this explanation could have been phrased better. I agree, however I would go further and say that the comment should not have been made. The Code of Guidance[26] requires authorities to bear in mind the general public sector duty[27] when carrying out their allocation functions. Therefore, it is relevant to compare how the Authority's processes applied to able-bodied and disabled applicants.

111. Mr A's Application (without the SHN form) was allocated points on 10 June. That is the date at which, all other aspects being equal, an able-bodied person's application would have been fully considered. The evidence shows that as a disabled applicant, Mr A had to request a SHN form and then wait for it to be reviewed. He was not given a decision on that review until 12 August. Therefore, as a direct result of the SHN form process, his application took longer. Having said that, Mr A's application had already been suspended in the meantime for other reasons (relating to House 1 upon which his disability had no bearing.)

112. The Authority said[28] that it had to obtain additional health information from disabled applicants in order to properly meet their needs. I agree, that is logical. However, it also said the time taken to assess the information provided by disabled applicants (via the SHN form) was a "balancing factor" which was justified because it enabled applicants with disabilities to be given additional points able-bodied applicants could not gain.

113. To my mind, that view is completely out of kilter with the aims of the EA. Further, the EA allows public bodies to treat disabled people more favourably than others in order to meet their needs. The evidence suggests that the Authority has not treated Mr A, as a disabled person, more favourably.

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[26] Ibid 5.3.
[27] The Equality Act, Appendix 1.
[28] The Authority's comments on the draft.

114. I am also concerned that the Authority's SHN process does not accommodate applications from applicants who are NFA.[29] If, because he was NFA, the Authority could not observe a link between Mr A's health and potentially unsuitable housing, it should have made further inquiries. The Code of Guidance specifies that the burden of proof for this matter was with the Authority, not Mr A.[30] It could have contacted his GP or other responsible health professional. I have seen no evidence that it did so. The Authority said Mr A gave consent only for his PTSD to be discussed with his GP. I should therefore clarify here that, based on the records, the Authority did not request consent for an approach to his GP about his physical health. It requested his consent via the MHQ, which was relevant only to his mental health, at a much later date.

115. The Authority has suggested that a review of the SHN form and OT assessment processes could be included in the planned EIA. I agree with that suggestion, it should include the processes in the EIA.

The Authority's consideration of whether Mr A was homeless

116. Information disclosed on a housing application form, or from subsequent information submitted by an applicant, may trigger the council's duty to undertake inquiries to establish if the applicant falls within the definition of homelessness and so is owed further duties under the Part 7 provisions or, any additional priority afforded under its housing allocation scheme.

117. The threshold for engaging its functions under the homelessness provisions of Part 7 of the Act is low. Once the threshold is reached a council has a duty to provide interim accommodation for some persons (including those with a disability who may be vulnerable) pending inquiries to establish if further duties are owed. A council cannot defer the inquiries it has a duty to carry out.

118. My investigation found failings in the way the Authority considered Mr A's housing application. These lead me to conclude that the Authority failed to recognise the threshold for homelessness inquiries as set out in the Act

[29] Ibid 3.39.
[30] Ibid 14.19

and the Code of Guidance. That was maladministrative. I have outlined my reasons for this conclusion below.

119. It is for the Authority to consider whether information given by an applicant gives reason to believe the applicant may be homeless. However, as explained above (and at Appendix 1) the threshold for the level of belief is a low one. Any new information provided by an applicant requires an authority to review the position. The Authority said it did not consider Mr A's housing application "to be a homelessness application", yet it had already written to Mr A on 9 September 2013, saying "...possibly not enough attention has been given to your homelessness situation...", (paragraph 30) after Mr A complained. That is as clear an indication as any that the Authority must accept that Mr A might (the threshold for inquiries to begin) be homeless. It could also reasonably be argued that what was said in fact clearly states that he was homeless.

120. This is reinforced by the fact that, in relation to his housing application, the Authority awarded Mr A points for his NFA status. By definition, being NFA, meant Mr A at least might be homeless. Most people would commonly consider NFA to mean actually being homeless. This was information Mr A had given to officers earlier than the points award (paragraph 12) and later when he explicitly said he was homeless on the SHN form (paragraph 13). At this point, based on the information it had available and having regard to the law and guidance, any reasonable authority ought to have commenced inquiries.

121. The following shows the points at which I consider, on the evidence before me, that a reasonable authority ought to have commenced inquiries.

122. Mr A's Application (June) referred to the relationship breakdown; said he could stay with his ex partner only until July (no precise date); gave House 1 as a "care of" address and declared his ownership of House 2, but said it was let out on a tenancy agreement. The form also gave details of his health issues. That form alone might have legitimately given rise to homelessness enquiries, but I accept the Authority would want to satisfy itself regarding the situation with the properties. However, it elected only to ask for information about House 1 (see above). By 19 July, Mr A had not only clarified that he had no right to remain in House 1, but also by then declared that he was NFA.

123. In July, after the Authority accepted the Amended Application, and on the information it had, it again failed to recognise the threshold for inquiries. For some reason Mr A did not explicitly state on this form that he was NFA but he did indicate at least a probable change in his situation given he no longer referred to staying with his ex partner (as the first form had already said he would only do so until July). However, he had already explicitly said that he was NFA both verbally and on the SHN form completed and received by the Authority just two days earlier.

124. On 7 August the Authority OT's assessed Mr A's SHN form (paragraph 20). Again, this indicated that Mr A was homeless (NFA) and inquiries should have been commenced (if they had not been at the above earlier points). In my view, the clearest point of no return was 12 August, when the Authority recognised Mr A was NFA. It said it could not award him additional points for health reasons because of the lack of a property to assess him against (paragraph 22).

125. At either of these points (19 July and 12 August), once the duty to commence inquiries was engaged, so was the duty to consider providing interim accommodation. The duty to provide is engaged if there is an **apparent** priority need (my emphasis). The information given by Mr A (on the housing application forms and the SHN form) put the Authority on notice that he may be in priority need, which is sufficient. Accommodation under s188 must then continue until the Authority is able to reach one of three decisions (below) about Mr A's application, all of which must be communicated in writing with an opportunity to request a review:[31]

a) that despite his health issues he is not vulnerable because of them and so he is after all not in priority need (even if homeless);
b) that he is not homeless - even if he would be found in priority need;
c) that he is homeless and in priority need in which case the interim accommodation becomes temporary accommodation until his longer term housing situation is resolved in line with other duties under the Act.

[31] It has a discretionary power to continue accommodation pending any review by the applicant

126. In addition to its initial stance, when commenting on the draft report, the Authority said a number of conflicting things:

a) That it did not consider that Mr A's application was "a homeless application" (paragraph 76 – suggesting the requirement for a formal application is needed.)
b) That it had no reason to believe Mr A might be homeless (paragraph 81).
c) That it would first consider preventing homelessness and the "only way to complete inquiries" was to send an OT to assess House 2 (paragraph 83 – it must therefore accept it had begun inquiries if it needed to complete them)
d) That based on the information Mr A gave it "eventually reached a decision that he was not homeless or threatened with homelessness" (paragraph 76)
e) That as the duty to undertake inquiries had not been triggered it did not make a determination under s184 in Mr A's case (paragraph 81 – but see (d) and (f))
f) That it acknowledged Mr A was not notified of the decision it had eventually reached (paragraph 76).

127. The above, in my view, speaks for itself - the Authority cannot have it both ways. It has either undertaken inquires under Part 7 of the Act and reached a decision, or it has not. If it has, then there was a duty to consider interim accommodation in Mr A's case (until one of the events I set out above happened) and a duty to inform him of the outcome of the homelessness inquires in writing, once completed. It has now recognised that it failed to do the latter. I consider that it clearly failed to do both even if it seeks to argue to the contrary.

128. In terms of injustice to Mr A, he said he was NFA (sleeping on various sofas) and at certain points he was also "street homeless" (paragraph 72). On 5 March 2014, he told the Authority he was no longer homeless (paragraph 57). It is at least arguable that during this period Mr A ought to have been in interim accommodation – until at least the Authority was satisfied that his health conditions did not mean he was in priority need.

129. He has further been denied the opportunity to request a review, by the Authority's acknowledged failure to give him a written decision that it did not consider him to be homeless.

130. Whilst accepting that housing law is complex, the Authority's fundamental failure to deal properly with legislation, that has been in place for many years (and which has been the subject of many reports by the Ombudsman's office), is worrying.

Complaint handling

131. I have considered the Authority's view that it was appropriate to use its Complaint Process to consider Mr A's complaint. I disagree, the process states that it should not be used if a complainant has a statutory right of appeal.[32] If the Authority had complied with the Act and Code of Guidance, Mr A would have had a statutory right[33] to request a review of some of the decisions it reached. I am not satisfied that Mr A was properly advised of this. Therefore, the Authority again failed to comply with the Act and Code of Guidance. I think the Authority's handling of Mr A's complaints was flawed.

The Authority's communication with Mr A

132. It is clear that communication between the Authority and Mr A has been very difficult. Both parties share some responsibility for this. However, Mr A has PTSD. As a public body, the Authority is expected to take steps to minimise disadvantages suffered by people due to their protected characteristics and to meet the needs of people from protected groups, where these are different from the needs of other people.[34] The Authority said it offered Mr A a single point of contact which he refused to use. However, the records show that the offer was not made until February 2014 and Mr A said it was unreasonable because it caused delays and put him at a disadvantage. The records also show that from February 2014 Mr A did regularly contact the single point of contact.

[32] Appendix 1 – "When To Use This Policy".
[33] Ibid Chapter 21.
[34] EA, Appendix 1.

133. I think the Authority should have made more effort to communicate with Mr A in a way that he was more able to adapt to. Having said that, the evidence does not indicate that he was victimised as a result of making his complaint. It indicates that the Authority should consider whether staff would benefit from further communications training from a mental health organisation (such as Gofal or Mind[35]).

Decision

134. For the reasons outlined above, I **uphold** this complaint.

Recommendations

135. If an investigation identifies that an injustice has been caused, the Ombudsman will make recommendations on what the organisation should do to put things right. When making recommendations, he may take into account earlier reports of a similar nature or any action that the organisation has already taken.

136. In October 2014, the Ombudsman issued report reference 201301753 about events which occurred after Mr A's housing application. The report identified failings which occurred after this case, some of which were similar to those of this case. The Authority has made good progress towards complying with the recommendations of the earlier report and I have taken that progress into account.

137. I have also taken into account that, in April 2015, the Authority will introduce a new allocations policy. The introduction will involve a review of all current housing applications. The Authority's internal audit team will also complete random sampling throughout the review.

138. Therefore, I recommend that:

139. Within one month of the date of this report, the Authority should:
   a) Give Mr A an unreserved apology for its failure to comply with the relevant legislation and statutory guidance when assessing his housing application.

[35] A national mental health charity.

b) Make a payment to Mr A of £1000 in recognition of the impact of those failings, which includes the uncertainty as to whether he would have been offered accommodation if the Authority had commenced homelessness inquiries and assessed his application properly.
c) Immediately (at the latest within one month) reassess Mr A's housing application, ensuring that assessment fully complies with legislation and statutory guidance. Mr A must then be given a written decision that fully complies with legislation and guidance.

140. Within one month of the date of this report, the Authority should also formally remind staff:
a) to comply with housing legislation and statutory guidance.
b) that they must maintain appropriate contemporaneous records of all contact with housing applicants.

141. Within two months of the date of this report, the Authority should consider whether the staff involved in this case would benefit from additional communications training from a mental health organisation. If such further training is considered necessary, it should be completed within four months of the date of this report.

142. Within four months of the date of this report, the Authority should undertake a review of the Housing Department's record keeping methods, to ensure that the records maintained
a) comply with legislation
b) enable officers to support existing tenants and new housing applicants effectively.

143. As part of the preparation for the introduction of its new allocation scheme in April 2015, the Authority should include the SHN form and OT assessment processes in the EIA.

144. Within one month of the due date of each, I require evidence[36] to demonstrate that the Authority has complied with these recommendations. I also require the Authority to give me a copy of the template letters which the Authority said now advise applicants that their application has been suspended and that they have a right of appeal.

[36] Suitable evidence is, for example, a copy of the apology letters, team meeting minutes, training material and attendance logs, an audit report, a revised protocol.

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

Claire James
Investigator

30 April 2015

A summary of the relevant legislation, statutory guidance and protocols

Housing Allocations (Part 6)

The Act places a duty on a local housing authority to consider every application made to it for an allocation of housing.[37] 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.[38]

A council (as housing authority) must comply with Part 6 of the Act when allocating housing; Part 6 provides that the Authority must have published information, such as an allocation scheme, to explain how its housing will be allocated and how priorities between applicants will be determined. Certain groups of people, such as applicants living in poor conditions, those in medical need, people who are homeless and people owed certain duties under Part 7 of the Act, are to be given reasonable preference (a "head start") within a housing allocation scheme.[39] On receiving a housing application (under Part 6) a council **must** (my emphasis) consider whether information disclosed by the form suggests the applicant **might** (my emphasis) qualify in one or more of the categories of reasonable preference and therefore be eligible for additional points or priority (depending on how a council's scheme has chosen to determine priorities).

[37] Ibid. s166 (3).
[38] Ibid. s166 (2) & s15.
[39] Ibid. S167(2).

Until 2009 the courts have held on a number of occasions that local housing authorities were acting irrationally by having allocation schemes that 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.[40]

Homelessness (Part 7)

The threshold for engaging a council's functions under the provisions of Part 7 of the Act is low. Once the threshold is reached, councils have a duty to provide interim accommodation for certain groups of people, pending inquiries. A council cannot defer the inquiries it has a duty to carry out. It cannot lawfully avoid its duties under Part 7 by either steering an applicant into other options or by taking steps to avoid the applicant's homelessness in isolation. Any such steps taken to avoid homelessness must be taken in parallel to the carrying out of Part 7 duties. s175 of the Act states:

> "(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he -
>
> (a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,
>
> (b) has an express or implied licence to occupy, or
>
> (c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.
>
> (2) A person is also homeless if he has accommodation but -
>
> (a) he cannot secure entry to it, or
>
> (b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.

[40] 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.

(3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.
(4) A person is threatened with homelessness if it is likely that he will become homeless within 28 days."

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.[41]

Not all homeless people live on the streets. In law, a person might be homeless even if they have a roof over their head; these people are "homeless at home".[42] A person might potentially be homeless at home if, for example, the condition of the property he is living in is so bad it would be unreasonable for him to continue to occupy it; or if by remaining in a property his health would be severely affected; or if the property he is living in is overcrowded.

Where a local housing authority has reason to believe that an applicant **may** (my emphasis) be homeless (including being homeless at home), it **must** (my emphasis) satisfy itself by making the inquiries necessary to establish, whether the applicant is eligible for assistance (linked to immigration status). Where a local housing authority is satisfied that an applicant is eligible, it **must** (my emphasis) also determine whether any duty and if so, what duty, is owed under Part 7 of the Act.[43] 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.[44] The Act says:

"s188. Interim duty to accommodate in case of apparent priority need
(1) If the local authority have reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they shall secure that accommodation is available for his occupation pending a

[41] Ibid. s177 (2).
[42] Birmingham City Council v Aweys & Ors [2008] EWCA.
[43] Ibid. s184.
[44] Ibid. s188.

decision as to the duty (if any) owed to him under the following provisions of this Part..."

The Act defines categories of applicants who are "in priority need". These include "a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason..."

Once its inquiries 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.[45] It should communicate its decision in writing[46] and if finding against the applicant, it should inform the applicant of the right to request a review of that decision.[47] Once a local housing authority accepts such a duty, it cannot change its mind, even if the applicant's circumstances change.

Alongside the above duties the Act imposes a duty on councils to make provision for free advice on homelessness and its prevention.[48]

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 out in S193 of the Act, 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."[49]

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

[45] Ibid. s193 & s206.
[46] Ibid. s184.
[47] Ibid. s202.
[48] Ibid. S178.
[49] Ibid. s191 (1).

review of the suitability of the accommodation.[50] The local housing authority may, but is not obliged, to require an applicant to pay for the accommodation that it provides.[51]

The Act also provides[52] that, in certain cases (for example those who are, or are threatened with homelessness), housing authorities must ensure that applicants are provided with advice and assistance in any attempts those persons may make to secure accommodation. There is also a requirement to carry out an assessment of the person's housing needs before advice and assistance is provided; the assessment should inform the provision of appropriate advice and assistance for that particular applicant.

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.

In February 2006, the then Ombudsman issued a Special Report[53] that gave guidance on homelessness and allocations. This report was produced after consultation with local authorities and other relevant organisations. Councils are obliged[54] to have regard to the guidance produced by the Ombudsman when exercising their functions. The report sets out good administrative practice and a summary of the law. I also had regard to public reports[55] that this office has issued in respect of a council's failure to recognise the triggering of its homelessness inquiries duties.

The Code of Guidance

In 2012, the Welsh Government produced guidance entitled "Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness 2012" ("the Code of Guidance") for councils on housing allocations and homelessness. The Code of Guidance explains how authorities are expected to fulfil their responsibilities. Authorities must have

[50] Ibid. s202 (1)(f).
[51] Ibid. s206 (2)(i)
[52] Ibid. s190, 192, 195.
[53] The report was called "Housing Allocations and Homelessness".
[54] s23(12A) of the Local Government Act 1974.
[55] Report reference numbers 201002076, 200600749 and 200602563.

regard to the Code of Guidance when dealing with these issues.[56] I have given relevant extracts below.

Chapter 3 Eligibility For An Allocation

"3.37 Local authorities are expected to consider the housing needs of owner-occupiers in the same way as other applicants. For example, this will ensure that appropriate support is given to elderly people whose homes are no longer suitable for them to continue to occupy...

3.39 Local authorities must ensure that allocation scheme procedures can accommodate applications from those who do not have a fixed address...

Chapter 4 The Allocation Scheme

4.18 The Welsh Government has developed a definition of homelessness which is broader than the legal definition and recommends that this be used in determining reasonable preference...

4.20 Where it is necessary to take account of medical advice, local authorities should contact the most appropriate health professional who has direct knowledge of the applicant's medical condition, as well as the impact their medical condition has on their housing needs...

4.23 The Welsh Government believes that it is important that Service Personnel who have been seriously injured or disabled in action and who have an urgent need for social housing should be given high priority within local authorities' allocation schemes in recognition of their service...

4.91 The Wales Audit Office report on Housing Services for adults with Mental Health Needs 2010 identified particular difficulties for people with mental health needs in accessing social housing. Local authorities need to ensure they have arrangements in place to take account of mental health needs to help those with these needs to fully engage with application and assessment processes...

4.128 The Welsh Government is of the view that, where an allocation scheme is framed to provide for additional preference to be given to applicants in

[56] Ibid. s62, s169, s182

urgent housing need, local authorities should ensure that the categories of applicants to be given additional preference include any applicant who needs to move to suitable adapted accommodation because of a serious injury, medical condition or impairment which he or she, or a member of their household, has sustained as a result of service in the Armed Forces...

4.133 The stress of working in the Armed Forces can affect the service personnel themselves and their families. Mental health problems can arise as a result of armed forces service and affect the family as well as the service person. The under-lying stress which can be manifested sometime later should also be taken into account by local authorities. Family break-up can occur and both parties can remain suffering from mental health issues...

4.167 Section 167(4A) also requires local authorities to inform applicants that they have the following rights about decisions which are taken in respect of their application:

> ...(ii) the right, on request, to be informed of any decision about the facts of the applicant's case which has been, or is likely to be, taken into account in considering whether to make an allocation to him/her; and...
> (iii) the right, on request, to review a decision mentioned in paragraph ... (ii) above ... The applicant also has the right to be informed of the decision on the review and the grounds for it ...

Chapter 5 Allocation Scheme Management

5.3 Local authorities should bear in mind that the general public sector duty in the Equality Act will mean that they will need, when carrying out their allocation functions and reviewing and revising their allocation policies, to consider the impact of their decision on people with protected characteristics of ... disability...

Chapter 9 Housing Advice

9.1 Under s.179 of the 1996 Act local authorities have a duty to ensure that advice and information on homelessness and the prevention of homelessness is freely available (and free of charge) to anyone in their area. Good advice at the right time can help prevent homelessness ... It is a duty to which the Welsh Government would urge authorities to give serious attention, as

housing advice should form the foundation for strategies to prevent homelessness. Good advisory services can enable people, often with complex problems, to explore the full range of options available to them and achieve the most favourable outcome to their difficulties...

Chapter 10 Preventing Homelessness

10.4 Preventing homelessness means providing people with the ways and means to meet their housing and any housing-related support needs in order to avoid experiencing homelessness...

10.5 Local authorities should intervene at the earliest possible opportunity. In many cases early intervention can prevent homelessness occurring. Local authorities are reminded that they must not avoid their obligations under Part 7 of the 1996 Act (including the duty to make inquiries under s.184, if they have reason to believe that an applicant may be homeless or threatened with homelessness), but it is open to them to suggest alternative solutions in cases of potential homelessness where these would be appropriate and acceptable to the applicant...

10.17 Local authorities will need to ensure their first contact points such as the housing reception or even the central customer service centre are able to direct the inquiry to the housing options and advice service where prevention and options advice should be used to avoid homelessness where possible. With effective prevention work homelessness applications should be minimised, however if the applicant may be homeless within 28 days then an application should be accepted and prevention work should continue alongside the assessment...

10.18 Where someone who may be homeless contacts the authority, and particularly where there is a formal presentation, it is important to examine the circumstances of the applicant. In most cases this can best be done by visiting the applicant where they live, which provides a stronger foundation for preventative work... Local authorities have a statutory duty to offer advice on homelessness which must be accompanied by the appropriate assistance, and encompass information, advice, representation and advocacy where needed...

10.55 People with mental health needs may also be vulnerable to homelessness, which in itself can aggravate or lead to mental ill health. It is essential that local authority homelessness teams have joint working arrangements with Community Mental Health Teams in order to support people with mental health problems find appropriate accommodation...

Chapter 12 Applications And Inquiries

12.1 An authority must make the inquiries required under Part 7 of the Act whenever:

i) someone approaches it for housing or help in obtaining housing; and
ii) the authority has reason to believe that he or she may be homeless or threatened with homelessness within 28 days...

12.2 Applications can be made by anyone 16 or over, to any department of the local authority and expressed in any form, they need not be expressed as explicitly seeking assistance under Part 7 of the 1996 Act. Applications could be in person or over the phone, verbal or written...

12.3 As long as there is a request for accommodation, or assistance in getting accommodation, and the information provided gives the local authority a reason to believe that the applicant **may** (my emphasis) be homeless or threatened with homelessness within 28 days, then a homeless application has been made. As soon as a homeless application has been made, the local authority has a duty to undertake inquiries in accordance with s.184, Part 7 of the Act.

12.4 If there is any doubt as to whether or not the applicant may be homeless or threatened with homelessness within 28 days, then the local authority should err on the side of caution and take a homelessness application. There is nothing to stop the local authority undertaking initial investigations immediately and reaching a decision that the applicant is not homeless.

12.5 Under s. 184 of the Act, the authority will need to satisfy itself whether the applicant is eligible for assistance. If the applicant is eligible for assistance the authority will need to determine whether a duty is owed and if so what duty is owed to that applicant under Part 7 of the Act.

12.6 It is essential that local authorities have prevention measures and options in place to offer clients ... Local authorities should ensure that the implications and likely outcomes of the available housing options are made clear to all applicants, including the distinction between having a priority need for accommodation under Part 7 of the 1996 Act and being in a "reasonable preference" category for an allocation of housing under Part 6 of the 1996 Act. Authorities must not avoid their obligations under Part 7 (especially the duty to make inquiries under s.184)...

12.8 As soon as a homelessness application is received and the authority has reason to believe that the applicant **may** (my emphasis) be homeless or threatened with homelessness, it **must** (my emphasis) make inquiries to satisfy itself whether the applicant is eligible for assistance; and what duty, if any, is owed to him or her under Part 7. Inquiries **must** (my emphasis) commence with immediate effect and any delay in commencing or failure to undertake these inquiries will be tantamount to an unlawful refusal of an application.

12.9 It is not appropriate for the local authority to provide an immediate non-priority decision to the applicant on first contact without having clear evidence of their status. At the very least, the authority will still have a duty to provide individual advice and assistance to the applicant...

12.14 If a local authority has reason to believe that an applicant may be eligible for assistance, homeless and have a priority need, the authority will have an immediate duty under s.188 of the 1996 Act to ensure that suitable accommodation is available for the applicant (and his or her household) pending the completion of its inquiries and decision as to what duty, if any, is owed to the applicant under Part 7 of the 1996 Act. The threshold for the duty is low as the local authority only has to have a reason to believe that the applicant may be homeless, eligible for assistance and have a priority need. Authorities are reminded that 'having reason to believe' is a lower test than 'being satisfied'. If the authority is in any doubt about whether or not the applicant meets any of these criteria, then it must accept an interim duty to accommodate pending completion of inquiries.

12.15 When a person is found to be homeless because it is not reasonable to continue to occupy accommodation, then that accommodation should not be regarded as suitable to discharge the s.188 of the 1996 Act interim duty to

provide temporary accommodation. There can be an agreement reached between the local authority and the homeless person if the homeless person wants to opt to remain in the accommodation until more suitable accommodation can be found, provided that the applicant is well informed and freely consents to the arrangement, with the knowledge and understanding that they are giving up their right to be provided with temporary accommodation...

12.17 It is open to an authority at this stage to consider whether an applicant could be allocated accommodation quickly under Part 6 of the 1996 Act. If the applicant is eligible to be considered under the allocation scheme, the authority may wish to consider offering him or her a tenancy under Part 6 of the 1996 Act. The applicant's refusal of an offer of accommodation which the authority considers suitable and reasonable for him or her to accept will not in these circumstances remove the authority's obligations to the applicant under Part 7 of the 1996 Act. The cessation of the duty under Part 7 by virtue of s.193(7) of the 1996 Act only applies where an authority has decided that the main housing duty under s.193 is owed...

12.22 The obligation to make inquiries, and satisfy itself whether a duty is owed, rests with the local authority and it is not for applicants to "prove their case". The burden of proof lies with the authority. Applicants should always be given the opportunity to explain their circumstances fully, particularly on matters that could lead to a decision against their interests, for example, a decision that an applicant is intentionally homeless.

12.23 Authorities will need to take in to account all of the circumstances surrounding the case and consider all of the information available to it when reaching a decision. There is no statutory requirement to undertake a face to face interview with an applicant, but this is considered best practice for ensuring that the applicant has every opportunity to fully explain all of the circumstances surrounding their case, as well as ensuring that the applicant fully understands any factors being considered and reasons why particular decisions are being made, especially where decisions are not in the favour of the applicant and where the applicant should be given an opportunity to comment. If there is any doubt surrounding the factors under consideration, then the decision should be given in favour of the applicant.

12.24 Local authorities should take reasonable steps to verify any information provided in support of the application.

12.25 Applicants should be kept informed of the progress of their application and the timescales involved for making a decision on their case. They should also be given a realistic expectation of the assistance to which they may be entitled.

12.26 Local authorities should deal with inquiries as quickly as possible, whilst ensuring that they are thorough and, in any particular case, sufficient to enable the authority to satisfy itself what duty, if any, is owed or what other assistance can be offered.

12.27 Local authorities are obliged to begin inquiries as soon as they have reason to believe that an applicant may be homeless or threatened with homelessness and should aim to carry out an initial interview and preliminary assessment on the day an application is received.

12.28 An early assessment will be vital to determine whether the local authority has an immediate duty to secure accommodation under s.188.

12.29 Wherever possible, it is recommended that local authorities aim to complete their inquiries and notify the applicant of their decision within 33 working days of accepting a duty to make inquiries under s.184. In many cases it should be possible for authorities to complete the inquiries significantly earlier. However the priority is for the assessment and decision to be correct which may take longer.

12.30 It is unlawful for local authorities to delay making a decision if the reason for this delay is so as to avoid having a duty. An example of this would be in the case of an applicant nearing their 18th birthday, when they may no longer be priority need. Delays may be necessary where, during discussions with the former accommodation provider to establish whether or not someone is homeless, indications are given that sustainable solutions may be found that could resolve that incidence of homelessness, in which case a not homeless decision can be made...

12.45 When a local authority has completed their inquiries under s.184(1) and (2) of the 1996 Act, they must notify the applicant in writing of their

decision as to whether he or she is eligible for assistance and whether any duty is owed (and if so, which duty) under Part 7 of the 1996 Act.

12.46 The notification must be given in writing and must include:
• a clear explanation of the reasons for any decision which is against the interest of the applicant and the factors were taken in to account when making that decision e.g. that he or she is not eligible for assistance, is not homeless, is not in priority need or is homeless intentionally (s.184(3));...
• information about the applicant's right to request a review of the decisions made, and the period within which a request for a review must be made (s.184(5));
• authorities should also advise applicants about their procedures on the right of review at this stage.

12.47 In accordance with s 184 (6) of the 1996 Act where the notification cannot be sent to the applicant, or where the authority believes that it may not have been received by him or her, the authority should make available at its office a written statement of its decisions, and the reasons for them, to enable the applicant, or someone who represents the applicant, to collect within a reasonable period.

12.48 Authorities must notify applicants in writing as soon as decisions are made on their case. The authority will need to ensure the notification explains clearly and fully the reasons for the decisions (where required) and what, if anything, the authority will now do to assist the applicant. ... It will be particularly important to ensure that the applicant fully understands the nature of any housing duty that is owed. Where possible, the decisions should not only be provided in writing but also explained in person to the applicant particularly where he or she may have difficulty understanding the consequences of the decisions...

12.51 The s.188(1) interim duty ends once the local authority has notified the applicant of its decision as to what duty, if any, is owed to him or her under Part 7, even if the applicant requests a review of the decision...

Chapter 13 Homelessness or Threatened with Homelessness

13.1 Under s.175, Housing Act 1996 a person is homeless if he or she has no accommodation in the UK or elsewhere which is available for his or her

occupation and which that person has a legal right to occupy... A person who has accommodation is to be treated as homeless where it would not be reasonable for him or her to continue to occupy that accommodation.

13.2 Under s.175(4) of the 1996 Act, a person is threatened with homelessness if they are likely to become homeless within 28 days. In many cases effective intervention can enable homelessness to be prevented or the loss of the current home to be delayed sufficiently to allow for a planned move. The Welsh Government considers that local authorities should take steps to prevent homelessness wherever possible, offering a broad range of advice and assistance for those in housing need. Authorities should not wait until homelessness is imminent before providing advice and assistance...

13.7 There are three categories of legal right to occupy accommodation:

(i) by virtue of a legal interest in it (e.g. as a freeholder, lessee or tenant) or a court order (s.175(1)(a) of the 1996 Act);

(ii) by virtue of an express or implied licence (e.g. as a lodger, as an employee with a service occupancy, or living with relatives) (s.175(1)(b)); ...

13.8 Someone who has been occupying accommodation as a licensee whose licence has been terminated is homeless because he or she no longer has a legal right to continue to occupy, even if they continue to occupy. This may include, for example:

(i) people whom friends or relatives have asked to leave...

13.9 Some applicants may have been asked to leave their current accommodation by family or friends with whom they have been living. In such cases, the local authority will need to consider carefully whether the applicant's licence to occupy the accommodation has in fact been revoked. Local authorities would be acting unlawfully if they insisted that the applicant obtain a letter confirming that they have been asked to leave before they entertain offering homeless assistance. Local authorities may need to interview the parents or friends to establish whether they are genuinely revoking the licence to occupy and rendering the applicants homeless.

13.14 Under section 175(2)(a), a person is homeless if he or she has a legal entitlement to accommodation, but is unable to secure entry to it.

For example:

i) those who have been evicted illegally, or

ii) those whose accommodation is being occupied illegally by squatters.

Legal remedies may be available to the applicant to regain possession of his or her accommodation, but authorities must treat the applicant as homeless until re-entry is secured.

13.16 Section 175(3) provides that a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him or her to continue to occupy. Reasonableness to occupy has no correlation to security of tenure, so it is possible for a home owner, ... to become homeless if it is, or becomes, no longer reasonable for them to continue to occupy their accommodation.

13.17 There are some factors which must be taken into account when considering reasonableness ... but there is no simple test of reasonableness. It is for the authority to make a judgement on the facts of each case.

13.27 Section 177(2) provides that in determining whether it is reasonable for a person to continue to occupy accommodation, local authorities may have regard to the general housing circumstances prevailing in the area. This could include... physical conditions: ...The Health and Safety Rating System should be used to assess the risk and suitability to the household who are to be offered the accommodation, taking account of their particular needs, particularly for people with physical disabilities ...

Chapter 14 Priority Need

14.1 The main homelessness duties in s.193 and s.195 of the 1996 Act apply only to applicants who have a priority need for accommodation.
Section 189(1) of the 1996 Act provides that :

"The following have a priority need for accommodation:
...(iii) a person who is vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside..."

14.5 Enquiries as to whether an applicant has a priority need must be carried out in all cases where the local authority has reason to believe that an

applicant may be homeless or threatened with homelessness (s.184 of the 1996 Act). Moreover, where the local authority has reason to believe that the applicant is homeless, eligible for assistance and may be in priority need, they will have an immediate duty to secure suitable interim accommodation, pending a decision on the case...

14.12 A person has a priority need for accommodation if he or she is:

"vulnerable as a result of...
(ii) mental illness or handicap;
(iii) physical impairment;..."

14.13 The critical test is whether the applicant is less able to fend for him or herself when homeless so that he or she would suffer injury or detriment, in circumstances where a less vulnerable person would be able to cope without harmful effects.

14.14 The assessment of an applicant's ability to cope is a composite one taking into account all of the circumstances. The applicant must be assessed on the basis that he or she is or will become street homeless, not on his or her ability to fend for him or herself while still housed...

14.16 assessment of vulnerability due to mental illness ... will require close co-operation between housing, social services and mental health services. Authorities should consider carrying out joint assessments... Authorities should also be aware of duties under the Equality Act 2010. Authorities should have regard to medical advice or social services advice obtained, but the final decision on the question of vulnerability will rest with the local authority. Factors which an authority will need to consider include:
(i) the nature and extent of the illness or impairment which may render the applicant vulnerable; and
(ii) the relationship between the illness or impairment and the individual's housing difficulties...

14.18 Mental or physical impairment, such as those defined by the Equality Act 2010, which impinge on the applicant's housing situation and give rise to vulnerability may be readily ascertainable, but advice from health or social services staff should be sought, if necessary.

14.19 To be able to make a decision on the level of vulnerability of an applicant ... local authorities will need to ensure that they make whatever inquiries they deem necessary to be able to make a decision on the level of vulnerability and the ability of someone to fend for themselves. These inquiries will need to take into account any medical information given in support of the application. It is for the local authority to make any further inquiries it deems necessary with any health professionals involved in the provision of any treatment. The burden of proof lies with the local authority, though applicants can be expected to provide written consent to gathering or inspecting any medical information held about them...

Chapter 21 Review Of Decisions And Appeals To County Court

21.1 Applicants have the right to request the local authority to review their decisions on the homelessness case in some circumstances. If the request is made in accordance with s.202 of the Act the authority must review the relevant decision...

21.2 When a local authority have completed their inquiries into the applicant's homelessness case under s.184, they must notify the applicant of their decision and the reasons for it; and of his or her right to request a review and the time within which such a request must be made. At this stage, authorities should advise the applicant of their right to request a review of the suitability of accommodation whether or not they have accepted the offer. Authorities should also advise the applicant of the review procedures.

21.3 An applicant must request a review within 21 days of being notified of a local authority's decision and has no right to request a review of a decision on an earlier review. The authority may specify a longer period during which a review may be requested.

Under s.202 an applicant has the right to request a review of:
...ii) any decision of an authority as to what duty (if any) is owed to him or her under sections 190, 191, 192, 193, 195 and 196...

The Authority's Housing Allocation Scheme ("the Allocation Scheme")

The Allocation Scheme is points based. Points are allocated to a housing application under the following broad categories: Circumstances, Housing Conditions, Social Need, Time on Waiting List etc.

The categories are further sub divided with points being allocated for specific identifiable circumstances and needs. For example, points can be awarded for: sharing with relatives or friends; sharing facilities such as a bathroom with other persons; having inadequate cooking facilities and for being NFA.

Housing officers have been issued with written guidance on how to assess applications on receipt and award relevant points.

The Allocation Scheme says:

> "...4.11 Owner Occupiers Under 60 Years Age
>
> 4.11.1 Relationship Breakdown
> Owner occupiers whose relationship with their partner has broken down will be eligible for rehousing subject to the following conditions:
> a) The applicant is no longer occupying the privately owned property
>
> 4.11.3 Not occupying privately owned property
> The owner of a residential property, which is occupied by another person as a tenant, or is unoccupied, may be allowed to register for rehousing, at the discretion of Area Housing Manager/Neighbourhood Housing Manger, following consideration of the individual's circumstances..."

Equality Act 2010

The Equality Act 2010 ("the EA") came into force on 1 October 2010 and consolidated all previous equality legislation in England, Scotland and Wales. It includes a public sector equality duty ("the duty") which consists of a general equality duty and specific duties which are imposed by secondary legislation. Public bodies are legally obliged to comply with the duty. The duty covers eight protected characteristics including disability. In summary,

in the exercise of their functions, public bodies must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.

The EA explains that having due regard for advancing equality involves:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

The EA also specifies that public bodies must make reasonable adjustments for disabled people so that they are not disadvantaged by the way in which the public body carries out its functions. The requirement to make reasonable adjustments applies to policies, practices and procedures.

Technical Guidance on the Public Sector Equality Duty: Wales

The Equality and Human Rights Commission published the Technical Guidance to help public bodies understand and meet their responsibilities under the EA. S.149(4) of the EA says that the steps involved in meeting the needs of disabled persons include steps to take account of disabled persons' disabilities.

The Technical Guidance says that the EA makes it lawful to treat a disabled person more favourably than a non-disabled person.[57] A disabled person can also be treated more favourably than disabled people with other impairments by relying on the positive action provisions. In order to comply with the general equality duty, relevant bodies should consider meeting the needs of disabled people by treating them more favourably than others.

[57] s149(6) the EA.

The Authority's Corporate Complaints Policy

"What Is A complaint?
A complaint is...An expression of dissatisfaction or concern which requires a response. It may be...about the Council's action or lack of action or about the standard of service provided...

When To Use This Policy
This policy ... does not apply to... issues where there is a statutory right of appeal ... In such cases the Council will explain the appeals process..."