

**Special Report under Section 22 of the Public Services Ombudsman
(Wales) Act 2005 into two complaints of maladministration made against
Gwynedd Council.**

INTRODUCTION.

1. Under the provisions of the Public Services Ombudsman (Wales) Act (“the Act”), if I am not satisfied that an authority has implemented in a timely way the recommendations to which it agreed in order to enable me to issue my report under of an investigation into a complaint under section 21 of the Act, I may issue a special report.¹

EVENTS LEADING TO THE ISSUE OF THIS REPORT.

2. In July 2006 a report was issued following an investigation of a complaint about the Council’s treatment of a homeless man, referred to as Mr T. I found that there had been maladministration by the Council, and in particular, that aspects of the Council’s housing allocations policy were unlawful. This had caused injustice to Mr T. I recommended that the Council should make suitable redress to Mr T, and I further recommended that the Council should revise its housing allocations policy to comply with the requirements of the law and take account of the relevant statutory guidance.

3. A draft of the report had been made available to the Council on 17 March 2006 with a request that it considered whether it might agree to my recommendations, in order that I might issue my report under section 21 of the Act. Had the Council not so agreed, I should have had to issue my report under section 16 of the Act, which would have obliged the Council to give publicity to it at the Council’s expense. In correspondence with the Council,

¹ s22 (4) Public Services Ombudsman (Wales) Act 2005.

wherein it agreed to implement the recommendations, the permitted period for fulfilling the recommendations was extended in particular with respect to the housing allocations policy. It was agreed that the Council would fulfil that recommendation by 31 July 2006. Accordingly the report was issued on 5 July 2006 including the following agreed recommendation²:

“.. that the Council adopts and implements, within 1 month of receipt of this report, an allocations policy which fully complies with the law, and asks its Monitoring Officer to certify to me that it has done so”.

4. A further complaint was investigated about a housing applicant, known as Mr D, where the housing allocations policy was again a feature and, in light of the events described above, the report into Mr D ‘s complaint was issued on 28 July 2006 with a similarly worded recommendation.³ My investigator, at the time of issuing the report on Mr D’s complaint, wrote to the Council to remind it of its specific agreement, nevertheless, to fulfil the recommendation of implementing the allocations policy by 31 July 2006 and that Mr T’s report took priority and precedence over Mr D’s in that respect.

5. Following a telephone enquiry from my investigator, the Council’s Monitoring Officer wrote on 9 August 2006 enclosing a copy of a Decision Notice made by the Council’s Board at its meeting of 25 July 2006. The letter suggested that the Council had adopted a new lawful allocation policy but went on to say that other matters within the policy were being reviewed and that the Council would, in forthcoming months, give further attention to those issues. The Board’s Decision contains the following statement:

² Report 200500367 - paragraph 109.

³ Report 200502144 - paragraph 29.

“That the workgroup continues to review the policy and gives attention to the matters which stand and consider further the observations noted by the Board in relation to the allocation of points to local people, inactive lists, and looking at good practice in other councils”.

6. The Board minutes set out a proposed points revision for determining priorities in housing allocation and a request that the Board adopt the policy subject to receiving confirmation from a Barrister. The minutes additionally record the following:

“The Monitoring Officer explained that the Workgroup has so far looked at the matters which were obviously unlawful and were [sic] an order given by the Ombudsman to review and legalise the policy by the end of July and that there are further reviews to be made by the Workgroup on the housing policies. She explained further that the opinion of a barrister is awaited on the amendments and that the decision must be subject to that as it could lead to further amendments.”

7. No copy of the Council's adopted and implemented Housing Allocations Policy document has to date been produced to me, despite a further request for it by my Investigation Manager in her letter of 8 September 2006.

8. The Council has been given an opportunity to comment on a draft of this report including my conclusions and recommended action. It responded indicating that, whilst grateful for the opportunity, it had no further comment to make.

CONCLUSIONS.

9. The Council explicitly agreed to accept and implement the recommendations I had made. It was as a result of that agreement that both reports, referred to above, were issued under the provisions of s21 of the Act. From the matters set out above it would appear either that the Council was in no position to fulfil that agreement when it was entered into, or that it has subsequently dragged its feet.

10. In considering whether or not to issue this report I have had regard not only to the fact that the Council explicitly agreed to the recommendation, and failed to fulfil it, but also the length of time the Council, in this instance, has been plainly aware of the illegality of its housing allocation policy. I first drew the Council's attention to concerns about its lawfulness when elements of it came to my attention when dealing with an earlier complaint⁴. That complaint was not investigated as it appeared that no injustice had been done to the complainant. However, I wrote to the Council's Chief Executive on 16 August 2005 expressing my view as to the policy's unlawfulness and indicating that my letter in no way prejudiced my intention to issue a report should the policy be an issue in any future complaint received by my office. I also expressed concern that the law, which the policy should comply with, had by that time been in place for over two and a half years and yet the Council's policy still failed to comply.

11. In addition, in February 2006, I issued a Special Report (under my previous jurisdiction)⁵ to all local housing authorities in Wales. It set out the law and issued guidance including that authorities should "review as a matter of urgency" their existing policies to ensure compliance with the law. Finally, it

⁴ Complaint 20040682.

⁵ "Housing Allocations and Homelessness" issued under Local Government Act 1974.

is a matter of concern to me as to how, in practice, the Council is currently dealing with housing applicants -whether existing or new - if it still has no new written policy document or implemented allocation scheme in place.

12. It is quite unacceptable that a major public authority should be aware over so lengthy a period that a significant area of its policy and procedure is unlawful, and fail to take prompt and effective action to rectify matters. It is equally unacceptable that the Council should fail to live up to a formal undertaking given to the Ombudsman. These shortcomings call into question the Council's standards of governance.

ACTION NOW REQUIRED.

13. The Board's decision of 25 July 2006 to amend the Council's housing allocation scheme, and points awarded to certain applicants to comply with the law, in principle meets one of the recommendations of my report but it was a qualified decision. I now recommend that the Council gives further consideration to my reports, including my previous Special Report and implements the full recommendations made as set out above as a matter of urgency. It needs to both adopt and implement a housing allocations policy [and related allocations point scheme] which fully complies with the legislative requirements. This must be done to ensure all housing applicants are treated properly, fairly, and in accordance with the law.

ADAM PEAT
Ombudsman

16 November 2006.