
Housing Allocations and Homelessness:

A Special Report by the Local
Government Ombudsman for Wales

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FOREWORD

Section 23(12A) of the Local Government Act 1974 provides that the Local Government Ombudsman may, after consultation with the authorities concerned and other relevant organisations, provide such advice and guidance about good administrative practice as he considers appropriate, and arrange for it to be published for the information of the public.

This is the first such special report to be published by the Local Government Ombudsman for Wales. I have been concerned to find in a number of recent investigations that a significant number of county and county borough councils in Wales have yet to adopt housing allocations policies which fully comply with the law and which take appropriate account of the relevant statutory guidance. There is also cause for concern about the manner in which homelessness applications are dealt with. It appears that these problems are widespread, so that it would in my view be worthwhile for all authorities to review as a matter of urgency their housing allocation policies and procedures in the light of the guidance contained in this report.

Adam Peat
Public Services Ombudsman for Wales
February 2006

ACKNOWLEDGEMENTS

I am grateful to all who responded during the consultation process and for their comments. Those respondents are listed in Appendix B to this report.

SUMMARY

1. A number of complaints received by my office concerning housing allocations and homelessness issues have revealed a widespread problem with how such applications are dealt with. A significant number of the 22 Welsh local authorities have failed to introduce housing allocation and homelessness policies and procedures that implement in practice the relevant legislative requirements, in particular those introduced by the Homelessness Act 2002.
2. I have therefore made the decision to issue this report, based on my findings and recommendations, by way of guidance to housing authorities in Wales generally.
3. The relevant law¹ and statutory guidance² with regard to housing allocations and homelessness is set out in Appendix A.

¹Housing Act 1996 Parts VI & VII as amended by the Homelessness Act 2002.

²National Assembly for Wales Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness – April 2003.

COMPLAINTS TO THE OMBUDSMAN

Introduction

1. The Housing Act 1996 Parts VI and VII governs the way in which councils allocated their housing and how they should assist those who were homeless. The Homelessness Act 2002 amended the Housing Act 1996 Parts VI and VII. The procedures for applying for and the allocation of housing were revised as were the duties owed by councils to those facing homelessness. The National Assembly for Wales has issued statutory guidance to councils to assist them in dealing with applications under both Parts of the Act. The relevant provisions and guidance are set out in Appendix A.
2. The overall aim of the changes introduced had been set out earlier in a government policy document.³ In relation to lettings and transfer policies, the intention was to encourage “social landlords to see themselves more as providers of a lettings service which is responsive to the needs and wishes of individuals rather than purely as housing ‘allocators’ ”⁴. The primary intention of the reforms was to ensure that they met the housing requirements of those people needing social housing the most and in so doing, made better use of the national housing stock by enabling lettings to span across local authority boundaries. In addition, applicants were to be empowered to make a decision on which housing best met their requirements.
3. In relation to homelessness policy, the government’s intention was to extend the limit of assistance to homeless people under the existing provisions by providing those unintentionally homeless and in priority need with temporary accommodation until such time as they obtained settled accommodation. In addition, the proposals were to provide councils with greater flexibility to assist households not deemed in priority need and to encourage a more strategic approach to the prevention of homelessness and re-housing of those who were homeless.⁵ Further, it proposed broadening the definition of priority need to ensure those most vulnerable were protected by the “homelessness safety net”.
4. The changes to both housing allocations and homelessness provisions were ultimately implemented by the enactment of the Homelessness Act 2002. The Act received Royal Assent on 26 February 2002, while its key requirements in relation to homelessness came into force on 30 September 2002 and those for housing allocations on 27 January 2003 (see Appendix A).

Examples of complaints received:

The following cases highlighted problems with both the homelessness practices of councils as well as the housing allocations policies of those concerned. In relation to homelessness matters, the issues ranged from a failure to properly conduct homelessness enquiries to a failure to inform the applicant of statutory rights of appeal against an authority’s decision.

³ Quality and choice: a decent homes for all (DETR April 2000 and Consultation response Dec 2000)

⁴ Quality and choice :a decent homes for all (DETR April 2000) para 9.3. also Homelessness and Allocations (Arden & Hunter 2002)

⁵ Ibid para 9.42.

So far as housing allocation policies are concerned, the problems varied in significance from there being no apparent changes evident in the policy since the introduction of the legislative changes - thus potentially calling into question every subsequent allocation of housing - to specific problems with the number of points awarded and the proper reflection of reasonable preference for particular categories of individual.

**Complaint by Mr & Mrs White against Conwy County Borough Council
(Public Report 2004/0803) Finding of maladministration and injustice —
October 2005**

Mr & Mrs White fled from Burnley following threats of violence by an individual known to the family. They arrived in Conwy, where Mr White's mother lived, seeking help from the Council as homeless. They were interviewed by telephone in the reception area, placed in a local B& B for two nights, then told to return to Burnley. The authority there assisted them as homeless, placing them in temporary accommodation in a motorway service station. They remained there for several weeks including the Christmas period. Application forms for housing on the Council's waiting list subsequently sent failed to arrive - Mr & Mrs White claimed they had not been provided with forms to apply when in Conwy, nor had they been advised they could apply to join the list. No decision letter upon their homelessness application was issued as required by law, thus denying any review and appeal rights. During the course of the investigation it became clear that insufficient enquiries had been conducted to ascertain the circumstances in which they had left Burnley. It also became clear that the Council's housing allocation policy was unlawful and had Mr & Mrs White applied to it they would have been wrongly disadvantaged.

The Ombudsman concluded that there had been a failure to conduct enquiries into the homelessness application, a failure to issue a decision letter and a failure to adopt a housing allocation policy which complied with the legal requirements by the due date.

The Ombudsman recommended that:

- The Council adopt and implement within 3 months of the report an allocation policy which fully complied with the law and statutory guidance.
- The Council ensure an offer of a private interview room was made to applicants.
- The Council should apologise to Mr & Mrs White and offer them the sum of £1500 for the inconvenience and distress they had suffered.
- The Council should place Mr & Mrs White on the housing waiting list backdating their date of joining to the day of their first presentation at the Council to request housing.

Complaint by Mr & Mrs Green against Ceredigion County Borough Council (Public Report 2003/0625) Finding of maladministration and injustice — November 2005

Mr & Mrs Green applied to the Council for housing from their private rented accommodation. Mr Green suffered from medical problems and it was claimed the landlady's failure to carry out repairs made the property unsuitable. Complaints of harassment by the landlady were also made. The Council did not conduct an inspection of the house for 2 years and failed to assess the couple as homeless or conduct enquiries into the alleged harassment. Mr & Mrs Green complained that the Council had allocated a property to an individual as a result of an intervention by a local member. They also claimed it was their view the Council's housing policy was unlawful.

The Ombudsman concluded that whilst there was no substantiated evidence that the member had been involved in making the allocation decision, the Council's practice of inviting members to comment at the point of allocation gave the impression that there might be undue influence. The Ombudsman also concluded that the Council had failed to conduct enquiries into the possibility Mr & Mrs Green were homeless as a result of the conditions and harassment and consequently had failed to assess their housing application properly for some 14 months. Further the Council had failed to adopt a housing allocations policy complying with the legislative changes introduced by the Homelessness Act 2002 by the due date.

The Ombudsman recommended that:

- The Council should carry out a formal review of its housing allocations policy with the benefit of appropriate legal advice, paying particular attention to a number of specified areas, including the role of local members and the making of enquiries in homelessness claims. It should implement any necessary changes within six months.
- The Council should apologise to Mr and Mrs Green and offer them the sum of £2,000.

Complaint by Mr East against Rhondda Cynon Taff County Borough Council (Public Report 2004/0385) Finding of maladministration and injustice — September 2005

Mr East and his family lived in private rented accommodation. The tenancy came to an end as the landlord was selling the property. He approached the Council as facing homelessness having already some months earlier applied to join the housing waiting list. Mr East was sent a letter of offer of a property which he claimed to be unsuitable. He requested a review but the Council upheld the offer claiming it had discharged its homelessness duties to him. The offer letter gave 3 days within which to make a decision upon the property, although in reality accounting for posting, Mr East had just 24 hours. The review decision letter did not inform Mr East of his right to appeal to the county court. The housing allocations policy under which Mr East's application had been assessed had not been revised since the new provisions introduced by legislation in 2002.

The Ombudsman found that the Council's procedures and decision letters were flawed. Insufficient time was given to consider offers and it was unclear if Mr East's circumstances had been fully taken into account in assessing the suitability of the offer. The Council had reviewed its procedures and improvements were accepted by the Ombudsman.

The Council accepted the Ombudsman's recommendations that:

- The Council adopt a lawful housing allocations policy within 3 months and certify through its Monitoring Officer that it had done so.
- The Council review its practice to ensure that where an offer of accommodation was made to a homeless applicant that a period of 21 days was given within which to decide whether to accept it.
- A senior officer of the Council should conduct a review and ensure procedures were in place to keep abreast of changes in legislation and to secure their timely implementation.
- The Council should make its staff aware of the importance of recording telephone calls.
- The Council apologise to Mr East and offer him the sum of £500.

Complaint by Mrs Jones and Shelter Cymru against Blaenau Gwent County Borough Council (Public Report 2004/0313) Finding of maladministration and injustice — October 2005

Mrs Jones and her four children lived in a one-roomed caravan on a site with few amenities. The caravan was damp and as a result the children were in poor health. She had been on the Council housing waiting list for over 2 years. Despite support and help from health professionals, her MP and an advice agency (Shelter Cymru), other families had been housed ahead of her. Shelter Cymru had written to the Council several times for information on her housing application but received no reply.

The Ombudsman described the Council's procedures as lamentable in that there were no proactive assessments of applicants who might qualify as homeless under the law, weaknesses in the handling of correspondence and no satisfactory arrangements in place for assessing the award of medical points to an applicant resulting in Mrs Jones having no medical points despite her children's poor health and evidence submitted from health professionals. Other applicants with fewer points had been housed ahead of her. The Council had also failed to change its housing allocations policy in line with the requirements of the Homelessness Act 2002 and operated a number of blanket exclusions. It was therefore unlawful.

The Ombudsman recommended that:

- The Council introduce an allocation scheme in line with legal requirements and that it reviews all current housing applications to ensure they were correctly assessed.
- The Council institute improved procedures for assessing medical priority.
- The Council introduce improved procedures for the handling of correspondence.
- The Council should apologise to Mrs Jones and offer the sum of £5000 in view of the inadequate housing conditions suffered for over two years. He also recommended that the Council apologise to Shelter Cymru for failing to respond to letters written to the Council by them.

Problems with housing allocations policies have also come to light during a preliminary investigation of other complaints. These are not solely in relation to the authorities identified by public reports already issued. In some cases, despite apparent maladministration by the authority concerned, there was no apparent resulting injustice to the individual complainant, so that the investigation was not pursued. Other cases are complaints recently filed and currently being assessed on a preliminary basis. However the housing allocations policy in each case has been seen to have elements of unlawfulness. In some instances they were the same concerns identified in the policies of authorities against whom public reports had been issued. In others, there were different features either instead of or, in addition to some of the common problems noticed:

Council X (investigation not pursued to the issue of a public report)

Notable problems with the housing allocations policy revealed the operation of an active and inactive / special inactive list for housing applicants. In some cases the net effect of this was to operate a policy of blanket exclusion particularly in the case of those applicants who possessed no local connection with the council's area. This is contrary to the law which provides that each application must be considered on its merit and a statutory test applied in order to deny an applicant entry to the list.

The Ombudsman wrote to the Council's Chief Executive pointing out that the policy was in his view unlawful.

The Council has indicated that it has obtained counsel's advice on the policy which found it to contain unlawful elements and is conducting an urgent review to implement a new policy complying with the law.

Council Y (investigation not pursued to the issue of a public report)

The Council's policy affords points for both local connection of an applicant in addition to points to current tenant applicants ("the Council Tenants Reward Scheme"). When added together the maximum points for a tenant with local connection seeking a transfer outweighs the point award to a homeless applicant.

The Ombudsman wrote to the Council's Chief Executive pointing out his view as to the unlawfulness of the policy: existing tenants seeking a transfer must be dealt with under the same scheme as new applicants. The preference categories are as prescribed by legislation. Preference categories do not include being a current tenant of the Council. The effect of the points weighting is however that a tenant preference category has been created.

Council Z (investigation not pursued to the issue of a public report)

The Council's housing allocations policy in operation at the time of the complaint made to the Ombudsman had remained un-amended since its production to comply with the Housing Act 1996 as originally enacted. It was therefore unlawful in many respects. The Council subsequently introduced changes to its policy with the aim of complying with the legislative requirements.

The Ombudsman wrote to the Council pointing out that some aspects of the new policy still appear not to comply, and suggested the Council review its policy further.

Concerns regarding homelessness practices alone feature in the recent issue of a public report dealing with a vulnerable group – former prisoners.

This was of particular concern given this group was introduced by the Welsh Assembly Government in March 2001 (see Appendix A) by way of extension to the “priority need” categories. Former prisoners had been highlighted as requiring particular assistance in the circumstances in order to decrease the risk of re-offending after release.

Complaint by Mr England against Bridgend County Borough Council (Public Report 2005/00246) Finding of maladministration and injustice - January 2006

Mr England was due to be released from HMP Dartmoor and would be subject to a probation order at Bridgend. He completed housing and homelessness application forms supplied to him by his probation officer sending them to the Council three weeks before his release. He was released before the Easter Bank Holiday and after staying with a friend went to the Council the first day the offices were next open. He had to complete the same forms again and remained homeless. The Council wrote to his c/o address 2 days later with a decision saying he was not in priority need.

The Ombudsman found that the Council routinely adopted the same procedure with former prisoners in that no applications were processed before release. Unless the applicant presented on the day of release or very soon afterwards he was found not to be homeless contrary to government guidance. The Ombudsman found that the Council had undertaken insufficient inquiries to reach its decision. In that respect it had failed to have sufficient regard to its own Homelessness Strategy which indicated it would work with the Probation Service to assist prisoners before their release.

The Ombudsman recommended that:

- The Council take immediate steps to ensure staff in its homelessness section deal promptly and effectively with applications from serving prisoners.
- A senior officer in the Council undertake a review of the Council’s procedures on decision letters issued in homelessness cases and undertake a quality monitoring exercise for a period of 3 months.
- The Council should make its staff aware of the importance of recording significant information.
- The Council should ensure effective liaison with statutory and voluntary agencies when dealing with housing and homelessness applications in accordance with its published Homelessness Strategy.

CONCLUSION

1. It appears from my investigations that many Welsh county and county borough councils may have failed to implement housing allocation policies that comply with the relevant legislative requirements. The requirements of the Homelessness Act 2002 came into effect on 27 January 2003. Three years on from the date by which they should have done so, some councils have yet to adopt and implement appropriate policies. In such authorities every decision made on an allocation of housing since 27 January 2003 – whether in respect of a new application or a transfer of an existing tenancy – may be potentially called into question. It is clearly for authorities to satisfy themselves as to the lawfulness of their allocation policies. This should be in consultation with the authority's own legal department or, if felt necessary, external expert opinion.
2. I have also found shortcomings in the manner in which some authorities deal with applicants who approach them claiming to be homeless. Recording practices were found to be wanting as well as in some instances the quality of enquiries and decision making. The recommendations I have included in this report are aimed at shortcomings in authorities' homelessness work just as much as their work on housing allocations, as these functions cannot in many instances be considered in isolation from one another.
3. I am pleased to note that since the issue of the public reports noted in this document and since my decision to commence work on this special report, some authorities have already taken significant steps to improve standards of practice and to overhaul their housing allocations policies. To help ensure that such shortcomings do not arise in future councils should:
 - Review as a matter of urgency the lawfulness of the authority's existing housing allocation policy and procedures, and of the authority's policy and procedures for dealing with homelessness applications, with particular reference to the changes introduced by the Homelessness Act 2002 and to the National Assembly for Wales Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness.
 - Review the authority's procedures for keeping abreast of legislative changes and for the dissemination of such information to members and to appropriate personnel.
 - Make a senior officer responsible for ensuring that any changes to the authority's policies or practice which are required as a result of legislative change, or of new statutory guidance, are introduced in a timely way.
 - Make a senior officer responsible for reviewing the procedures in place for keeping abreast with legislative changes and government guidance including putting mechanisms in place for the dissemination of such information to appropriate personnel for cascading down to officers. One means of achieving this could be by an appropriate departmental training strategy and input from the authority's legal section.

- Ensure adequate training is given to all staff on appropriate recording practices and their importance, in order to ensure all key information from housing applicants is properly recorded whether by written correspondence or evidence of oral contacts.
- A senior officer should undertake a review of, and monitor the quality and standard of, decision letters issued to housing applicants.
- Consider the appropriate use of standard letters and/or paragraphs to ensure critical standard information applying to all applicants is conveyed. At the same time, all information specific to the applicant's case must be clearly set out.
- Ensure effective liaison with other relevant departments of the authority and relevant statutory and voluntary agencies particularly in homelessness cases.

Public Services Ombudsman for Wales
February 2006

APPENDIX A

THE LAW AND GOVERNMENT GUIDANCE ON HOUSING ALLOCATIONS AND HOMELESSNESS

LEGISLATION

The Housing Act 1996 Part VI (as amended)- the allocation of housing

1. The allocation of council housing is governed by the Housing Act 1996 (“the Act”) which underwent significant change by the introduction of the Homelessness Act 2002 provisions. The relevant changes for housing allocations were to have effect in Wales from 27 January 2003
2. A council, as a local housing authority, must comply with the provisions of Part VI of the Act in allocating accommodation⁶ and, is required to have a scheme for determining priorities in the allocation of its housing.⁷ The scheme in particular should ensure it gives “reasonable preference” to the following categories of applicant⁸ :
 - (a) People who are homeless (within the meaning of Part VII of the Act)
 - (b) People who are owed a duty under Part VII (by any local housing authority).
 - (c) People who occupy insanitary or overcrowded housing or otherwise live in unsatisfactory housing conditions.
 - (d) People who need to move on medical or welfare grounds; and
 - (e) People who need to move to a particular locality to avoid hardship to themselves or others.

The interpretation of “reasonable preference” has been considered by the Court of Appeal.⁹ The Judge concluded that “**positive favour should be shown to applications which satisfy any of the relevant criteria. To use colloquial language they should be given a reasonable head start**”.

3. The Act states that an allocation may not be made to ineligible persons.¹⁰ A person is ineligible because:
 - (a) He is excluded for immigration reasons.
 - (b) He falls within a class of persons as may be prescribed by the Secretary of State.
 - (c) The council has decided that he has been guilty of serious “unacceptable behaviour” such as to deem him unsuitable to be a tenant of the council.

If a person is so disqualified, then the authority is not permitted to allocate a tenancy to him even jointly with someone else who is qualified.

⁶ Housing Act 1996 (as amended by Homelessness Act 2002) s159

⁷ Ibid s167 as amended from 27 January 2003.

⁸ Ibid s167(2)

⁹ R v Wolverhampton MBC ex p Watters (1997) 29 HLR 931 per Judge LJ.

¹⁰ Ibid s160A.

4. The test to be applied to determine “unacceptable behaviour” is set out in the Act.¹¹ The overriding purpose of the test serves to limit the council from generally excluding a class or description of persons who wish to apply to it. If it decides an applicant is guilty of unacceptable behaviour”, the council must inform the applicant in writing of such with reasons why.¹² It must also inform the applicant of his right to request a review of the decision and of any time within which to do so.¹³
5. A council’s allocation scheme must also contain a statement as to the authority’s policy on choice of accommodation or the opportunity for any applicant to express his/ her preference about housing that is allocated.¹⁴

The Housing Act 1996 Part VII (as amended)- the homelessness provisions

6. A council, as the local housing authority, must under the amended provisions of the Housing Act 1996 Part VII (“the Act”) provide a range of assistance to those who face being made, or are, homeless. The particular assistance required under the Act will depend on the individual’s needs and circumstances leading to their homelessness. Such is to be assessed by the Council in line with the Act’s provisions.
7. Should a council have reason to believe that an applicant may be homeless or threatened with homelessness, then it must make inquiries sufficient to satisfy itself as to whether the applicant is eligible for assistance and, if so, whether the council has any duty to him.¹⁵ A person is threatened with homelessness if it is likely he will become homeless within 28 days.¹⁶ Once faced with an applicant who is threatened with homelessness, the council must start making appropriate inquiries.¹⁷
8. If it has reason to believe, or finds that the applicant is “in priority need”, the council must ensure that accommodation is available for the applicant and his family pending its conclusion of inquiries.¹⁸ The general categories of persons who are “in priority need” are set out in section 189 of the Act. By virtue of The Homeless Persons (Priority Need) (Wales) Order 2001¹⁹ (“the Wales Order”) the categories were further extended.

¹¹ Housing Act 1996 (as amended by Homelessness Act 2002) s160A (7) & (8).

¹² Ibid s160A (9).

¹³ Ibid s167 (4A).

¹⁴ Ibid s167 (1A)

¹⁵ Housing Act 1996 (as amended) s184(1)

¹⁶ Ibid s175(4).

¹⁷ Ibid s184(1)

¹⁸ Ibid s188(1)

¹⁹ SI 2001 No 607 (W30) with effect from 1 March 2001.

9. Once it has completed its inquiries the council must notify the applicant in writing of its decision and, if against the applicant's interest, of its reasons and the right to request a review.²⁰ This is commonly known as "the s184 decision". If the s184 decision is favourable, then one of a range of duties is triggered under the Act. Notification by the s184 decision, if not received by the applicant, is treated as being given if it is made available at the council's office for collection for a reasonable period of time.²¹
10. In addition to the obligations to individual applicants laid down within the Act, a council is also required by the Homelessness Act 2002's "stand alone" provisions to more generally carry out a review of homelessness in its district²² and formulate a strategy²³ in order to seek the prevention of homelessness and secure sufficient accommodation will be available for those who may become homeless. All councils were required to produce the first "Homelessness Review and Strategy" document by 30 September 2003.

THE RELEVANT GOVERNMENT GUIDANCE

11. In relation to both the homelessness and housing allocation functions of the Council, the Act provides that guidance may be issued by the Secretary of State to assist.²⁴ In Wales such guidance is produced by the National Assembly for Wales. The relevant guidance in place, the Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness ("the Code"), was issued by the Welsh Assembly Government in April 2003. It is divided into several Parts, with Section A of the Code providing guidance on a number of general matters including its purpose, compliance and its status. Decisions on allocations and homelessness should always take account of the guidance in the Code.
12. Part 1 of the Code gives an overview of existing and emerging types of allocation scheme and provides guidance on how to comply with the legislative requirements of the Act in formulating housing allocation policies.
13. Part 2 of the Code provides detailed guidance in relation to a council's homelessness duties under the Act and gives specific guidance in relation to the application of the Wales Order. In many instances reference to relevant caselaw decisions is made and useful Appendices provide specific help on such complex issues as establishing immigration status. In addition advice and guidance is given in relation to the formulation of homelessness strategies as required by the Homelessness Act 2002.

²⁰ Housing Act 1996 (as amended) s184.

²¹ Ibid s184(6).

²² Homelessness Act 2002 s2

²³ Ibid s3

²⁴ Housing Act 1996 (as amended) s169 & s182.

APPENDIX B
RESPONDENTS TO THE CONSULTATION

Blaenau Gwent County Borough Council

Caerphilly County Borough Council

Cardiff County Council

Denbighshire County Council

Gwynedd Council

Isle of Anglesey County Council

Powys County Council

The Vale of Glamorgan County Council

Wales Audit Office

Welsh Local Government Association