

The investigation of a complaint by Mr S against Wrexham County
Borough Council

A report by the Public Services Ombudsman for Wales

Case: 201002076

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Introduction

This report is issued under section 16 of the Public Services Ombudsman (Wales) Act 2005 (“the PSOW Act”).¹

In accordance with the provisions of this Act, the report is anonymised so that, as far as possible, any details that may identify individuals have been amended or omitted. The report therefore refers to the complainant as Mr S, his mother as Mrs G; and Council officers involved in the case are referred to by their job titles. Colours replace road or street names and reference numbers that link Council documents to Mr S or Mrs G are replaced.

¹ The investigation has raised matters of public interest; therefore, the report is issued under s16 of the PSOW Act. This means that the Council is obliged to make the report publicly available and the Ombudsman provides a copy of the final report to the press and media.

Summary²

I received a complaint from Mr S about Wrexham County Borough Council (“the Council”). Mr S is a disabled single person, who lives with his mother, a council tenant. Due to mobility difficulties, generally he is confined to a bedroom at the property. He said that the bedroom is in a state of disrepair and that despite complaining about the disrepair for some time, no repairs had been done. Mr S said that his mother’s council house is not adapted and is unsuitable for his needs. He complained that he had applied for housing “...over 10 years ago” yet the Council’s records only show that his first application was made in July 2007. Mr S said that, as a regular wheelchair user, he has been offered properties that are unsuitable for his needs. He believed that the Council had failed to fulfil its statutory responsibilities, as it did not appear to have a separate “Disabled Persons Housing List”.

The investigation found evidence of systemic failures in the Council’s approach to handling Mr S’s application for housing. The Council failed to follow relevant legislation, statutory guidance and its own policies and procedures on a number of occasions. Poor record keeping compounded the failings.

I recommended that the Council should apologise to Mr S for the identified failings; pay him £1500 as redress; and thoroughly re-assesses his housing application and homelessness status. I also recommended that the Council should train all housing staff, on the recognition of homelessness and identifying when inquiries must commence. The Council should apologise to Mrs G for the delays in dealing with the disrepair and ensure that the repairs to the property are now completed.

In addition, I recommended that the Council should:

- review the Housing Department’s procedures to ensure that they fully and properly reflect legislation and statutory guidance;
- review the Department’s systems to ensure that it is able to match housing applications from disabled people effectively and appropriately to suitable properties;

² Summaries are prepared for all reports issued by the Ombudsman. This summary may be displayed on the Ombudsman’s website and may be included in publications issued by the Ombudsman and/or in other media. If you wish to discuss the use of this summary, please contact the Ombudsman’s office.

- review the Department's record keeping methods, to ensure that the records maintained comply with the Data Protection Act; and
- review the Department's communication and information sharing mechanisms, to ensure that lessons learnt contribute to an improvement in the service provided.

Lastly, I recommended that the Council should consider adopting the Model Complaints Policy and Guidance issued by the Welsh Government in July 2011.

201002076

25 January 2012

The complaint

1. On 29 December 2010, I received a complaint from a solicitor on behalf of Mr S about Wrexham County Borough Council (“the Council”). Mr S is a disabled single person. He suffered a severe head injury and multiple limb fractures in an accident, leaving him with ongoing mobility issues. Over the last few years, his health has deteriorated and he is now largely reliant on a wheelchair. Mr S lives at his mother’s (“Mrs G”) home; Mrs G is a council tenant. Because of his restricted mobility, he is mostly confined to one room at the property and Mr S said that the room is in a state of disrepair. Mr S complained that:

- He applied for housing “...over 10 years ago” yet the Council’s records only record that his initial application is dated 18 July 2007. He also said that he asked the Council to carry out a search for documentation that precedes this date, but that no earlier records have been found.
- As a regular wheelchair user, he has been offered properties that are unsuitable for his needs.
- No further accommodation has been identified for him and he continues to live at his mother’s property. No adaptations have been made to the property and it is totally unsuitable for his needs. Despite complaining of disrepair for some time, no repair work has been completed.
- He believes that the Council has failed to fulfil its statutory responsibilities, as it does not appear to have a separate “Disabled Persons Housing List”, as encouraged by the Code of Guidance³.

My Investigation

2. On 14 February 2011, following a review of all the information provided by Mr S, the Council was notified that I intended to investigate the complaint.

3. My Investigator obtained comments and copies of all relevant documents from the Council. These were considered with the evidence provided by Mr S. My Investigator also inspected the Council’s files and interviewed Council officers. I have not put every detail investigated into

³ Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness, Welsh Assembly Government, 2003

this report, but I am satisfied that no matter of significance has been overlooked. The complainant, the Council and all those interviewed during the course of this investigation have been given the opportunity to comment on a draft of this report.

Relevant legislation, statutory guidance and Ombudsman's reports

4. The law governing my jurisdiction enables me to investigate alleged maladministration, which, though not formally defined, is traditionally accepted to mean the manner in which decisions are reached or the manner in which they are, or are not, implemented. I cannot question the merits of a decision made by a body if that decision has been properly made, without maladministration⁴.

5. In April 2008, I issued a public interest report⁵ that dealt with the issue of when a local housing authority's duty to commence homelessness inquiries is engaged.⁶ Before I published that report, I obtained legal advice on that issue generally and on the report itself. I have subsequently issued further public interest reports⁷ dealing with the same issues. Therefore, where appropriate, I have taken account of this legal advice.

6. The legislation that applies to housing and homelessness is complex. In investigating Mr S's complaint I have considered the following:

- The Housing Act, 1996 (as amended).
- The Homelessness Act, 2002.
- The Landlord and Tenant Act, 1985.
- Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness (Welsh Assembly Government) 2003. ("the Code of Guidance").
- Housing Allocations and Homelessness, Ombudsman's Special Report, February 2006.

4 The Public Services Ombudsman (Wales) Act 2005 s39

5 Ibid s16

6 200600749 (against Cardiff County Council)

7 200602563 (against Cardiff County Council) September 2008;
200902138 (against Isle of Anglesey Council) June 2011

- Principles of Good Administration, the Ombudsman, March 2008.
- The Local Government Act 1974.

The legal provisions relevant to this complaint are set out in fuller detail at Appendix A with a brief summary of them below.

7. The Housing Act 1996 (as amended), (“the Act”) governs the way in which councils, as local housing authorities, must allocate their housing. It also governs the way in which councils must deal with those who may be, are, or face being made, homeless.

8. In relation to its housing allocation function, a council must comply with the Act (Part 6). This provides that it must have published information, such as an allocation scheme, to explain how its housing is allocated and how priorities between applicants will be determined. Certain groups of people, as set out in the Act, are to be given some reasonable priority within a housing allocation scheme.

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

10. On receiving a housing application (under Part 6) the council must consider whether information disclosed by the form suggests the applicant might qualify in one or more of the categories of reasonable preference for additional points or priority (depending on how a council’s scheme has chosen to determine priorities.) 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.

11. A council must take the Code of Guidance into account when dealing with these issues and it must give explicit reasons if departing from the guidance.

The Council's Policies and Procedures

12. In investigating Mr S's complaint I have considered the following:

- Policy for Letting Council Accommodation (2007) ("the 2007 Policy")
- Lettings – Part 2 Housing Lettings Policy ("the Lettings Policy")
- Lettings – the processing of Housing Waiting List applications ("the Waiting List Procedure")
- Lettings – the Points Scheme ("the Pointing Procedure")
- Matching Applicants to Properties ("the Matching Procedure")
- Nominations to Housing Associations ("the Nominations Procedure")
- Processing Waiting List Applications for Homeless Applicants ("the Homelessness Procedure")
- Lettings – Part 4, Quality Documents Index & Filing Matrix ("the Document Index")
- The Corporate Complaints Procedure
- The Housing Department's Complaints Procedure

Extracts of the Council's documents, as relevant to the investigation, are attached to this report as Appendix B. The Council also provided a copy of the standard "Homelessness Letter" and the "Homeless or fear you may be in the future" leaflet. These are attached as Appendix D and Appendix E respectively.

Background Events

13. The chronology given here is an outline of the key events relevant to the complaint. Unless indicated otherwise, the information has been taken from the Council's files and the documents provided by Mr S and his solicitor.

14. 2007

13 June

A handwritten file note on Mrs G's housing file records that Mr S contacted the Estates Office about "...4 forms that had gone astray...". The note says that the files (back to February) were checked and he was advised there were no applications on file and he should complete a housing application form.

[Note: This file note was not provided to my Investigator, nor was it provided to the solicitor in response to a "Subject Access Request"; it was identified by my Investigator during the inspection of Council files; I discuss this issue further below.]

19 June

Mr S submitted an application for Council Accommodation ("Application 1"). His application stated that he was disabled. It also included details of his preferred location, information about his two children who he said "stay during school holidays" and his preference for a three bedroom property due to this requirement.

[Note: The application form has a variety of sections and Yes/No tick boxes for completion; some are for the applicant to complete and some for Council officers. Some of the boxes that Mr S could have completed were left blank; for example, he did not indicate that he would require an adapted property or give details of what adaptations might be needed. Nor did he specify whether he wanted to be nominated for a Housing Association property.]

The application form was date stamped 22 June and then 18 July. The following "office use only" sections were completed:

- "Is the form fully completed (yes/no)" – this was ticked NO
- "If no to either...date form returned to applicant:" 11/7/07

Some "office use only" sections were not completed, including:

- "Has all the relevant evidence been enclosed (yes/no)"
- "All original documents seen (yes/no)"

- “Does the applicant require a Health and Social Care Form? (yes/no)”
- “Is the applicant Homeless? (yes/no)”

30 July

Mr S’s MP wrote to the Estate Office Manager requesting information about Mr S’s application. The MP said:

“...I understand that there has been some difficulty in dealing with [Mr S’s] application, notwithstanding the fact that Mr S told me that he completed the application with you personally. I would be grateful if you could please let me know what level of points Mr S has been assessed as having, and what prospects there are for making an offer of a property to Mr S ...”

[Note: As part of the Council’s evidence I was given two, differing, file copies of this letter; I discuss the Council’s handling of this letter further below.]

31 July

Council records indicate that [Mr S] queried the points allocation. The note indicates that he said that he had submitted a Health and Social Care (“HSC”) form. The application form was returned to Mr S, on 31 July, requesting more information. On 31 July, Application 1 was then allocated 45 points, being:

Local Connection 25 points
Sharing Facilities 20 points

[Note: In his complaint, Mr S said he applied for housing “...over 10 years ago”. However, the Council’s records start with Application 1.]

7 August

The Council replied to the MP with details of the allocated points. It also said that it was awaiting determination of his HSC points and that “...the areas in which Mr S is applying for a house are in high demand”.

15. 2008

15 February

Mr S renewed his housing application (“Application 2”). The points allocated to the application were 45 (as per Application 1).

[Note: The Council’s file copy of this application includes additional file notes dated 8.10.08, 11.11.08, 6.1.09 and 17.3.09; these are discussed below.]

5 April

Council records indicate that Mr S enquired about three bedroom flats equipped for disabled persons; the records state that a Social Worker advised him that the Council did not have three bedroom flats in the lettings area of his choice. The records also state that Mr S had been in hospital and had an Occupational Therapist (“OT”). He was advised to resubmit his medical information and a form was sent to him.

1 September

Mr S renewed his housing application (“Application 3”).

2 October

The Council’s Social Services Customer Services Manager sent an email to the Council’s Representations and Complaints Officer, the email states:

“... Mr S ...wished to make a complaint about social services. However, he also made a complaint about the fact that he has not been offered his own house so I confirmed to him that I would pass this information on to you.

Mr S is disabled after a serious accident...

He said that he has been trying to get a council house of his own for 10 years but is continually told that he does not have enough points.

... Because he is unhappy with his living situation, this is causing him to suffer from depression and he is not eating properly.

He said that he has been asked to provide a medical report - yet he says that he has already forwarded a letter to the Department from his GP...”

8 October

The records include a copy of an OT Specialist Housing Assessment, which outlined Mr S’s health issues. Application 2 also included details of an OT visit completed on 8 October. The file note states:

“Recommend G/F [ground floor] Accommodation with level entry into property. No proof of access to children”

The application also notes:

Date of meeting	11.11.08
Points awarded	100 (apparently dated 6/1/09)
Date added to application	17/3/09”

There is a further handwritten note: “Points to remain on 50”

Also on 8 October, the 2 October complaint was allocated to the Estate Office Manager for consideration. The “Complaint Investigation Request Form” states:

“...Mr S has applied for a Council property ... he claims he has been on the waiting list for 10 years...”

10 October

The Estate Office Manager wrote to Mr S; he said:

“... We are awaiting determination of your Health and Social Care form and have received supporting letters for this. Following the determination of this you will be advised of any additional points you may have been awarded.

...you have insufficient points to be allocated a property. You failed to provide information required which has resulted in delay of your points being determined.

We allocate using a points scheme ... No points are awarded for how long you have been on the list. For your information your application was registered on 18 July 2007.

Please contact [the Housing Department Complaints Officer] if you are not satisfied with this reply.”

11 November

An OT advised the HSC Panel (“the Panel”) that a home visit had been completed on 8 October 2008. The Officer’s file note states “Serious Medical points amended due to difficulties with stairs...”

Also on 11 November, the Council notified Mr S that 50 HSC points had been awarded. The application total was then 95 points, being:

Local Connection 25 points
Sharing Facilities 20 points
Health and Social 50 points

November

Mrs G wrote to the Council at some point shortly before December 2008. She said:

“... [Mr S] is in a bad way and I'm disabled myself and a pensioner. I can't look after [him] and I can only just manage for myself.

He needs his own place. Sorry when he comes out of hospital he will be homeless. The council is fobbing him off all the time. He is 43yrs old, he needs his own place.”

1 December

The Estate Office Manager replied to Mrs G’s letter; he said:

“If you can no longer have your son living with you he will be homeless, then he needs to contact the Homeless Officer ...”

5 December

Council records include a copy of a Hospital OT assessment completed whilst Mr S was in hospital.

10 December

The Estate Office Manager requested a reassessment of Mr S's medical points as he had been hospitalised.

15 December

In response to a query from the Council, Mr S said that he would now consider two bedroom ground floor flats.

16. 2009

6 January

The Council wrote to Mr S to confirm that his housing application had been allocated 95 points.

[Note: This notification was a repeat of the information provided to him on 11 November.]

27 February

The Estate Office Manager wrote to Mr S to advise him that he had requested that the Special Needs Housing Officer carry out a review of Mr S's case in terms of his requirements for re-housing.

[Note: I have seen no records to demonstrate that such a review was completed.]

6 March

The Council records include a copy of a letter from a Consultant Neurologist to Mr S's GP. The letter confirms that Mr S suffered from post-traumatic epilepsy, had undergone a number of surgical procedures and was wheelchair bound.

9 March

Council records indicate that Mr S now wanted to be considered for all ground floor flats in his preferred areas.

18 March

The Council notified Mr S that 100 Medical points had been awarded. The application total was then 145 points, being:

Local Connection 25 points
Sharing Facilities 20 points
Health and Social 100 points

24 March

Council records indicate that Mr S telephoned the Council and said that he was “suing the council and recording all telephone calls”.

11 June

Mr P (Mr S’s brother) wrote to the Council to say that he had accompanied Mr S approximately 4 years previously [therefore apparently circa 2005] to a housing interview which (he said) the Estate Office Manager attended. Mr P said that, at the interview, Mr S gave written proof of his access to his two children.

Also on 11 June, Mr P accompanied Mr S to an interview with the Estate Office Manager. Council records indicate that Mr S’s application form was looked at and his areas of choice were discussed.

The Council also made an offer (“Offer 1”) of a two bedroom ground floor flat on 11 June. The subsequent OT assessment stated that the flat was not suitable for Mr S as it was not wheelchair accessible and could not be adapted.

15 July

Council records indicate that Mr S advised the Council that “repairs had not been carried out to the roof” and he “was probably not going to take the first property that was offered to him”

28 July

Council records indicate that, during a home visit, Mr S’s living conditions were discussed and that there was the possibility that a two

bedroom flat might be available shortly. The file note states that an OT Assessment would be requested and that Mr S would be advised of the outcome.

5 August

The Council held a two bedroom ground floor flat for allocation to Mr S ("Offer 2"). The OT assessment deemed that the flat was not suitable.

24 September

The solicitor acting for Mr S wrote to the Council expressing concern about the unsuitability of his current accommodation and requesting an urgent update on the progress the Council had made in relation to Mr S's housing application.

28 September

The Council offered a two bedroom ground floor flat ("Offer 3"). Mr S and the OT considered that some parts were too narrow for his wheelchair.

27 November

A Senior Social Worker wrote to Mr S; he said:

"...I am writing to you to clarify my understanding of the discussion that took place during the recent meeting at your mother's home...The aim of the meeting with [the Special Needs Housing Officer] was to focus on other housing options for you to consider

...I am still keen to assist you with moving you into your own accommodation as soon as possible."

[Note: Mr S provided this letter; the Council did not provide it when it gave its responses to the complaint. I discuss this issue further below.]

10 December

Council records show that a complaint (ref: WCBC/00001-08H) was closed on the Council's complaint system ("RESPOND"); the form stated:

“...Mr S telephoned Public Health and complained about the Housing Repairs Department. He has been waiting for various repairs including, damp problems, missing roof tiles among others but nothing has been done. Mr S is disabled and would like the repairs done asap.

Outcome: Mr S has advised [Council officer] that this matter is in the hands of his solicitor and he does not want to proceed with this complaint...”

[Note: the Council did not provide a copy of the “complaint closed” form to my office until April 2011.]

22 December

Using the Data Protection Act 1998, the solicitor submitted a “Subject Access Request”. On 24 December the Council provided a copy of the housing file and “printouts of information held on computer”.

[Note: I have compared the documents provided by the Council to the solicitor with the copy of the housing file that the Council gave to me; the copies are not consistent, some documents given to the solicitor were not provided to me and vice versa; I discuss this issue further below.]

17. 2010

25 January

The solicitor wrote to the Council to query the information held on the Housing file; the solicitor said:

“...housing file states that an application for housing was made on the 18th July 2007. It is our client’s position that he approached you in 1999 with regard to his first application for housing ...

[Mr S] has complained with regard to the fact that a suitable property has not been identified for him and also that the state of his current accommodation has never been addressed by you. The only reference throughout the entire housing file which we have been provided with states that on the 28th July 2009 a home visit was carried out and our clients (sic) current living conditions

were discussed with him. Save for that one note on the file there does not appear to be any other information relating to the alleged disrepair at [Mrs G's home]. It would appear to us therefore that there is a substantial amount of paperwork missing in relation to our client's file.

We would be grateful if you could now carry out a further search in order to retrieve any further papers relating to our client and his application for housing...

Finally, we understand that rainwater is still leaking through our client's bedroom ceiling and requires immediate attention. We look forward to hearing from you by return with the following information:

1. Confirmation that you have conducted a further search for papers relating to our client's application.
2. Please advise of the current position with regard to identifying a suitable property for our client.
3. Please provide confirmation by return that preparations are in hand to inspect and thereafter carry out work to the ceiling of our client's bedroom.

it is our client's position that he has not been treated fairly with regard to his application ... Our client believes that ... he should have been allocated

housing by this time. We note ... that it is in 2009 that our client is allocated 100 points under the Health Care needs, despite information being received before this date..."

3 February

The Council wrote to Mr S's solicitor. The Council's further correspondence of 21 June 2010, (below) refers to this letter.

[Note: the Council had great difficulty in locating this letter; it was not in Mr S's Housing file when my Investigator examined it. The Council eventually provided a copy of the letter in July 2011.]

8 March

The Council nominated Mr S to a Housing Association, for a two bedroom adapted bungalow along with two other applicants (“Offer 4”). The Housing Association subsequently opted to offer the property to one of the other applicants.

26 May

Mr S made two complaints to the Council via his solicitor. His first was sent to “the Representations and Complaints Officer” and concerned his housing application. He sent the second to “the Customer Services Manager” of the Social Services Department and repeated his first complaint along with an additional complaint about the Social Services department.

[Note: I have seen no records that demonstrate that the Social Services Department, or any other part of the Council, acknowledged or replied to Mr S’s complaint to the Social Services Department.]

21 June

The Representations and Complaints Officer replied to Mr S’s solicitor. In his letter, he said:

“...A letter was sent to [the solicitor] from the Estate Office on 3 February 2010 and they can only re-iterate the contents and confirm that the Local Authority has attempted to source suitable accommodation to meet Mr S’s needs.

However there has been nothing available in the area of his choice and Mr S is specific in the areas that he will accept and also the type of accommodation. This further limits the Authorities (sic) ability to source suitable adaptable accommodation for him.

The Housing Department have informed Mr S regarding the progress of his application at his request and in line with Council procedures. The correspondence is unambiguous as to what steps

and action is available to him in relation to any queries, concerns, help and request for a review of decisions and the right to appeal, if dissatisfied.

The housing department have also been in regular contact with Social Services and joint home visits by both departments to Mr S home have been undertaken. Although suitable accommodation has yet to be sourced, the Local Authority will continue to seek a property that will meet his needs.

Concerning the complaint issue regarding repairs, [officer] recently visited [Mrs G's home], and on inspection of the property, the tenant reported that the roof is leaking into the front right bedroom.

As a step forward, the following repairs have been identified and they will be carried out by an approved Council contractor, ... The contractors will be in touch with the tenant in the near future to arrange access for the required works to begin.

If you are still not satisfied with this response, or the manner in which your complaint has been handled in line with the Council's Corporate Complaints Procedure, please contact..."

6 July

A Senior Social Worker wrote to the Estate Office, stating:

"Mr S's situation has not improved since the last letter of support forwarded to Housing Department by a Social Worker on 3 October 2008..."

Mr S still resides at his mother's tenancy which is totally unsuitable for his physical needs. He sleeps upstairs & has to use his elbow crutch whilst climbing the stairs. This has caused additional deterioration to his condition & injuries. Also the roof is badly in need of repair as it leaks ... water is dripping down the wall into the electric socket near his bed. My understanding from Housing repair [is] that this cannot be repaired until Mr S is re-housed. In

my opinion he would need to be accommodated in a ground floor flat or bungalow that has good access for a wheelchair.

I am aware of the current pressure on Housing Department however I do feel that Mr S needs to be considered for a tenancy as a matter of urgency...”

26 August

The Council offered a two bedroom adapted flat (“Offer 5”). Mr S and the OT considered that some turning spaces were too narrow.

17 November

The Council offered a fully adapted two bedroom ground floor flat, to Mr S (“Offer 6”). Mr S refused it on 1 December, as he said it needed carpeting and redecorating. The Council disputed that it needed decorating and told him that it did not supply carpets.

18. 2011

28 February

Council records indicate that Mr S’s application was allocated 165 points. There is a handwritten note (unsigned) added to the printout:

20 sharing
100 health and social points
45 borough and local connection points

[Note: the increase in “local connection” points was due to a change in Council policy; I have seen no indication that Mr S was advised of the increase.]

Mr S’s evidence

19. In the complaint to my office, the solicitor gave a history of Mr S’s complaint about his housing application. The solicitor said:

“...the Local Authority are (sic) attempting to identify a suitable property for him. A referral was made by the Local Authority to another Housing Association ..., however, this property was in fact allocated to another person. [the Council] then identified one of

their (sic) own properties ... however, ... it was clear that this was unsuitable as Mr S was unable to turn around in his wheelchair.

We were informed by the Council on the 13th September 2010 that a further property had been identified ... however, this would not be available immediately. The property ... did become available, however, following a site visit that took place in November 2010 Mr S did not accept this property due to the condition of it.

Mr S's position is that he approached the Local Authority for housing [as] his current property was unsuitable, approximately 9 years ago. Mr S states that until 2009 no properties had been identified for his needs and his maximum entitlement to points had also not been dealt with...

Mr S complains (sic) about the Local Authority have not addressed the problems in his current property ... which is a tenancy in his mothers (sic) sole name and which is unsuitable for his needs and is in a great deal of disrepair..."

20. Mr S's solicitor also said Mr S had instructed them that he had not received any verbal or written advice from the Council about the housing application process. The solicitor said that Mr S told her that, when he attended the Council offices in 2007, he was advised by the Council that:

"...there was a homeless shelter up the road and to go there..."

The solicitor also said that Mr S told her:

"... In December 2008 when I left hospital I wanted to go to the homeless shelter, however, the Nurse contacted [a Council social worker] and she attended at the hospital and she told me I was not going to the homeless shelter as they were not taking me there and they would arrange an ambulance to take me home instead. I have never told the Council that I did not want to be considered homeless".

The Council's evidence

21. The Council is obliged, by legislation and statutory guidance, to have in place:

- a Housing Strategy
- a Homelessness Strategy
- a Housing Allocation Scheme
- a Complaints Procedure

I asked the Council to provide these as part of the investigation.

22. The Council's Homelessness Strategy is included in the "Local Housing Strategy 2007 – 2012". The Homelessness Strategy indicates that there has been a significant (35%) increase in the number of people presenting as homeless since 2001/02.

23. The Council gave several formal responses to the complaint; in the first response on 10 March 2011, the Council said that it was providing the 2007 "Housing Allocation Policy" and the updated 2011 version.

[Note: The Council provided the "Policy for Letting Council Accommodation" that was issued to the public in 2007, rather than the requested Housing Allocation Scheme. I discuss this issue further below.]

24. On 30 March 2011, the Council told my Investigator that it could not provide a copy of the 2007 procedure utilised by staff to process housing applications, as it had been superseded on 1 February 2011. The Council provided a copy of the February 2011 Letting Procedure. The Council also told my Investigator that it did not have a separate Homelessness Procedure and that the "Housing Allocation Policy" dealt with how the Council administers homeless applications. The Council also said it does not have a "Disabled Persons Housing List".

25. On 19 April 2011, the Council provided the Housing Department's Document Index. This is the Council's document retention policy that outlines where each document should be stored; how long it should be retained; and how it should be destroyed. The Council also provided the

RESPOND complaint closed form dated 10 December 2009, ref:
WCBC/00001-08H

26.

[Note: this complaint record had not previously been provided.]

27. On 11 July 2011, after the officers had been interviewed, the Council provided a copy of the following Housing procedure documents⁸.

- Processing Waiting List Applications for Homeless Applicants (Procedure 9.16)
- Nominations to Housing Associations (Procedure 3.12)
- Matching Applicants to Properties (Procedure 3.10)
- Requests for Adaptations – Council Properties (Procedure 5.11)
- The Housing Department’s Complaints Procedure

[Note: Although relevant to the investigation, these documents had not previously been provided]

28. The Council’s Complaints Procedure has two major stages. Stage 1 involves the department responding to a complaint using its own specific departmental procedure. If the complainant remains dissatisfied with the department’s service or response to the complaint it can be escalated to stage 2 to be considered under the Corporate Complaints Policy. Council staff should record all complaints on “RESPOND” (a computerised system). An extract of the Council’s procedures is attached at Appendix B

29. The Council said that it has no record of an application for housing from Mr S before July 2007. It said it had received correspondence from Mr S before this date, but nothing in relation to the problems he was experiencing personally in his current home. It provided details of six offers (Offers 1 – 6), including a nomination to a Housing Association, that were made to Mr S between 11 June 2009 and 1 December 2010.

⁸ Extracts attached as Appendix B

30. The Council said that there is a "...history of trying to make offers of accommodation, in a high demand, low turnover area, that meets Mr S's needs. This is obviously a narrow band of properties available to the Council...". The Council said that when nominating to a Housing Association the Council will generally offer the Association three potential tenants and the Association would then make a choice based upon their own criteria. It said Mr S was nominated to an Association on 8 March 2010 (Offer 4); however, the Association then offered this property to another applicant with medical needs.

31. The Council referred to the Council's Housing policy booklet "Applying For Housing" which advises applicants:

"Due to the on-going reduction in the number of properties the Council manages, we must make the best use of properties which become available ... we have rules about the size of property people will normally be offered... You are advised to be realistic in your choice of area and property. If you are too restrictive you can severely affect your chance of an offer ...

Please be aware that housing in some areas ...is in short supply. Offers will be made to applicants whose household is able to make best use of the accommodation, for example, a single person would not normally be offered a 3 bedroom house."

32. The Council said that Mr S initially requested three bedroom accommodation and such properties would not ordinarily be considered for a single applicant (even with access to children, which Mr S has claimed). The Council said it has similar rules regarding two bed accommodation and someone in Mr S's position would only be allocated a property of that size in areas of low demand.

33. The Council said that, from July 2007 to date, Mr S was not overlooked for a suitable property other than when there were higher pointed applicants or a lack of adaptations. It also said that it was "confident that points have been consistently awarded in accordance with the Councils (sic) lettings policy".

34. The Council's evidence included two, differing, file copies of a letter, dated 30 July 2007, from Mr S's MP. Version 1 was provided as part of the complaint records (so had been filed with the RESPOND records, outside Mr S's Housing File); this included a handwritten note. Version 2 was provided as part of Mr S's Housing File, it included additions to the handwritten note (below).

Version 1

"I've info
about him!"

Version 2

"I've info **that might
help** about him! – **to aid allocation**"

[Note: Version 2 is formatted to show later additions]

35. The Council was asked to provide the vacant housing stock records to match each of Mr S's housing application (and renewal) dates. It said it did not keep such records so was unable to provide them. It did provide a "full list of properties allocated in Mr S's area of preference".

[Note: the list only included details of three bedroom properties.]

36. The Council said that Mrs G had requested five repairs, within a 12 month period, including a report of problems with the kitchen ceiling in May 2010. There were no reports of problems with the bedroom ceiling during the period. The Council said that contractors completed the kitchen ceiling repair on 16 July. The contractors reported that Mrs G did not want work to the bedroom ceiling completed on that date, as "a member of the family was unwell". The Council said that Mrs G had not made contact to arrange a new appointment. On 10 March 2011, the Council told my Investigator that it would attempt to arrange for the repair to the bedroom ceiling to be completed.

37. The Council said it considered the Estate Office Manager's letter of 1 December 2008 to Mrs G, directing Mr S to contact the Homeless Officer, to be an appropriate response and that it anticipated that the family would then contact the Homelessness Team. The Council said it had no record of contact being made.

38. The Council said that Mr S's complaint to the (Social Services) Customer Services Manager was not dealt with using the Statutory Social Services Complaints Procedure as the complaint was considered to be one for the Housing Department to address. As such, it was forward to the Complaints Officer in the Housing Department.

The Council Officers' Comments at Interview

39. My Investigator interviewed Council officers in the course of the investigation. With the exception of the District Housing Manager and the Scrutiny Manager, the officers were involved in dealing with Mr S's case. All except the Scrutiny Manager have received training on homelessness. I summarised their comments below. Further details of the Council officers' comments are attached at Appendix C.

The Estate Office Manager

40. The Estate Office Manager said that he dealt with Application 1 and interviewed Mr S in 2007, when he said he advised Mr S that he could be homeless. The Estate Office Manager said that he believed Mr S did not want to be considered homeless because he (Mr S) did not think he would get a property in his preferred area. He said that Mr S has consistently said that he only wants to consider houses in a very specific area. The Estate Office Manager said that, as Mr S did not make a homeless application, the Council never considered that he was homeless.

41. The Estate Office Manager said that it is for the applicant to provide the necessary supporting documents for the application, the Council does not "chase" applicants to provide information. He said that applicants are advised about that when they make an application. He said that any medical information provided by Mr S in support of his application would only be assessed by the Panel. He said it was for the Panel to identify missing or incomplete information. The Estate Office would then notify the applicant that further information was needed. He said that the Estate Office did not approach any of Mr S's medical advisors.

42. The Estate Office Manager said that the Estate Office did not deal directly with repairs; the office would refer the tenant to the Service Centre and all records of repairs would be held by that team.

43. The Estate Office Manager said that there is a “Management Move” procedure, it deals with unusual situations that would not be resolved by the normal points allocation procedure; for example, it would be used to re-house victims of severe Anti Social Behaviour. He said that the process effectively pushed the application to the top of the waiting list and that a recommendation to award “management move” points would be considered by senior staff. It was possible that other applicants could have been given a management move whilst Mr S was waiting to be housed.

The Deputy Estate Office Manager

44. The Deputy Estate Office Manager said she has been in her current post since 2005. She said that Mr S’s housing applications were already registered on the system when she started at the Estate Office; she said that she thought that he already had “critical points” at that stage but her memory may be “sketchy”. She said that she had tried to find Mr S a suitable property and had dealt with some of his complaints about delays. She remembered making the original note on the MP’s letter in 2007 and then altering it later.

45. The Deputy Estate Office Manager said that she contacted Mr S’s solicitor on 1 February 2010 to give an update following a letter from the solicitor (25 January 2010). She said could not recall the [missing] 3 February 2010 letter from the Council to the solicitor; but it would seem logical that it would be linked to the phone update she gave. The Deputy Estate Office Manager said that the solicitor also asked the Council to undertake a further search for housing applications made by Mr S before 2007. She said that there was no record of earlier applications. She said that if an applicant does not renew an application then the papers are destroyed one year after, so even if Mr S did make an earlier application, if he did not subsequently renew it, the application would not have been kept.

46. The Deputy Estate Office Manager said that because Mr S was adamant that he wanted a three bed property, the Council took the view that he would only consider three bedroom properties. She said that if Mr S had opted for a one bed property from the start of the process, he would have had wider options, but still, only if he would accept the properties offered. She said that Mr S could go through the homelessness process and he could be considered homeless at his mother's home; but she does not know whether that would resolve the situation.

The District Housing Manager

47. The District Housing Manager said that the paper files for Mr S and Mrs G are typical of the records kept by the department. He agreed that the record keeping in both files is not good. He said that record keeping was identified as a weakness during an earlier investigation by my office and the department therefore has an action plan in place. He agreed that it is possible that staff are not easily able to identify what is the most recent piece of relevant information and that could lead to errors. He agreed that the notes made by the Panel on Mr S's file were inadequate; and that it is difficult to follow what decisions had been made, when and by whom. He said that the Council has recognised that the situation needs to improve and there is a will to learn from both this and the recent case.

48. The District Housing Manager said that the department has received homelessness training recently. He believed that Mr S had said that he did not want to be considered as homeless but he also accepted that the records do not support or record that view. He accepted that, where there is a statutory obligation to provide a service and the Council does not appear to have provided the service, accurate record keeping of the situation is clearly vital and a lack of records leaves the Council's actions open to challenge.

49. The District Housing Manager said there could potentially be many more cases where homelessness inquiries were needed. He said that it would be a difficult situation if officers were directing lots more applicants to the homelessness team. He agreed that if the Council received a complaint now about housing services provided in line with an earlier

procedure, the department would need to refer to the procedure in place at that time. He agreed that if that procedure were not available that would potentially create a problem.

The Occupational Therapist

50. The Occupational Therapist said that she was part of the original Panel that considered Mr S's medical points; she recalled that the Panel awarded 50 points. She said that Mr S initially said he wanted a three bed property; however, that would not have been recommended for him because he was a single person and because of his condition.

51. The Occupational Therapist visited Green Road (Offer 5) with Mr S and confirmed that the property was unsuitable, but that it was not possible to tell that until observing Mr S at the property. She said that she had also assessed the adapted property in Red Road (Offer 6) with Mr S. She had considered the property was very suitable and was shocked when Mr S rejected it. She said she contacted social workers to check whether he could be given more support to help him be realistic about what properties the Council actually has available.

52. The Occupational Therapist said that, between the November 2008 Panel and the decision letter in March 2009, it seems that the case must have been reconsidered by the Panel and, probably, based on the consultant's letter (March 2009), the decision would have been made to increase the points. She said that she cannot see a further assessment on file and that therefore the points must have been increased because of the consultant's letter. She said the record keeping systems have improved since these notes were made and similar confusion would not happen now.

The Special Needs Housing Officer

53. The Special Needs Housing Officer said that she was only involved in dealing with Mr S's housing applications as part of the Panel. She has not dealt with any aspects of his complaints to the Council and she only visited him once at his home, with his social worker⁹. She said that the Social Worker asked her to visit Mr S, as he (the Social Worker) was concerned that no progress was being made for Mr S. She said

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that she had not previously seen the letter (dated 27 November 2009) to Mr S about the visit and it is possible that the letter was held on Social Services files rather than the housing department files.

54. The Special Needs Housing Officer confirmed that Mr. S's housing application was not awarded HSC points until 50 points were awarded in November 2008. She said that the change from 50 points to 100 points, between January 2009 and March 2009, could have been as a result of the consultant's letter, but she could not recall it being considered. She said that the Panel could not award more points without seeing new supporting information and the sort of information given by the consultant in March 2009 could be considered by the Panel.

55. The Special Needs Housing Officer said that, because of a previous investigation by my office, she has developed an action plan, to implement improvements in the Panel process, and there is now a documented procedure for the Panel.

The Scrutiny Manager

56. The Scrutiny Manager said that all complaints should be recorded on RESPOND. He said that a new complaint about a Housing matter would be passed to the department; it would not be recorded by the Corporate Complaints Team. The Housing Department would consider the complaint (at stage 1). The stage 1 response would inform the complainant that, if they remained dissatisfied, they could then complain further to the Corporate Complaints Team.

57. He said that provided the departmental procedure adheres to the minimum standards, the department is free to decide how it manages complaints. The Scrutiny Manager said that responsibility for considering how to resolve, or respond to, a stage 1 complaint rests with a Department Manager. He said that he understood that Mr S advised the department in 2008 that he did not want to escalate his complaints as he (Mr S) intended to take legal action.

58. The Scrutiny Manager said that the Social Services department did not consider that the May 2010 complaint was a complaint against that department and the issues should be responded to by the Housing

Department. He said he was not aware whether Social Services had given an update or response to Mr S about that decision. He said that the Housing Department should have registered the May 2010 complaint on the RESPOND system. He agreed that it appeared that the Council's 21 June letter to the solicitor is a response to the May complaint. He did not know why the Council could not locate the 3 February 2010 letter mentioned in the 21 June response.

59. He said that if the Council received a complaint now about services provided in line with an earlier procedure, he would expect to be able to refer to the procedure that was in place at the time of the events complained about. He said that if the Document Retention Policy suggests that Housing documents are retained for a particular period then, unless there is a specific instruction on the retention/ destruction of a particular document, he would conclude that the document should be retained for a similar period.

60. The Scrutiny Manager said that, as far as he was aware, the reference number on each Council "complaint closed" page appears to be a unique reference number with, for example, 08 meaning 2008 and H referring to Housing. He said that he could not explain why the Housing Department "complaint closed" form from November 2009 appeared to have a 2008 serial number.

Mr S's comments on the draft of this report

61. Mr S's solicitor said that Mr S was happy with the report.

The Council's comments on the draft of this report

62. The Council submitted comments on the Analysis and Conclusions of the report. A summary is given below.

63. The Council accepted that it did not commence homelessness inquiries and agreed that it needs to move to a more pro-active approach in determining homelessness. It agreed that the failure to determine Mr S's homelessness status might have meant that his points were not correct. It maintained that it did not commence inquiries on this occasion because Mr S did not want to be considered as homeless. The Council suggested that it would be intrusive if it made inquiries against

an applicant's express wishes and that Mr S's insistence that he did not wish to be considered homeless was the main cause of not starting the inquiries. The Council accepted that it cannot ignore its duties to commence homelessness inquiries, but also said that in order for such inquiries to be productive they depend on consent and cooperation from the applicant. It said that to have forced the issue, could have potentially laid it open to criticism. The Council said that in situations where the applicant insists that they do not want homelessness inquiries carried out, it did not consider that not starting those inquiries would be a failure to meet its statutory obligations.

64. The Council accepted that "a perceived lack of resources" might not be an acceptable reason for a "failure to meet its statutory obligation". It said that, in cases similar to Mr S's, putting the onus on the Council to commence homelessness inquiries would potentially double the number of cases requiring investigation. The Council accepted that its current policy does not follow the Code of Guidance in respect of contacting the appropriate health professionals when required. It said that to do so would place a large financial and administrative burden upon it.

65. The Council said that, because of this case, it would be making representations to the Welsh Government about the Code of Guidance.

66. The Council said that it was disappointed that my draft report concluded that Mr S "was not advised that he was potentially homeless" as it said Mr S had been advised about this by the Estate Office Manager. The Council did accept that there is no record of the advice. The Council said that officers do advise applicants of their options for re-housing and it maintained Mr S received appropriate advice, but that this was not documented. It said that there was no evidence that Mr S wished initially to be considered for smaller properties. The Council said that it did not fully accept that appropriate advice was not given at the time of application.

67. The Council said that the Estate Manager would have no reason to have signed Mr S's original application form but would have certainly taken the opportunity to discuss the missing information. The Council

said that a written record of this advice would have provided helpful clarification.

68. The Council said that Mr S was initially considered for three-bedroom homes at his own request. It said that he would have been advised to consider alternatives, but accepted there was no written record of that advice. It said such a record would have been “helpful to this process”. It said it provided my Investigator with a list of properties, which did not just contain three-bedroomed homes. In accordance with the applicant’s wishes, he expanded his choice of properties in March 2009 and the list reflects that. The Council disputed the contention that Mr S was not given an opportunity to reconsider his housing options, as he did reconsider his options in 2009.

69. The Council said that although it accepted that it failed to commence homeless enquiries, it remained the case that sourcing appropriate accommodation within Mr S’s “strict wishes” would still have been challenging. The Council seeks to offer accommodation that matches an individual’s needs in the area an applicant is seeking to be housed. It said that it is disappointed that the investigation did not highlight that offers of appropriate accommodation were made “on at least two occasions”. It said that Mr S’s decision to decline an offer of accommodation because it was not carpeted (which no Council properties are) or decorated to his taste do not represent the actions of someone in severe need of re-housing.

70. The Council said that properties are a scarce resource and adapted or adaptable ones even more so; therefore matching the unique needs of each applicant with the unique configuration of available properties is not straightforward. The Council said it must also consider the needs of other applicants, who may be also seeking this scarce resource.

71. The Council accepted that, at that time, the standard of record keeping by the Health and Social Care Panel needed improvement. It said it has improved the administration of the Panel and an auditable procedure has been introduced.

72. The Council said that it has separate Lettings and Homelessness procedures and that Housing Officers and Homelessness Officers are familiar with all relevant procedures. It said that guidance on how Housing officers should deal with an applicant in terms of consideration of homelessness has been addressed both procedurally and in the training of Housing officers. It said that it has already amended procedures and implemented training to reinforce guidance on how low the threshold for commencing homeless enquiries is.

73. It said that the nomination procedure reflects the urgency of the housing need and refresher training on nominations for Estate Office staff was carried out in November 2011. It said that the issue of 'reasonable preference' is then a matter for the Housing Association.

74. The Council said it has retained a copy of the 2007 Lettings Policy and it was unfortunate that it was not provided to my Investigator.

75. The Council challenged my conclusions about the bedroom ceiling disrepair; it said it has no report of the damaged bedroom ceiling before May 2010. It said an appointment was made for 24 May, but Mrs G did not keep it. It said access to the bedroom was denied on 3 November as Mr S was bed-bound in the bedroom and Mrs G said she would contact the Council to re-arrange a more convenient time. The Council said it then made contact in March 2011 and was again told that it was inconvenient. The Council said that the events do not suggest that Mrs G or Mr S wished to resolve the problem with any urgency. The Council said that it did not accept that, its performance in this area amounted to maladministration.

76. The Council said that its complaints procedures would be amended to ensure that staff are aware that any written response must advise complainants on how to escalate a complaint to the next stage of the Council's Corporate process. A review will also be completed to ensure that there is consistency in the Department's handling and identification of what constitutes a complaint.

Analysis and Conclusions

77. In reaching my conclusions, I have taken account of the Council's comments on the draft of this report.

78. The decision not to commence homelessness inquiries seems to have occurred because of Council officers' desire to be helpful. However, in deciding not to commence homelessness inquiries the Council failed to meet its statutory obligations, and as a result, Mr S suffered an injustice. I have no choice therefore but to conclude that the Council acted with maladministration. I have given my reasons for this conclusion below.

The Council's policies and procedures relating to Homelessness

79. The Council is obliged to have a Homelessness Strategy and a Housing Allocation Scheme. The Council was asked to provide its Housing Allocation and Homelessness policies and procedures as part of the investigation. The Council told my Investigator that there was no separate Homelessness Procedure and that the "Housing Allocation Policy" deals with how the Council administers homelessness applications. The Homelessness Strategy was not provided. However, my Investigator was able to obtain the "Local Housing Strategy 2007-2012" which includes a section about homelessness, from the Council's website.

80. The Council's Letting Policy¹⁰ recognises the statutory duty in respect of homelessness. The Letting Policy refers officers to the Homelessness Procedure. It appears therefore that the Council does have a separate Homelessness Procedure. The lack of clarity by the Council about what policies and procedures it has is of serious concern.

81. The Council told my Investigator it could not provide a copy of the procedure utilised by staff to process housing applications in July 2007, as it was replaced on 1 February 2011. My Investigator subsequently searched my office's records of previous complaints against the Council and identified the Waiting List Procedure¹¹ and the Pointing Procedure¹².

10 Paragraph 3, Appendix B

11 Paragraph 4, Appendix B

12 Paragraph 5, Appendix B

82. The Council's Homelessness Procedure¹³ starts at the point where an approach is made to the Homelessness Team. From that perspective, it appears to be for the use of the Homelessness Team (as opposed to other Council officers). It does not give any guidance on how other officers should deal with a housing application if they consider the applicant may be homeless. The Pointing procedure provides that guidance, but there is no reference to that procedure in the Lettings Policy.

83. In law, there is no such thing as a "homelessness application"; the law requires that when considering an application for housing, if the Council has reason to believe the applicant might be homeless, it must commence homelessness inquiries. The lack of reference to the Pointing procedure in the Lettings Policy is therefore an issue. Council officers who are considering housing applications must be provided with clear guidance on how to assist housing applicants who may be homeless, or threatened with homelessness.

84. Bearing in mind the Code of Guidance¹⁴, it is not sufficient for Housing officers simply to tell applicants, who may be homeless, to contact the Homelessness Team. Housing officers must be proactive in addressing possible homelessness at the first point of contact. It is clearly a requirement that the policies and procedures must comply with the law and the statutory guidance. It follows therefore that the procedures must give clear, effective guidance and support to the officers required to use them.

85. The Code of Guidance requires housing authorities to contact the most appropriate health professionals if there is a need to take account of medical advice¹⁵. However, the Council's 2007 Policy states:

"...the onus is placed on the applicant to provide this information and failure to do so will delay the registration process..." The Waiting List Procedure similarly indicates that Council officers must return, to the applicant, any form that cannot be processed due to a lack of medical information.

13 Paragraph 8, Appendix B

14 Paragraph 12.12 'service Provision for Applicants' the Code of Guidance

15 Paragraph 4.11 'Medical and Welfare Grounds' the Code of Guidance

Both the Council's 2007 Policy and the Waiting List Procedure fail to recognise the statutory guidance given to housing authorities, about contacting the appropriate health professionals. **I conclude that elements of the Council's procedures, as set out, do not fully comply with the legislation and guidance; this amounts to maladministration.**

The Council's duty to consider whether Mr S was homeless

86. When Mr S made his complaint to my office, he had been on the Council's Housing Waiting List for more than three years, during which time his health deteriorated. It is also clear that the Council failed to start homelessness inquiries following Mrs G's letter in November 2008. The Estate Office Manager said that he did not use the template letter¹⁶ or the "homelessness explained" leaflet¹⁷ with that letter. Consequently, Mr S was not properly advised that he was potentially homeless, or the implications of that.

87. S184(1) of the Act indicates that "...if a Housing Authority has reason to believe that an applicant **may** (my emphasis) be homeless or threatened with homelessness, **they shall make such inquiries as are necessary to satisfy themselves...**" (my emphasis). The Code of Guidance also states "...Applications need not be explicitly for assistance under Part 7 ... Authorities will, therefore, need to be proactive in establishing whether an applicant is ..."18.

88. At interview, Council officers said that they were aware from his first application that, in law, Mr S could be homeless; they maintain that they did nothing because Mr S "did not want to be considered homeless". The Council cannot ignore the duty to commence homelessness inquiries on the basis that an applicant indicates they do not want to be considered as homeless. In addition, Mr S maintains that he did not tell the Council that he did not want to be considered as homeless and the Council has no records to support the Council officers' assertions that he did. Without such contemporaneous records, there is insufficient evidence for me to accept that Mr S was advised properly.

16 Appendix D

17 Appendix E

18 Paragraph 12.2 Applications for Assistance, the Code of Guidance

89. The threshold for engaging a council's functions under the homelessness provisions of the Act is low¹⁹. Once the threshold is reached, housing authorities have a duty to provide interim accommodation for certain groups of people pending inquiries²⁰. The Act also outlines the conditions that need to be met in order for a person to be classed as homeless. It is clear from the available information that it is quite likely that Mr S's circumstances met those conditions and officers should have considered whether he might have been "homeless at home"²¹.

90. The District Housing Manager said there could potentially be many more cases where homelessness inquiries could be needed. He said that it would create a difficult situation if officers were directing lots more applicants to the homelessness team. The Council's published Homelessness Strategy also indicates there has been a 35% increase in the number of people presenting as homeless since 2001/02. However, a perceived lack of resources, or a fear that a particular team would not be able to cope with an increase in workload, are not acceptable reasons for a council's failure to meet its statutory obligations.

91. It is clear from the legislation and guidance that once the Council considers that a person may be homeless there is a statutory obligation to commence homelessness inquiries. The Estate Office Manager said that, as early as July 2007, he was aware that Mr S could be homeless. That possibility became even clearer with Mrs G's letter of November 2008; that letter was an obvious trigger for the Council's statutory obligations under the Act.

92. The Council failed to make any homelessness inquiries and consequently failed to satisfy itself whether Mr S was owed any form of duty under the Act. The Council was not proactive in establishing whether Mr S was homeless; this is contrary to the law and the requirements outlined in the Guidance. **I consider that the Council has not met its statutory obligations in respect of homelessness and the failure to commence homelessness inquiries amounts to maladministration.**

19 Homelessness, Legal Note – Appendix A

20 Paragraph 14.4, 'Enquiries about priority need', the Code of Guidance

21 Homelessness, Legal Note – Appendix A

The Council's Duty to provide advice and assistance

93. The Code of Guidance underlines the statutory requirement for housing authorities to provide advice and assistance to applicants in certain cases including, people who are, or may soon be, homeless. The Council's Waiting List Procedure²² indicates that if an applicant specifies a type of property that does not exist in their area of choice; or if they specify a property type for which they will never be considered; they must be told that and given guidance on the options available to them.

94. Application 1 indicates that Mr S was applying for ground floor accommodation with three bedrooms. There is no record of the interview that took place between Mr S and the Estate Office Manager in July 2007. The records do not indicate if Mr S was told before April 2008 that the Council did not have three bedroom flats in his preferred areas. Records indicate the information was provided by a Social Worker in April 2008. There is no explanation as to why this advice was not provided sooner, or why it was provided by a Social Worker, rather than a Housing Officer.

95. It is my view that the Council failed to follow its own procedures by not providing appropriate advice at the time the application was checked; and that the delay in providing this advice to Mr S is unacceptable and amounts to maladministration.

The administration of Mr S's housing application

96. Application 1 indicates that Mr S sought a three bedroom property as he had two children who would live with him during school holidays. The Council said that he did not provide supporting evidence for this requirement but there is no record of the Council then specifically requesting such information. There is no record that the Council accepted Mr S's need for a three bedroom property until the file note of June 2009. Conversely, the Council only provided information about three bedroom properties to my Investigator, which suggests that the Council initially only considered him for three bedroom properties.

22 Appendix B

97. The Estate Office Manager said that the possibility that Mr S could be classed as homeless, and what information he would need to provide, was discussed during the first interview in July 2007. However, whilst it is acknowledged that a meeting took place, there is no record of the discussion. Therefore there is no record of whether the Council's Waiting List Procedure²³ was complied with. In addition, the Estate Office Manager said that, when he sent the letter to Mrs G in December 2008, he again did not use the Homelessness template letter or leaflet. He therefore again did not comply with the Waiting List Procedure²⁴.

98. I do not understand why, if he interviewed Mr S to go through and check Application 1, the Estate Office Manager did not sign the form; nor did he record any advice given to Mr S about which sections were incomplete and which supporting evidence was missing. It would have been apparent that the form was not fully completed and, if critical information was identified as being missing, that issue should have been discussed with Mr S at the interview. It is also difficult to understand how, if the HSC form was returned to Mr S (to obtain extra information) on 31 July the application was assessed for points on that same date.

99. A poor standard of administration was apparent on Application 1 and all subsequent (renewal) applications. The 2009 records include confusing file notes about whether the application was allocated 50 or 100 medical points²⁵; Council officers clarified this issue at interview. I do not intend to discuss the subsequent applications in any more detail as it would not add value to this report to do so.

100. The District Housing Manager said that the paper files for Mr S and Mrs G are typical of the records kept by the department. He agreed that the record keeping was not good and it could lead to errors. He agreed that the notes, made on Mr S's file between January 2009 and March 2009, were inadequate and that it is very difficult to follow the thread of decisions.

101. It is clear that officers failed to follow Council procedures when administering Mr S's application; this led to delays and confusion. The

23 & 24 Paragraph 9.1, Waiting List Procedure, Appendix B

25 6 January, 6 March, 18 March 2009

failures were not simply a case of poor record keeping, **there is clear evidence that the Council's own procedures have not been complied with; this failure amounts to maladministration.**

Obtaining medical advice in support of a housing application

102. The Code of Guidance makes it clear that "**where it is necessary** (my emphasis) to take account of medical advice, housing authorities should contact the most appropriate health professionals..."²⁶ The Council's procedure however states that the onus (to provide supporting information) is placed on the applicant; it therefore does not reflect the guidance.

103. The Estate Office Manager said that the Estate Office did not approach any of Mr S's medical advisors in relation to his applications; it was left to Mr S to provide the appropriate information. There is no record of how many times Mr S's HSC form was returned to him; however, it is clear that the Council did not instigate direct contact with any health professionals involved in his care and the Panel did not assess his medical needs until November 2008. **It is my view that the Council's failure to contact health professionals involved in Mr S's care and the undue delay in considering his medical situation amounts to maladministration.**

The assessment of points and the housing allocations

104. The Waiting List Procedure indicates that if an applicant specifies a type of property for which they will never be considered, they will be given advice and the opportunity to reconsider their housing options²⁷. The procedure then refers officers to the Matching Procedure²⁸; that indicates that officers will aim to make lettings in relation to property and household size in order to make best use of the limited housing stock. That procedure also indicates that Council officers have discretion to allow under occupation if there is an "...urgent need for re-housing and one applicant has a clear priority..."

105. The Council said that, as a single person, Mr S would not qualify for a three-bed property – this response is in line with the procedure.

26 Code of Guidance paragraph 4.11 (Medical and Welfare grounds)

27 Paragraph 4, Appendix B

28 Paragraph 7, Appendix B

However, it appears from the documents provided by the Council that, for a large part of the time spent dealing with his application (2007 to early 2009), he was only actually considered for three bed properties. The Council did not offer Mr S any properties until June 2009. There is no record that Mr S was given an opportunity to reconsider his housing options at any stage before the Social Worker apparently told him in April 2008 that there were no 3 bedroom flats in his area of choice.

106. The Deputy Estate Office Manager said that it would have helped if Mr S was prepared to consider one bed properties; she said that if Mr S had opted for a one bed from the start of the process, he would have had wider options.

107. The Council said it was “confident that points have been consistently awarded in accordance with the Councils lettings policy” and that, from July 2007 to date, Mr S had not been overlooked for a suitable property other than where there were higher pointed applicants or a lack of adaptations. I do not share the Council’s confidence. The evidence indicates that Mr S should, in all probability, have been considered as a homeless person in priority need in July 2007. In addition, if the Council had contacted health professionals involved in his care at an early stage in the process, it is quite probable that his allocated points would have been markedly different to the 45 points his application was allocated in July 2007.

108. By March 2009, when the HSC points had been re-assessed his application was allocated 145 points. In reality, Mr S’s situation had not changed in the interim, what had changed was the availability of information to support his application. The allocated points could have been further increased if the Council had properly considered whether Mr S was homeless.

109. The Pointing Procedure gives the option of allocating points to a housing application because of the condition of the applicant’s current home. The Council records indicate that Mr S complained about leaks to the bedroom ceiling in July 2009; I have seen no evidence to suggest that Mr S’s application was assessed for the award of points under the “condition of property” category. It is possible that the Council did not

award points under this category as it considered that the reported faults could be repaired. However, the records show that there have been serious delays in completing the necessary repairs, I discuss this further below.

110. The Council provided details of six offers (referred to above as Offers 1 to 6), including a nomination to a housing association. Four of the offers (Offers 1, 2, 3 and 5) were clearly not suitable for Mr S, because he is a wheelchair user and he could not navigate around the properties; an OT confirmed this on each occasion. Offer 4 was a nomination to a housing association; the Housing Association chose one of the other “candidates” (I discuss this issue further below).

111. The result is, in effect, that the Council has made one suitable offer of accommodation, not six as it indicated. It is unfortunate that Mr S declined that offer, but the Council’s waiting list policies afford him that choice. I am mindful however, that had the Council considered that it owed the full homelessness duty to Mr S, and had it then made Offer 6 to discharge that duty²⁹; if Mr S (as he did) refused the offer, the Council might have, at that point, fulfilled its statutory obligation to Mr S.

112. By its failure to assess his entitlement to housing points correctly, Mr S was treated unreasonably by the Council; that amounts to maladministration.

The Nomination to a Housing Association (Offer 4)

113. Although the Code of Guidance encourages housing authorities to have a common waiting list³⁰, the Council said it does not have a common waiting list; it has formal nomination agreements with each of the relevant local housing associations. The Council provided my Investigator with a copy of its Nominations Procedure³¹.

114. When allocating its accommodation, the Council must comply with Part 6 of the Act, which requires that certain categories of applicant receive reasonable preference. The principles of “reasonable preference” also apply to the Council’s nominations to housing

29 Paragraph 4.45, Offers and Refusals, the Code of Guidance

30 the Code of Guidance - Section B, Joint Working between Housing Organisations, Common housing lists,

31 Paragraph 6, Appendix B

associations, as under the legislation, such nominations amount to a housing allocation³². The Council's Nomination Procedure does not give any guidance to officers on how reasonable preference is given to applicants who fall into one of the relevant categories.

115. The Council nominated Mr S, along with two other waiting list applicants, to be considered for a housing association property. The process gives the Housing Association a "short-list" of three applicants for one available property; effectively therefore Mr S had a one in three chance of being offered the property. The Housing Association did not subsequently offer the property to Mr S. The Council files, that my Investigator inspected, do not include any records of correspondence with Mr S about the nomination process.

Is the Council required to have a "Disabled Persons Housing List"?

116. Mr S complained that the Council failed in its statutory responsibilities as it does not have a separate "Disabled Persons Housing List". The Code of Guidance encourages authorities to "...adopt information systems that enable them to identify accessible and adapted properties, and match them to the needs and choices of disabled people..."³³. There is therefore no statutory requirement to have a separate "Disabled Persons Housing List".

117. Whilst that is the case, there is an obligation to have systems in place to enable it to make appropriate matches between disabled applicants and available properties. Given that the Council offered four unsuitable properties to Mr S, I question whether the system that the Council has in place meets this requirement.

The repairs required to Mrs G's council property

118. Mr S lives at his mother's Council property and as a result of his disability he is largely confined to one room which (he said) is in a state of disrepair. Mr S said that despite complaining about the disrepair for some time, no repair work has been carried.

32 the Code of Guidance - Chapter 3 Eligibility for an Allocation (Definition of an Allocation 3.2)

33 Code of Guidance, Paragraph 4.66

119. Mr S's Housing file includes notes and records that demonstrate that Mr S had reported the disrepair several times³⁴. The Estate Office Manager said that the Estate Office would refer the tenant to the Service Centre and the Estate Office would not keep records of repairs, all records would be held by the repairs team. The Council said that Mrs G did not want work to the bedroom ceiling completed on 16 July, as [Mr S] was unwell. That indicates that the Council was clearly aware of the need to repair the bedroom ceiling, as the contractor was expecting to repair it during that appointment.

120. The Council told my Investigator that if a tenant misses a repair appointment the onus is on the tenant to contact the Council to re-arrange a time for the work to be completed. The Council said that Mrs G had not contacted it to re-arrange a time to complete the work.

121. Mr S first reported the problems in July 2009; in June 2010, the Council told Mr S's solicitor that a contractor would be in touch with Mrs G, "...in the near future..." to arrange to start the work. In March 2011, the Council then told my Investigator that it would attempt to arrange for the work to the bedroom ceiling to be completed. When my Investigator interviewed Council officers in June 2011, the repairs had not been completed. It is clearly unsatisfactory that despite the Council giving several commitments that the work would be completed, almost two years later it was still an issue.

122. I fully appreciate that estate offices would refer reports of repairs to the Service Centre and also that the Council expects its tenants to make contact with the Service Centre to re-arrange missed appointments. However, given the awareness of Mr S's housing situation, a higher priority could have been given to resolving the disrepair, particularly as the Council failed to award any points for poor living conditions when assessing Mr S's housing application.

The Council's responses to Mr S's complaints

123. The Corporate Complaints Procedure is summarised in Appendix B. The relevant records should comprise:

34 15 July 2009, 28 July 2009, 24 September 2009, 25 January 2010

- the Complaint Investigation Request Form,
- all correspondence with the complainant (about the specific complaint)
- the “complaint closed” record (with the RESPOND system reference number).

124. As part of its first response to the complaint, the Council provided records of contacts made by (or on behalf of) Mr S³⁵. Three were recorded as complaints. However, there were six other contacts³⁶. In comparing the content of the letters with the Council’s own definition of a complaint³⁷, all six contacts were stage 1 complaints. There are no records showing that the Council considered or recorded them as such. I am concerned that the Council officers who received these contacts did not deal with the matters using the Housing Department’s Complaints Procedure.

125. In addition, the letter of complaint to Social Services on 26 May 2010 was merely forwarded to the Housing Department. The Social Services issues have not been addressed by either department and Mr S has not received a response from the Council to that complaint; that is unsatisfactory.

126. Turning to the contacts that were considered as complaints; the Council’s evidence included two differing copies of the MP’s letter of 30 July 2007. My Investigator inspected the original letter (held on the Council’s Housing File); it is clear that additional comments were added to the note on the original letter, after a copy of the letter had been passed to the Complaints Officer. The additional comments changed the meaning of the note³⁸. It is not possible to say definitively when this alteration was made; however, it is clear that it only came to light because a separate copy of the letter was kept outside Mr S’s Housing File.

127. At interview, the Deputy Estate Office Manager claimed that she altered the note to “give a better explanation” following a discussion with

35 30 July 2007, 2 October 2008, 10 December 2009

36 13 June 2007, 24 March 2009, 15 July 2009, 24 September 2009, 25 January 2010, 26 May 2010

37 Paragraph 10, Appendix B

38 Paragraph 43 shows the two versions of the note

the Estate Office Manager. It is a concern that records were altered in this way and that Council officers would consider that such alterations were acceptable; even if the note is, in itself, relatively minor.

128. The Council provided a “complaint closed form” (ref: WCBC/00001-08H) dated 10 December 2009 which, the Council maintained, demonstrated that Mr S did not want to take the complaint about repairs further. The “08H” section of the form’s serial number specifies that the record was created in 2008, but the form is dated 2009. Council officers could not initially explain this discrepancy and the Council did not provide any of the other documents that should accompany a “complaint closed form”. The Council later told my Investigator that the form retained the “08” reference as the department had forgotten to update the system to show 2009 references. This is an example of inadequate record keeping (I discuss this issue further below).

129. The Estate Office Manager’s 10 October 2008 response letter ended with the comment: “...Please contact [name] if you are not satisfied with this reply...”. That response effectively completed stage 1 of the procedure. In that letter, Mr S should have been advised about how to take his complaint to stage 2 and ultimately to my office³⁹. It is unsatisfactory that this information was not included.

130. The Scrutiny Manager said that the separate departmental complaints procedures must comply with a minimum standard and, provided the procedure adheres to the minimum, the department is then free to decide how it manages complaints. I have seen no records to demonstrate that the Housing Department acknowledged any of the recorded complaints within 5 working days as specified by the procedure.

131. The Scrutiny Manager said that, in terms of ensuring that, overall, Mr S was satisfied with the Council’s response to his complaints, it would depend on whether the separate parts of the complaint were considered under the Corporate Complaints Procedure. He also said that if a complaint were made against more than one department, the Council would rely on each department entering details on RESPOND.

³⁹ Complaint Handling, Legal Note, Appendix A

He accepted that it would not be possible to identify whether a department has provided a response to a complainant if the department has not entered the complaint on RESPOND. He also said that, if the complaint was initially made direct to the department, the Corporate Complaints Team would not know that a complaint had been made if it was not entered onto the RESPOND system.

132. I am aware that, at the time Council officers were interviewed the Council already had proposals in place to review its Complaint Handling procedure. In addition, in July 2011, the Welsh Government issued a Model Complaints Policy and Guidance for public services in Wales⁴⁰.

133. I consider that the Council has failed to follow its own Complaints Procedure when dealing with Mr S's complaints. Also, the responsibility for stage 1 of the Complaints Procedure is devolved to such a high degree that the Council does not have an acceptable overview of whether complaints are being properly considered, responded to or recorded. **I consider the Council's consideration and recording of Mr S's complaints is unsatisfactory. It is my view that the Council's failures amount to maladministration. The failure to comply with the statutory requirement that complainants are advised of their right to bring their complaint to my office is also maladministration.**

The Council's Record Keeping

134. The Housing Department's Documents Index⁴¹ indicates that, in general, the retention period for housing documents is 12 years. The Scrutiny Manager⁴² said that, unless there is a specific instruction on the retention/ destruction of a document, the procedural document should be retained for a similar period. The Council told my Investigator that it could not provide a copy of the 2007 Letting Procedure as it had been superseded on 1 February 2011, only six weeks before the Council gave its response to the complaint.

135. Both the Scrutiny Manager and the District Housing Manager said that, if a complaint was made now about Housing matters that occurred recently, they would expect to be able to refer to the procedures that were in place. They agreed that those procedures should be available

40 Model Concerns and Complaints Policy, Welsh Government, Legal Note, Appendix A

41 Lettings – Part 4, Quality Documents Index & Filing Matrix, Appendix B

42 Scrutiny Manager's witness statement, Appendix C

and that it would be difficult to respond to a complaint properly if the document was not available.

136. I consider that, in relation to this complaint, the 2007 Letting Procedure is a key document. It is clearly a concern therefore that the Council was not able to produce that document because it had been superseded six weeks previously. The destruction of a policy document six weeks after being replaced does not appear to comply with the Council's Document Retention policy⁴³. Without access to the document the Council would not be able to respond effectively to complaints; the absence of this document could also have seriously hampered my investigation. It is my view that the Council's initial inability to provide the 2007 Letting Procedure is unsatisfactory.

137. Mr S complained that he had applied for housing "...over 10 years ago"; however, the Council maintains that the first application was made in July 2007. Mr S also said that he asked the Council to carry out a search for documentation that preceded that date, but that no earlier records were found. A handwritten note on Mrs G's housing file, dated 13 June 2007, records this request for a search; it also records that, whatever search took place, was cursory at best. The District Housing Manager agreed that the record keeping was not good.

138. The Deputy Estate Office Manager said that Mr S's solicitor asked the Council to undertake a further search. She said that there was no record of earlier applications; she also said that if an applicant does not renew an application then the papers are destroyed after one year. Therefore, if Mr S did not renew any earlier application that he made, it would not have been kept.

139. The Deputy Estate Office Manager said she has been in her current post since 2005; she also said that Mr S's housing applications were already registered on the system when she started at that Estate Office. These comments appear to suggest that there may possibly have been an application before 2007. However, due to the standard of record keeping and the failure of the Council to adhere to its own

43 Lettings – Part 4, Quality Documents Index & Filing Matrix, Appendix B

Document Retention policy it has not been possible to say definitively whether Mr S did make an application for housing before June 2007.

140. When the Council provided, what it said was, a full copy of Mr S's Housing file, the records ended at circa July 2010. The file does not include any records of correspondence with Mr S about the nomination to the Housing Association (Offer 4) made in March 2010. This failure is further evidence that the Council has failed to comply with its own Document Retention policy.

141. I am concerned that, when comparing the documents provided to Mr S's solicitor with the documents provided to me, it is evident that the Council has not provided a consistent set of documents. In all probability, this is because of the standard of record keeping and it causes me to question whether the Council would be able to comply fully with relevant legislation, for example, when responding to a Freedom of Information or Data Protection Act request. I am also concerned about whether the Council's record keeping procedures comply with the Data Protection Act⁴⁴ ("the DPA").

142. If the Council could demonstrate that the department's record keeping is reliable I would be more inclined to accept its view that Mr S did not make a housing application before June 2007. It is unfortunate that because of the standard of record keeping it will never be possible to confirm whether Mr S did, as he asserts, make such an application. **I consider therefore that the Council's failure to comply with its own record keeping procedures amounts to maladministration.**

Decision

143. I have carefully considered the Council's comments on the draft of this report. The Council said that it would be intrusive to commence homelessness inquiries if that action went against the applicant's wishes. That might be a reasonable point of view and I acknowledge that such a situation places a council in a difficult position; however, the clear fact remains that the Council has no record that Mr S's possible homelessness status was discussed with him or that he declined to be considered as such. It is also the case that, as the law and statutory

44 The Code of Guidance and Data Protection Act 1998, Legal Note, Appendix A

guidance stands, the Council has an obligation to commence such inquiries; it accepted that it did not do so.

144. The Council said it considered that sourcing accommodation within Mr S's "strict wishes" would have been challenging. However, the law does not place an obligation on a Council to meet an applicant's specific requirements when fulfilling its statutory obligation. Provided the Council had properly met its statutory obligation, if Mr S had then chosen to decline a reasonable offer of a suitable property, the Council could legitimately have advised Mr S that it considered it had discharged its duty under S193 of the Act. Once it had done that, it would have been acceptable to place Mr S on the Housing Register along with other applicants to whom it did not owe the full duty.

145. The Council said that it did not fully accept that appropriate advice was not given at the time of application, but it did accept that there were no written records of the advice given to Mr S. It said that on occasions a written note would have been "helpful". The Council's own procedures require that such records are kept; it is not simply a matter of records being helpful.

146. The Council did not agree with my conclusions about the first time, or the number of times, the bedroom disrepair had been reported. I agree that Service Centre records indicate the first report was made to that council team in May 2010. However, Estate Office records clearly show that the matter was raised on four occasions from July 2009 onwards. I appreciate that, if a council tenant refuses access, it will take longer to complete necessary repairs. However, the Estate Office was aware of the disrepair in July 2009, it was also aware of Mr S's housing situation throughout. Given that the Estate Office and Service Centre are both part of the Council's Housing Department it is reasonable to expect that, in cases such as this, more is done to share information. It is disappointing that the Estate Office did not inform the Service Centre of the disrepair. It therefore remains, in my view, unsatisfactory that the repairs were still not complete by June 2011.

147. I consider that, for the reasons outlined above, when dealing with Mr S's housing application the Council has, on a number of occasions,

failed to comply with the relevant legislation, statutory guidance and its own policies and procedures. I have found evidence of systemic failure throughout the Council's dealings with Mr S. **I therefore uphold Mr S's complaint against Wrexham County Borough Council.**

Recommendations

148. I recommend that:

- a. within one month of the date of this report, the Council provides Mr S with an unreserved apology for its failure to comply with the relevant legislation and statutory guidance and for its failure to assess Mr S's housing application properly.
- b. within one month of the date of this report, the Council makes a payment of £1500, comprising £1250 to reflect the additional time spent in unsuitable accommodation and £250 for the time and trouble taken by Mr S in pursuing his complaint.
- c. the Council immediately (at the latest within one month), thoroughly re-assesses Mr S's housing application and homelessness status; the Council must ensure that the assessment fully complies with relevant legislation and includes the full entitlement to points in all applicable categories. Mr S must then be given a written decision that fully complies with the Act.
- d. within one month of the date of this report, the Council provides Mrs G with an apology for its failure to address the disrepair reports made before May 2010 effectively.
- e. the Council, if it has not already done so, ensures that the necessary repairs to the bedroom ceiling are completed as an urgent priority. I further recommend that the Council is proactive in ensuring this recommendation is implemented.

- f. within three months of the date of this report, the Council provides comprehensive training to all housing staff, on the recognition of homelessness and identifying when inquiries should be started.
- g. within six months of the date of this report, the Council undertakes a comprehensive review of the Housing Department's procedures to ensure that the procedures fully and properly reflect legislation and statutory guidance.
- h. the Council undertakes a comprehensive review of the Housing Department's systems to ensure that it is able to match housing applications from disabled people effectively and appropriately to suitable, available, adapted properties and properties capable of adaptation.
- i. the Council undertakes a comprehensive review of the Housing Department's record keeping methods, to ensure that the records maintained comply with the law and its own policies and enable Council officers to support existing Council tenants and new housing applicants effectively.
- j. the Council undertakes a comprehensive review of the Housing Department's communication and information sharing mechanisms, to ensure that the failures identified by this case (in terms of joint working) provide lessons that contribute to an improvement in the service provided to existing Council tenants and new housing applicants.
- k. within three months of the date of this report, and if it has not already done so as part of the planned review of its Complaint Handling procedures, the Council should consider adopting in full the Model Complaints Policy and Guidance for public services in Wales issued by the Welsh Government in July 2011.

149. I expect the Council to confirm to my Investigator that it has complied with recommendations (a) to (e) within six weeks of the date of this report.

150. I also expect the Council to provide a copy of its improvement plan detailing how it will address the recommendations (f) to (k) to my Investigator within six weeks of this report. I expect the Council to provide regular (monthly) updates to my Investigator, until the improvement plan has been implemented in full.

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

PETER TYNDALL
Ombudsman

25 January 2012

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Legal Note

Housing Allocations

1. The Housing Act 1996 (as amended), which I shall refer to as “the Act” governs the way in which councils, as local housing authorities, must deal with those who might be, are, or face being made, homeless and how councils must allocate their housing. The Act places a duty on a local housing authority to consider every application made to it for an allocation of housing⁴⁵. 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 available⁴⁶.

2. A council must comply with Part 6 of the Act when allocating housing; Part 6 provides that the Council 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. On receiving a housing application (under Part 6) a council must consider whether information disclosed by the form suggests the applicant might 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).

⁴⁵ Ibid. s166 (3).

⁴⁶ Ibid. s166 (2) & s15.

3. 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 categories⁴⁷.

4. In allocating⁴⁸ its accommodation, the Council must comply with Part 6 of the Act. It is therefore required to have in place a scheme⁴⁹ for determining priorities between applicants for housing. The scheme in particular must ensure that “reasonable preference” is given to the following categories:

- a. people who are homeless (within the meaning of Part 7);
- b. people who are owed a duty by any local housing authority under section 190(2), 193(2) or 195(2) (or under section 65(2) or 68(2) of the Housing Act 1985) or who are occupying accommodation secured by any such authority under section 192(3);
- c. people occupying insanitary or overcrowded housing or otherwise living 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 in the district of the authority, where failure to meet that need would cause hardship (to themselves or to others)…”

47 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

48 Ibid. s159

49 Ibid. s167

Homelessness

5. 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. Any such steps taken to avoid homelessness must be taken in parallel to the carrying out of Part 7 duties.

6. 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.

(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.”

7. 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 area⁵⁰.

⁵⁰ Ibid. s177 (2).

8. 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”⁵¹. 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.

9. Where a local housing authority has reason to believe that an applicant may be homeless (including being homeless at home), it must satisfy itself by making the inquiries necessary to establish, whether the applicant is eligible for assistance. Where a local housing authority is satisfied that an applicant is eligible, it must also determine whether any duty and if so, what duty, is owed under Part 7 of the Act⁵². 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 need⁵³. The Act defines an applicant with whom either dependent children reside or might reasonably be expected to reside as a person with priority need⁵⁴.

10. 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 so⁵⁵. It should communicate its decision in writing⁵⁶ and if finding against the applicant, it should inform the applicant of the right to request a review of that decision⁵⁷. Once a local housing authority accepts such a duty, it cannot change its mind, even if the applicant’s circumstances change.

11. The duty to provide suitable accommodation is an ongoing duty that can only be brought to an end by the fulfilment of the statutory

51 Birmingham City Council v Aweys & Ors [2008] EWCA

52 Ibid. s184.

53 Ibid. s188.

54 Ibid. s189 (1) (b).

55 Ibid. s193 & s206.

56 Ibid. s184.

57 Ibid. s202.

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.”⁵⁸

12. 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 review of the suitability of the accommodation.⁵⁹ The local housing authority may, but is not obliged, to require an applicant to pay for the accommodation that it provides.⁶⁰

13. The Act also provides⁶¹ 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.

14. 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.

15. The Welsh Assembly Government produced guidance entitled “Code of Guidance for Local Authorities on Allocation of Accommodation and Homelessness” (“the Code of Guidance”) for councils on housing

58 Ibid. s191 (1).

59 Ibid. s202 (1)(f)

60 Ibid. s206 (2) (i).

61 Ibid. s190, 192, 195

allocations and homelessness. Councils must have regard⁶² to the Guidance when dealing with these issues.

16. In February 2006, my predecessor issued a Special Report⁶³ that gave guidance on homelessness and allocations. This report was produced after consultation with local authorities and other relevant organisations. Councils are obliged⁶⁴ 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 reports⁶⁵ that I, and my predecessor, have issued in respect of a council's failure to recognise the triggering of its homelessness inquiries duties.

Repairs

17. As a landlord, a council is legally responsible for carrying out certain repairs⁶⁶, although tenants do have some maintenance responsibilities (which will be set out in the tenancy agreement). The law states that the problem must first be brought to the attention of the landlord and the landlord must have been given a reasonable opportunity to carry out the repair before I can consider a complaint.

Data Protection Act 1998

18. The Code of Guidance requires that the Council's administration of its housing allocation scheme must comply with the Data Protection Act 1998 ("the DPA")⁶⁷. The DPA includes eight principles that organisations must comply with when using personal data. The DPA stipulates that personal data:

- shall be accurate and, where necessary, kept up to date⁶⁸.
- processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes⁶⁹.

62 Ibid. s62, s169, s182

63 The report was called "Housing Allocations and Homelessness".

64 s23(12A) of the Local Government Act 1974.

65 Report reference numbers 200600749 and 200602563.

66 Landlord and Tenants Act 1985

67 Paragraph 5.23, Data Protection, the Code of Guidance

68 Principle 4, Schedule 1, the Data Protection Act 1998

69 Principle 5, Schedule 1, the Data Protection Act 1998

Complaint Handling

1. Section 33(2)(b) of the PSOW Act requires that the Council must provide information to a complainant about the right to make a complaint to the Ombudsman, in any document issued by the Council in response to a complaint made to it by a person who might be entitled to make the complaint to the Ombudsman.

2. In September 2006, the Ombudsman issued statutory guidance to public authorities in Wales entitled Guidance to Local Authorities on Complaints Handling. In March 2008, the Ombudsman issued statutory guidance⁷⁰ to public authorities in Wales on the Principles of Good Administration. Councils were obliged to have regard to this guidance when exercising their functions.

3. In July 2011, The Welsh Government issued a Model Complaints Policy and Guidance for public services in Wales⁷¹. The Model Policy has two parts. The first part is for issue to the public, the second part is guidance to which public authorities should have regard when developing their complaints handling processes. Although there is no statutory requirement to adopt the Model Policy, the Welsh Government issued it with a strong recommendation that it should be adopted.

70 s31 of the Public Services Ombudsman (Wales) Act 2005

71 Model Concerns and Complaints Policy, Welsh Government July 2011

Extracts from the Council's relevant Policies and Procedures

1. The Council's Housing Department has achieved accreditation under the British Standards Institute ("BSI") 9001 Quality Standard; the standard covers management systems. In order to achieve and maintain accreditation the organisation must demonstrate that it consistently meets customer and applicable regulatory requirements. As part of the system the organisation must have a documented Quality Management System ("QMS") that includes a Document Retention Policy, an agreed Continuous Improvement Process and an approval (control) process for all key policies and procedures. All the Housing Department's operational procedure documents quoted below, and provided as evidence by the Council, display the BSI mark. By displaying the BSI mark the Council is stating that it has current accreditation.

2. Policy for Letting Council Accommodation (January 2007)

"3.1.1 Supporting Evidence

When completing the form applicants are also prompted to provide documentary evidence specific to their housing circumstances, e.g. medical conditions, dependent children etc. The onus is placed on the applicant to provide this information and failure to do so will delay the registration

3.2.2 Property size & type

Due to the on-going reduction in the number of properties the Council manages, care must be taken to ensure that the best use is made of the existing stock. For this reason certain rules have been set regarding the size of property people can normally be offered. When applying for accommodation, applicants are asked to refer to the property choice table in the 'Applying for Housing Booklet'.

Household type	Property Type
single person under 60	1 bedroom Bedsit 1 bedroom flat 1 bedroom house 1 bedroom bungalow*
Families with 1, 2 or 3 children	2 or 3* bedroom flat 2 or 3* bedroom maisonette 2 or 3* bedroom house
Households containing a physically disabled applicant who requires an adapted property	Adapted properties suitable for their needs or properties capable of being adapted. This may include properties "suitable" for older people or sheltered accommodation.

*depending upon local demand and supply

3. Lettings, Part 2 - Housing Lettings Policy (procedure 3.1)

"1.1 Wrexham County Borough Council will follow the published policy when letting its accommodation as required by the Housing Act 1996 (amended by the Homelessness Act 2002).

1.2 The lettings policy has been written in accordance with the Welsh Assembly Government's Code of Guidance...

3.3 when completing the form applicants are also prompted to provide documentary evidence specific to their housing circumstances, e.g. medical conditions... the onus is placed on the applicant to provide this information...

3.8 ...Due to the ongoing reduction in the number of properties the Council manages, care must be taken to ensure that the best use is made of existing stock...staff should refer to procedure 3.10 'Matching Applicants to Properties'...

3.9...in cases where the applicant is found to be unintentionally homeless and in priority need and the Council has a statutory duty to secure permanent accommodation, the applicant's re-housing

choices will be reviewed 4 weeks after the formal decision has been made to ensure that they are not restrictive. The applicant will be required to broaden their choices to consider properties that are in greater supply where necessary. The Council may then discharge its duty through a 'final offer' of a suitable property in any of these additional areas (see procedure 9.16 – Processing Waiting List Applications for Homeless Applicants)..."

4. Lettings - the processing of housing waiting List applications (procedure 3.2)

"3.1 The Application... shall be checked to see if... the appropriate proof of... current housing circumstances has been included..."

3.3 Officers should also identify whether the applicant requires a Health & Social Care Form or advice from a Homelessness Officer.

4.1 An application which cannot be processed because:

...

or the supporting evidence has not been provided

4.2 shall be returned to the applicant accompanied by the 'request for information' letter (LET4) in which the relevant problem(s) will be clearly identified...

4.3 All applicants must provide... proof of their:

...

Regular access to children...

4.7 Officers may use their discretion in deciding whether to return the form to the applicant for further information.

7.3 Where an applicant specifies a type of property that does not exist in their area of choice they must be advised that this is the case and given guidance on the options available to them.

7.4 Where an applicant specifies a type of property for which they will never be considered due to demand etc. (e.g. a single person applying for a three bedroom property) they will be advised and given the opportunity to reconsider their housing options. Staff should also refer to procedure 3.10 'Matching Applicants to Properties'.

8.1 A special needs & medical assessment Form (LET6) should be issued...

8.3 The form must be accompanied by supporting evidence... forms which are not completed or fully supported with evidence shall be returned to the applicant... or the applicant will be contacted by telephone...

8.6 If the Panel decides there is not enough supportive evidence, the...form will be returned to the Estate Office via Housing Administration

9.1 Potentially Homeless Applications should be identified at the point of receiving the application. Applicants should be sent the 'Advise to see homeless letter (LET7)' together with the 'homelessness explained' leaflet.

9.2 The housing application form should be processed as for non-homeless applications pending the homelessness officer's decision.

Upon receipt all applications should be date stamped. Officers should aim to process applications within 20 working days of a fully completed and supported application form being received.

14.1 Applications should be assessed against the points scheme... Officers may complete a pointing form to provide a file record...

14.2 A second officer should verify the points awarded and sign the office use page on the application form (and Pointing Sheet if in use).

Subsequent amendments/additions to the points should also be checked independently and 'Office Use' page signed and dated

18.1 If it is believed that the case is so severe it merits the awarding of management move points then the Estate Manager should complete the Management Move Request Form..."

5. Lettings – the Points Scheme (procedure 3.7)

"2.5 Someone may be considered to be 'homeless' or 'threatened with homelessness' if they:

have no accommodation which is available for them to live in or which they have a legal right to live in

have accommodation but cannot gain entry to it

have accommodation which it is not reasonable for them to continue to occupy

have moveable accommodation such as a caravan but have nowhere to both place it and live in it...

2.7 An applicant may be found to be in "priority need" if they:

...

are vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or someone who resides with, or might reasonably be expected to live with them is vulnerable;...

7 Condition of property

...

Property in urgent need of repair 50 points

...

7.7 although it may not be of 'unsuitable housing standard'...a property will be considered to be in 'poor condition' where:

... its condition interferes with the personal comfort of the applicant
e.g. dust, damp etc

14 Management Points 300 points

14.1 these points will only be awarded following consultation with the Management Move Panel and may include the following instances:

...

Where re-housing is a matter of urgency, but where the points awarded under the scheme do not reflect this urgency...”

6. Nominations to Housing Associations (Procedure 3.12)

“4.1 Whenever possible 3 nominees will be forwarded for each vacancy...”

8.0 Information to Nominees

When an applicant is nominated to an RSL, they will be advised using letter (LET43 — Application for Housing). An accompanying leaflet (LET44 — Understanding the Nominations Process) will also be sent to inform the nominees of the process. Other basic information will be provided by the RSL...

9.0 Selection of Successful Nominees

An offer of accommodation will be made to the successful applicant. In the case of applicants who are priority homeless, an offer of accommodation will always be made in writing rather than verbally during a home visit or in a telephone call.

This is to ensure that the Council discharges its legal obligation and properties are not refused unreasonably. Letter (LET45 - Offer of Accommodation to Homeless Applicants) will also be sent...

9.1 These applicants can request that the Council reviews the suitability of the offer.

10.0 Nomination Results

Regardless of whether the nomination is rejected, or the nominee accepts or declines the offer, the RSL will notify the relevant Estate Office of the decision within 3 working days using form (LET46 — Nomination Result Form).

10.1 If the nomination is rejected or the offer is refused, form LET46 will be completed detailing the reasons why...”

7. Matching Applicants to Properties (Procedure 3.10)

“2.1 Priority will usually be given to applicants who have the highest points based on the reasonable preference categories and are the most appropriate ‘fit’ for any particular property. Officers will aim to make lettings in relation to property and household size in order to make best use of the limited housing stock (see table below).

2.2 Where there is an urgent need for re-housing and one applicant has a clear priority officers should use their discretion and may allow under occupation of the property, e.g. priority homeless cases, critical health and social care or unfit.

3.9 Adapted properties will be let to households most able to make use of their facilities. Every effort would be made to find such a household through liaison with Occupational Therapists, Social Services etc. before letting the property to a general needs applicant...”

8. Processing Waiting List Applications for Homeless Applicants (Procedure 9.16)

“The purpose of this procedure is to identify the process to follow when processing applications for rehousing from applicants who are homeless or may subsequently seek to be rehoused as homeless.

There are three situations which may arise when processing an application

- Initial application made to the homelessness team...
- Existing application registered at an Estate Office...
- Application registered for rehousing at an Estate Office during Homelessness Investigations...”

9. Lettings – Part 4, Quality Documents Index & Filing Matrix

Quality Doc Ref:	Document Name	Retention Period
LET1	Application for Council Housing Form	...12 years...
LET6	Health and Social Care Form	...12 years...
LET7	Advise to see Homeless letter	...12 years...
LET19	Cancelled Application for Housing letter	...12 years...
LET43	Nomination Letter	...12 years...

10. The Corporate Complaints Policy

“A complaint is an expression of dissatisfaction, however made, about:

- The behaviour/ actions of members of staff
- The standard of service provided or the manner in which it was provided
- A failure to deliver a service within agreed and defined timescales
- Lack of action

Timescale standards for responses:

First Stage (Departmental Level)

Written acknowledgement sent within 5 working days of receipt of complaint.

Final/interim reply sent within 20 working days...

Every ‘final’ response sent at this stage should inform the customer what actions they may take if they are not satisfied with the response or the manner in which the complaint was dealt with.

Second Stage (Corporate Stage)

Acknowledgement sent within 5 working days.

Final/interim reply sent within 20 working days...

All complaints are to be recorded by the Departmental Complaints Officers on the RESPOND computer system, ...

When a complaint is received, care should be taken to be clear what the nature of the complaint is. If there are a number of issues raised which appear to be related then agreement should be reached with the complainant about a single substantive complaint which can be dealt with...

If a number of issues, which appear to be unrelated, are mentioned then these should be separated out and dealt with as individual complaints. The same investigating officer may be able to deal with all of them during one interview and may produce one report covering all of the complaints...

Staff dealing with complaints must ensure that the Procedure is adhered to rigorously...

All Comments, Compliments and Complaints, and correspondence regarding a particular complaint, must be passed to the Departmental Complaints Officer.

The Authority should reach a clear and firm decision... The complainant should always be informed of the right to ask for the matter to be referred to the relevant officer dealing with the next stage..."

11. The Housing Department's Complaint Procedure

"...The relevant Line Manager will respond at Stage 1 to the complainant and send a copy of the reply to the Representation & Complaints Officer.

If the customer is not happy with the written response, or has not received a written response, the customer can take the complaint to Stage 2...

a) Complaints - Enter all complaints onto the system...

b) MP/AM Enquiries - Log enquiry onto the system...

Formulate a response and pass to Landlord Services manager for signature. Individuals are not to write or sign letters direct to MPs/AMs. All correspondence to MP's/AM's (sic) must go through the Representations & Complaints Officer, who will draft the response, which must be signed off by the Landlord Services Manager..."

The Council Officers' Comments at Interview

The Estate Office Manager

1. The Estate Office Manager said that he was responsible for all Housing Management functions for the [locations], including: dealing with rent arrears; mutual exchanges; housing allocations; administering the waiting list; initial Anti Social Behaviour reports and taking initial reports of repairs (but not resolving them).

2. He said that he was familiar and proficient with the full range of Council policies and procedures, had a general awareness of homelessness policy and could refer to the homelessness team if needed. He said that if a policy or procedure is changed the Council has an update procedure for all procedures included in the Quality Management System ("QMS") and that if there was a major policy change the Council would provide training.

3. He said he received training on homelessness some while ago; and that the Council has recently provided further training, but as he is no longer in the Estate Office Manager post, he has not received that update training.

4. He said that the wording of a housing offer is specific but that he could not remember if it refers to suitability. He also said that he did not know, specifically, what is stated in the Code of Guidance but that he is aware that there is a need to make a suitable offer. He said that the Council would do its best to make a suitable offer, based on the particular needs of that person; but whether the Council would be able to meet those needs would depend on the housing supply available.

5. The Estate Office Manager said if a suitable property was not available and the Council had a "full duty" to provide housing then the Council would consider an adaptation request. He said that he would liaise with an occupational therapist ("an OT") to consider the specific requirements. He said that if major adaptations were needed they would look for alternative properties as a first option before going ahead with changes.

6. The Estate Office Manager confirmed that the “housing register” is the Council’s waiting list. He also confirmed that it is not a common list with the Registered Social Landlords (“the RSLs”) in the area; that the Council has formal nomination procedures with the RSLs; and that an RSL would advise the Council that it had a property available and the Council would look to match an applicant to the specific type of property.

7. The Estate Office Manager said that, when making an application, it is up to the applicant to provide the necessary supporting documents. He said that applicants are advised about this point when they make an application and it is published in leaflets and on the Council’s website. He said that the Council does not “chase” applicants to provide information.

8. He said that certain types of supporting documents (e.g. Proof of ID) are classed as critical and failure to provide that type of document would halt the process. If other forms of documents (e.g. medical information) were missing it would delay, but not halt, the process. He explained that the application could be processed but without full supporting medical information it may result in the applicant not receiving the correct level of points.

9. He said that the medical information provided by Mr S in support of his application would only be assessed by the Panel, which comprised the District Manager, an Occupational Therapist and the Special Needs Housing Officer. He said that the objective of the process was to ensure that each application was correctly assessed for HSC points. He said that HSC points could affect the position on the waiting list because 100 points [the maximum allocation for that category] could have a major impact on an application.

10. The Estate Office Manager said that officers use common sense to decide whether an application needs to be returned to the applicant. The idea is not to be prescriptive, but to try to make as much progress on the application as possible.

11. The Estate Office Manager said that he dealt with Mr S’s initial application in 2007 and interviewed Mr S to review his application form.

He said this was a part of his normal responsibilities. He said that during the initial interview with Mr S he checked through his application with Mr S and discussed his “chances” [of being housed]. He discussed what information would be accepted (as proof of Mr S’s regular access to his children).

12. He said the Estate Office did not approach any of Mr S’s medical advisors in relation to his applications; and that it was left to Mr S to provide the appropriate information. He said that, if relevant, information would have been identified as missing (or incomplete) by the Panel. The Panel would notify the Estate Office; the office would then request the missing information from the applicant and, when it was supplied, the application would be returned to the Panel to be re-determined.

13. The Estate Office Manager said he had been involved in dealing with some of the matters that Mr S has complained about throughout the progress of his application, but that he had not been involved in dealing with complaint about repairs or responding to Mr S’s complaint to the Ombudsman.

14. The Estate Office Manager said that, in dealing with the complaints Mr S made whilst waiting to be housed, to his recollection, he followed the housing department’s complaints procedure. He said that the “housing complaints officer” would register the complaint and then pass it on to be dealt with.

15. The Estate Office Manager said that he did not use a template letter in his response letter (10 October 2008) and that he advised Mr S that he had “failed to provide....” because he was aware that processing the application had been affected by the lack of supporting documentation. He said that Mr S would previously have been advised that he needed to provide the additional information in support of his application. He also said that if the Panel had identified that more information was needed then the Estate Office would then need to request that from him. He said that he recalled that there had been a few times when Mr S’s points had been revised so he must have provided further information and then the Estate Office would have sent the application back to the Panel to be re-determined.

16. The Estate Office Manager said that he wrote the 1 December 2008 letter to Mrs G in response to her [November 2008] note. He also said that he did not use the template letter or provide the "homelessness explained" leaflet in support of his 1 December 2008 letter.

17. The Estate Office Manager said that, as far as he could recall, the "O8H" part of the reference number on a "Complaint Closed" form would refer to the year - 08 being 2008 - and the H for "housing" but the Council's Scrutiny Manager would be able to confirm that.

18. The Estate Office Manager said that he advised Mr S during the first interview in July 2007 that he could be homeless and what information he would need to provide. He said he told Mr S that he could have had an appointment to see homelessness in July 2007, but, the Estate Manager said, Mr S did not want to do that.

19. He also said that he explained the Council's policy and that the Council would try, for the first 4 weeks, to house him in his preferred area of choice; after that, the Council would then look at other areas. The Estate Office Manager said that Mr S did not want to be considered homeless because he did not think he would get a property in his preferred area.

20. He said that if the applicant is restricting the areas that he wants to live in and the Council has no available properties in that area it then becomes difficult to make progress. He said that Mr S has consistently said that he only wants to consider houses in a very specific area.

21. The Estate Office Manager said that, as Mr S has not made a homeless application, the Council has never considered that he is homeless. He also said that the Council has therefore not, at any point, given Mr S a final offer (in terms of the homeless duty) and Mr S has not been penalised as a result of him refusing any particular offer. He said that a waiting list applicant could refuse as many offers as they want. He also said that Mr S was treated as a new applicant, not as an existing tenant and that he was advised throughout the process of his option to appeal against any of the Council's decisions.

22. The Estate Office Manager said that he checked Mr S's initial application but that generally admin staff would complete the "department only" section after the interview had been completed. He said it was not unusual for some parts of that section to be left incomplete. He said that he presumed that staff had seen the relevant documents but just not "ticked the box" on some sections.

23. The Estate Office Manager said that as the application progresses several officers would add notes to the paper records and it is possible that later notes could be added to earlier forms. He said that housing officers would refer to the paper forms to check what the latest information for an application would be.

24. The Estate Office Manager said that the first application did not identify that there were adaptations at his current property probably because he is living at his mum's home and that is not adapted. He said that the application indicates that Mr S had HSC reasons for making his application and therefore Mr S would have then been given a form to complete.

25. The Estate Office Manager said that information from a Social Worker would be taken into account as part of HSC information. The information may not make a significant difference to the application if the applicant had already provided all the necessary medical information and it may also not make a difference if the applicant wants to live in a certain area and there is no housing available in that area.

26. The Estate Office Manager said that the "Management Move" procedure is designed to cover unusual situations that would not be dealt with by the normal points allocation procedure; for example, it would be used to re-house victims of severe Anti Social Behaviour.

27. He said that the process adds 300 points to a housing application and effectively pushes the application to the top of the waiting list; this enables the Council to deal with urgent housing situations. He said that senior staff would consider a recommendation to award management move points and it is possible that the other applicants could have been given a management move whilst Mr S has been waiting to be housed.

28. He said that, even if Social Services provided information that might lead the Housing department to consider triggering the “management move” process, if the applicant is adamant, as Mr S was, that he only wants to live in a very specific area then using the “management move” process would not necessarily resolve the problem.

29. The Estate Office Manager said that the Estate Office did not deal directly with repairs; the office would refer the tenant to the Service Centre and the Estate Office would not keep records of repairs, the repairs team would hold those. He said he had not dealt with any complaints about repairs as they would be dealt with by the Service Centre.

The Deputy Estate Office Manager

30. The Deputy Estate Office Manager said she has been in her current post since the 2005 re-structure and that she has a good deal of experience in the housing functions of the Council. She said that she uses the full range of housing policies and procedures in her role and she deals with, and responds to, complaints about housing. She said that she refers to homelessness policies and would contact the legal officer if she was unsure of anything.

31. The Deputy Estate Office Manager said that Mr S’s housing applications were already registered on the system when she started at that Estate Office; she said that she thinks that he already had “critical points” at that stage but her memory may be sketchy.

32. The Deputy Estate Office Manager said that she had primarily been dealing with allocations and trying to find Mr S a suitable property. She also said that she had been dealing with some of his complaints about delays. The Deputy Estate Office Manager said that it has been a difficult situation as properties that look like they would be suitable have not been so. She said that over the period of handling his application, Mr S’s condition has deteriorated.

33. The Deputy Estate Office Manager said that she remembered making the original note on the MP letter in 2007 and then altering it

later (so that it would give a better explanation) after a discussion with the Estate Office Manager.

34. The Deputy Estate Office Manager said that she contacted Mr S's solicitor on 1 February 2010 to give her an update in response to the solicitor's letter of 25 January 2010. She said that sometimes the solicitor's letters cover a range of matters and, on that occasion, the solicitor had raised issues about delays in repairs. She said that, as the repairs were for Mrs G's property, the Council could not give the solicitor details without authorisation from Mrs G.

35. The Deputy Estate Office Manager said that the solicitor was also asking the Council to undertake a further search in connection with Mr S's assertion that he had made housing applications before 2007. She said that there was no record of earlier applications and the Council had also changed systems. She also said that if an applicant does not renew an application then the papers are destroyed 1 year after, so even if Mr S did make an earlier application, if he did not subsequently renew it, the application would not have been kept.

36. The Deputy Estate Office Manager said that she could not recall the 3 February 2010 letter from the Council to the solicitor; but it would seem logical that it would be linked to her phone update on 1 February 2010. She said that where the 21 June 2010 letter refers to the 3 February 2010 letter as having been sent by the Estate Office it would not be unusual for the content of that letter to have been drafted by the Estate Office, but sent out by the department complaints coordinator.

37. The Deputy Estate Office Manager said that she did give the solicitor a telephone update in response to the solicitor's 24 September 2010 letter. She said that it was about a property that could be suitable for Mr S. As it turned out the property was not suitable, because Mr S could not turn his wheelchair in certain parts.

38. The Deputy Estate Office Manager said that Mr S is insisting that he will only consider two bed properties. She said that it would help if he was prepared to consider one bed properties. She said that Mr S has had quite a lot of offers, but it depends on what he thinks is suitable.

39. The Deputy Estate Office Manager said that because Mr S is adamant that he wants a three bedroom property and that he has given information to support his statement that he needs extra bedrooms because of access to his children; the Council has taken the view that he would only consider three bedroom properties. The Council wants Mr S to have a property and he would give himself more of an opportunity to be housed, if he was prepared to consider a one bedroom property, but the decision is really for him to make.

40. The Deputy Estate Office Manager said that if Mr S had opted for a one bed property from the start of the process, he would have had wider options, but still only if he would accept the properties offered. She also said that Mr S is also very specific about the locations he will consider – this also limits his options as the Council’s adapted properties are spread over wide areas (some of which, she said, Mr S is not prepared consider).

41. The Deputy Estate Office Manager said that as Mr S is a waiting list applicant he has the privilege of being able to refuse an allocation. If he was homeless he may be in danger of losing his homeless points if he refused a suitable offer.

42. The Deputy Estate Office Manager said that, she always works with the OTs to identify suitable properties. She said that when Mr S was not completely dependent on his wheelchair, some of the early properties that were offered might have been suitable, as Mr S had some use of his crutches. As his situation has deteriorated it has become necessary to identify a property that is suitable for full wheelchair use.

43. The Deputy Estate Office Manager said Mr S refused one suitable property because it was not decorated or carpeted but the Council do not provide those items with social housing. She said that Mr S has also refused a property that could have been adapted (and which the Council would have adapted it if Mr S had accepted).

44. The Deputy Estate Office Manager said that the Council would not just recommend a property just to be seen to be making an offer, the OTs assess each property to try to ensure it meets Mr S's needs before he is offered it. She said that she recognises the position Mr S is in; the Council has awarded the maximum medical points and she would have expected his situation to be resolved by now. She said she is concerned for his well being.

45. The Deputy Estate Office Manager said that Mr S could go through the homelessness process and he could be considered homeless at his mother's home; but she does not know whether that would resolve the situation. She said that she is aware that he needs to stay close to his family, but properties in the immediate area have not come up and are also smaller than the properties that have been available and are suitable.

The District Housing Manager

46. The District Housing Manager said he covers two areas including the area managed by the Estate Office Manager, and he is responsible for all housing functions. He said that he has not been involved in dealing with Mr S's housing application as he was on secondment during the relevant period. He resumed his responsibilities as District Housing Manager in January 2011.

47. He confirmed that complaints about housing are initially dealt with by the department's complaints officer. The District Housing Manager agreed that if the Council received a complaint now about housing services provided in, say, November 2010, in looking at the complaint the department would need to refer to the procedure in place for November 2010. He agreed that if that procedure was not available that would potentially create a problem.

48. The District Housing Manager said that he is not familiar with what happens to procedure documents when they are superseded and he does not know what happens to the old versions. He said that he would need to check the process with the department's policy team.

49. He confirmed that the department does have a Management Move Register and that he is part of the panel of staff who consider such recommendations. He said that, as far as he could tell from the Management Move form on Mr S's file, it has not been used to record a Management Move recommendation and he does not recall Mr S being considered for a Management Move.

50. The District Housing Manager said that the paper files for Mr S and Mrs G are typical of the records kept by the department. He said that record keeping has previously been identified as a weakness and the department is taking steps to improve the situation. He agreed that the record keeping in both Mr S's and Mrs G's files is not good. He said that Housing staff had been advised that record keeping must improve.

51. The District Housing Manager said that the department has an action plan in place because of a previous case and that record-keeping training has been arranged. He agreed that, with the current record keeping, it is possible that staff are not easily able to identify what the most recent piece of relevant information is and that could lead to errors. He said that he expects that increased use of the IT system will improve the situation.

52. The District Housing Manager agreed that the notes made by the Panel on Mr S's file⁷² were inadequate; he agreed that it is a struggle to follow what decisions had been made, when and by whom. He said that the record keeping for this particular case is a classic example of where the department got the record keeping wrong.

53. The District Housing Manager said that the department has received homelessness training recently. He said that he believes that Mr S said that he did not want to be considered as homeless but he also accepted that the records do not support or record that information. He said that he accepts that, where there is a statutory obligation to provide a service and the Council does not appear to have provided the service, accurate record keeping of the situation is clearly vital and a lack of records does leave the Council's actions open to challenge.

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54. The District Housing Manager said that the Council receives applications where the applicant says “I can’t live there anymore” and, given the low threshold for homelessness, it could be the case that there could potentially be many more cases where homelessness inquiries might be necessary. He said that the Council is currently updating the procedure and applicants are now advised that the Council has considered the application under homelessness legislation and “we consider you may/may not be considered to be homeless”. He said that it would be a difficult situation if they were directing lots more applicants to the homelessness team as they already have plenty of work.

55. He said that the Council has recognised that the situation needs to improve and there is a will to learn from both this and the recent case. He said that he is very hopeful that if the Ombudsman came back in 12 months the department would be in a very different situation.

The Occupational Therapist

56. The Occupational Therapist said she has approximately 20 years experience. She said that she works with the Housing Department to help identify suitable properties for housing applicants with disabilities. She said that she follows both Social Services and Housing policies as the role is cross-departmental. She said that she has had training on homelessness and that she is aware of how to refer people to the Homelessness team.

57. She said that she helps the housing department by assessing the needs of applicants to help identify suitable properties and by working with the Panel to assess applicants if it is not clear what the medical issues are (and therefore what points should be allocated). She said that she was part of the original Panel that considered Mr S’s medical points but did not complete the initial assessment. She recalls that the Panel awarded 50 points.

58. The Occupational Therapist said that initially, Mr S said he wanted a 3 bed property, but that would not have been recommended for him because he was a single person and also because of his condition (mobility issues and epilepsy). She said that she thought he would have been better in a ground floor property because of his circumstances.

59. The Occupational Therapist said she thinks that the case came back when she was on maternity leave following receipt of a consultant's letter, or possibly it was resubmitted to the Panel with more evidence. She said that she does not know if another assessment was completed whilst she was on maternity leave but it looks as if his application was then allocated 100 points.

60. The Occupational Therapist said that, she visited Mr S (with a colleague) and undertook a periodic assessment approximately one year ago. At that point the application was still allocated 100 points. Since then she has assessed properties that the Estate Office has identified as potentially being suitable for Mr S. She said that she has visited three properties with Mr S to assess whether he can navigate through doorways etc., in his wheelchair.

61. The Occupational Therapist visited Green Road (Offer 5) with Mr S and confirmed that the property was not suitable for him, but that it was not possible to tell that until observing Mr S at the property. She said that she also visited another property with a Hospital Therapist and Mr S and is unsure why Mr S also refused that property.

62. The Occupational Therapist said that she had also been to assess the adapted property in Red Road (Offer 6) with Mr S; she had considered the property very suitable and she was shocked when Mr S rejected it. She said that she then contacted Mr S's specialist because she was concerned that his brain injury was possibly affecting his "decision-making capacity".

63. The Occupational Therapist said that following the Red Road visit, she contacted social workers to check whether he could be given more support to help him be realistic about what properties the council actually has available. She said that she made contact because they already knew Mr S. She said that the social workers told her that it "would be hard for Mr S to have direct payments to provide the care until he has his own property because where he is at present is unsuitable at the moment". She said that she is aware that social services has had some contact with Mr S previously, but does not know the specifics.

64. The Occupational Therapist said that there is no HSC form attached to the Application 1 records; she said that she was not involved in the case at that point. She said that, she could see from looking at the notes on Applications 2 and 3 that she contacted the Hospital OT to discuss whether Mr S could cope with stairs (as he was still requesting a three bed house at that point). She said she recognised her notes in the Panel notes on the form. She said that the records have been improved since these records were made but at that point the system was just to keep adding to the same thread of notes.

65. The Occupational Therapist said that in relation to the increase in points (from 50 to 100), between the November 2008 Panel and the decision letter in March 2009, the case must have been reconsidered by the Panel and, probably, based on the consultant's letter (March 2009), the decision would have been made to increase the points. She said that she cannot see a further assessment on file and that therefore the points must have been increased (to 100) because of the consultant's letter.

66. The Occupational Therapist said the record keeping systems have improved since these notes were made and the confusion would not happen with the new system. She also said that staff would also refer to the computer records for confirmation when needed.

67. The Occupational Therapist said that the HSC form attached to the 2009 records is a copy of the form attached to the 2008 records. She said that this is the norm as occasionally applicants complain if they are asked to complete the form more than once; she said that if, therefore, the applicant gives new information it is then attached to the form (and put on file).

The Special Needs Housing Officer

68. The Special Needs Housing Officer said that she works jointly between housing, social services and health. She has been in post for approx nine years. She said that she deals with all services groups and she sits on the Panel and she also deals with housing adaptations; she said she focuses on housing needs for specific, individual clients.

69. The Special Needs Housing Officer said that she was previously employed in the Council's Social Services team; she said that she had very little knowledge of the housing function before taking up her current post. She said that she has received good training since joining the Housing department and that it was effective for her role. She said that she had also been able to share her experience and knowledge with the housing team.

70. The Special Needs Housing Officer said that she uses a range of Council policies in her role. She said that she attended the recent homelessness training (that came about as a result of recommendations from a recent Ombudsman's investigation). She said she has also represented clients as an "appropriate adult", so she also had a basic understanding of homelessness from that work.

71. The Special Needs Housing Officer said that she was only involved in dealing with Mr S's housing applications due to her role on the Panel. She has not dealt with any aspects of his complaints to the Council and she only visited him once at his home, with his social worker⁷³. They discussed housing options – particularly "Strategic Housing Options" such as part ownership; she said that Mr S was not interested. They also discussed private landlord renting options but Mr S was "very focused" and only wanted to go into Council housing.

72. The Special Needs Housing Officer said the visit with the Social Worker took place in November 2009 and it was the first time she had met Mr S. She said that the Social Worker asked her to attend, as he was apparently concerned that no progress was being made for Mr S. She said that she had not previously seen the letter from the Social Worker (dated 27 November 2009) to Mr S about the meeting and that it is possible that the letter was held on Social Services files not the housing department files.

73. The Special Needs Housing Officer said that she would not need to get involved in every application and at the initial stage and she had no contact with Mr S when he made the first application. She said that

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an application would only be passed to her when it was supported by a medical form.

74. The Special Needs Housing Officer said that she did not make the notes dated 6 January 2009; she said the OT made the note. She said that the notes refer to Panel decisions and that she may have been at the Panel, but at that time they did not keep a record of who attended each Panel meeting.

75. The Special Needs Housing Officer said that, because of a previous investigation, she has developed an action plan (to implement improvements in the Panel process) and there is now a documented procedure for the Panel.

76. She said that the OT had assessed Mr S's needs in October 2008 and after the Panel reached its decision in November 2008 Mr S was advised by letter of the points allocated. She said that her name only appears on that letter as a procedural matter. The Special Needs Housing Officer confirmed that the application was assessed as having 50 HSC points in November 08, before that his application had no HSC points awarded.

77. The Special Needs Housing Officer said that she could not recall every form that was considered by the Panel, and therefore cannot be clear about the January 2009 notes and, whether he should have been awarded 50 or 100 points at that stage. She said she thinks that there were two visits by the OTs, but the paper records do not confirm that.

78. She said that the change from 50 points to 100 points could possibly have been as a result of the consultant's letter⁷⁴. She said that the Panel could not award more points without seeing additional supporting information. She said that she cannot remember the situation clearly, so cannot give a better picture. She said that the sort of information given by the consultant in the March 2009 letter could be taken into account by the Panel, but she cannot recall it being considered.

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79. The Special Needs Housing Officer said that Mr S has not told her at any point that he wanted to be considered as homeless. She said that she believes someone discussed being considered homeless with him but thinks that he did not want to do that. She said that she realises that people do not have to be without a roof to be homeless, but was not until the most recent training that it has become clear how huge the range of homelessness issues is.

The Scrutiny Manager

80. The Council's Scrutiny Manager took responsibility for corporate complaints approximately seven years ago. He said that he has been employed by the Council for over 30 years and though he has not worked in the Council's Housing functions, he was seconded to the department some time ago to help introduce the Quality Management System (as stated above, the department has BSI registration).

81. The Scrutiny Manager confirmed that the Council follows its Corporate Complaints Procedure. He said that the Council also publishes similar information for residents on the internet and in leaflets etc. He said that, when considering complaints, the Council would also take account of relevant appropriate legislation, including the Freedom of Information Act for example.

82. The Scrutiny Manager said that all complaints should be recorded on the Council's complaint administration system, "RESPOND". He said that a new complaint about a Housing matter would be passed to that department, for recording on RESPOND; it would not be recorded by the Corporate Complaints Team. The Housing Department would consider the complaint (at stage 1) using the department's complaint procedure. The stage 1 response would give information to the complainant that, if they remained dissatisfied after the department had considered the complaint, they could then complain further to the Corporate Complaints Team. If the further complaint is made, that is then considered as stage 2 of the procedure by the Corporate Team using the Corporate Complaints Procedure.

83. He also said that all the separate departmental complaints procedures comply with minimum standards (e.g. enter the complaint on

RESPOND/ meet specified timescales for responses) and, provided the departmental procedure adheres to the minimum standards, the department is then free to decide how it manages complaints. He said that the Council had decided that it did not want to “strait-jacket” any department.

84. The Scrutiny Manager said that each department has a complaints coordinator. However, the responsibility for considering how to resolve, or respond to, a complaint rests with a Department Manager. He said that the training the coordinators have received is mainly about inputting to RESPOND and being able to use the system effectively.

85. The Scrutiny Manager said that he has not been involved in dealing with Mr S’s Housing applications at any stage. He also said that he has not been involved in dealing with Mr S’s complaints to the Housing Department and that he understood that Mr S advised the department in 2008 that he did not want to escalate his complaints as he (Mr S) intended to take legal action.

86. The Scrutiny Manager said that, as far as he is aware, the reference number on each Council “complaint closed” page appears to be a unique reference number with, for example, 08 meaning 2008 and H referring to Housing.

87. He said that as far as he was aware Mr S did not want to escalate his complaint about repairs. He said that he could not clarify, at that point, why the “complaint closed” form from November 2009 appeared to have a 2008 serial ref; he agreed that it did appear strange and he suggested that the Housing Department should be able to clarify the situation.

88. He said that, if a complaint is about more than one department, then, in order to ensure that a complainant is satisfied with each response, the Council relies on each department entering details on RESPOND. He said that it would not be possible, at a corporate level, to identify whether a department has provided a response to a complainant if the department has not entered the complaint to RESPOND; the process relies on each department entering the

complaints on the system. He also said that, if the complaint was made direct to the department, the Corporate Complaints Team would not know about that complaint if it was not entered on RESPOND.

89. In relation to the email from Social Services to Housing in October 2008, which advised the Housing Department that Mr S had made a complaint about Social Services and Housing; the Scrutiny Manager said that, in terms of ensuring that Mr S was satisfied with the Council's overall response, it would depend on whether the separate parts of the complaint were considered under the Corporate Complaints Procedure.

90. The Scrutiny Manager said that, Social Services considered that the May 2010 complaint was not a complaint against Social Services and the matter should be responded to by the Housing Department. He said he was not aware whether Social Services had given an update or response to Mr S, about that decision, at the time.

91. The Scrutiny Manager said that Housing Department should have registered the complaint made by Mr S on 19 May 2010 on the RESPOND system. He agreed that it appeared that the Council's 21 June letter to the solicitor is a response to the May complaint. He said that he did not know whether the complaint was entered on RESPOND. He also said that he does not know why the Council cannot locate the 3 February 2010 letter mentioned in the 21 June response.

92. The Scrutiny Manager said that he thought that, possibly, some documents were not originally provided to my office by the Council because the Council had focused on the complaint being about the Housing Department rather than any other aspect.

93. The Scrutiny Manager said that, when the Corporate Complaints team have to deal with a complaint about a department, at stage 2 of the procedure, the Complaints Officer relies on RESPOND, the complainant's information and the records on the file. He said that there is an element of trust between the Corporate Complaints team and the particular department, that that the department has provided all the relevant documents. He said that the Complaints Officer would interview staff if the complaint was considered to be serious.

94. The Scrutiny Manager said that the Council does not put a specific timescale on whether a complainant can escalate a complaint to stage 2, but clearly, it would need to be within a reasonable period to enable an investigation to take place.

95. He said that if a Housing complaint was made now about matters that occurred, say, six months ago he would expect to be able to refer to the procedures that were in place at the time. He said he would expect those procedures to be available and he would find the situation unusual if the department told him that, because the procedure had been updated, the relevant document was not available for the investigation.

96. He said that he had not come across that issue before and it would make the situation very difficult. He said he would probably have to say that he could not guarantee that the department had complied with procedures and it would possibly lead him to lean towards the complainant's view of the situation. The Scrutiny Manager said that he would also consider how important the particular missing document/ part of procedure is to the complaint/ investigation.

97. The Scrutiny Manager said that if the Document Retention Policy suggests that Housing documents are retained for a particular period then, unless there is a specific instruction on the retention/ destruction of a procedural document, you would conclude that the procedural document should be retained for a similar period.