The investigation of a complaint
by Mrs C
against Tai Ceredigion Cyf

A report by the
Public Services Ombudsman for Wales
Case: 201204677
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**Introduction**

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

In accordance with the provisions of that Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as Mrs C, and staff of Tai Ceredigion Cyf (the Association) by their job designations and/or numerically.
Summary

Mrs C (through her Advocate) complained about the management of her social housing application and that the Association had overlooked her for properties when she had been top of the list on points. She was at the time in temporary accommodation having been accepted as unintentionally homeless and owed a duty by the local Council.\(^1\) The Council had previously transferred all its housing stock to the Association. Mrs C had held a tenancy with the Association before but there was a dispute as to the circumstances of its termination and sums owed. Mrs C also complained about how her formal complaint to the Association had been dealt with.

The Ombudsman’s investigation found that Mrs C had been top of the list for three available lettings but had been overlooked for each one because of the previous tenancy. Whilst the Association could have overlooked Mrs C, the written agreement and process as entered into with other social landlords and the Council, when it took over the housing stock, required that it notify the Council promptly if it were to overlook a top applicant giving its reasons. It did not do so and effectively treated Mrs C as if she was suspended from consideration.\(^2\) Neither had Mrs C been informed so she was denied any opportunity of challenging the decisions and potentially missed out on three allocations. It transpired that all social landlords who were signatories to the agreement also did not in practice follow this process. All were currently reviewing the procedural documentation. Mrs C was subsequently offered, and accepted, a tenancy from another social landlord. The Ombudsman found that the failure to follow due process was maladministration. There was also a failure to have regard to good practice guidance issued by the Welsh Government including in relation to complaints handling. Mrs C’s complaint had not been recognised or considered as a complaint quickly enough. This

\(^1\) Councils by law have an obligation to assist certain people (e.g. those with children) who may be homeless including through the provision of temporary accommodation, and, ultimately, a final offer of longer term housing (e.g. a social housing tenancy either from the council or other social housing provider).

\(^2\) A housing applicant can be lawfully suspended by a housing authority, and so not be considered for housing, if they are deemed "guilty of unacceptable behaviour". They need to be notified and are afforded a right of appeal.
had resulted in a lost opportunity to Mrs C and so injustice to her in remaining in temporary accommodation for longer.

The Ombudsman recommended that the Association:

(a) Apologise to Mrs C.

(b) Offer her redress of £1000.

(c) Provide a copy of the new allocations process and any agreement when finalised, and confirm that appropriate staff will be trained in its application.

(d) Review its Complaints Policy with a view to adopting the Model Complaints Policy.
The complaint

1. The complaint relates to the way in which Tai Ceredigion Cyf ("the Association") managed and dealt with Mrs C’s application for social housing. The complaint was submitted on behalf of Mrs C by the charitable housing advice organisation Shelter Cymru ("the Advocate").

2. In summary, Mrs C complained that she was unhappy with how her application for housing, submitted in March 2011 via Ceredigion County Council ("the Council"), had been managed. She believed that she had been wrongly overlooked for an allocation of a house in 2012. Mrs C also had concerns as to how the Association had dealt with her complaint about this.

Investigation

3. My investigator obtained comments and copies of relevant documents from the Association and considered those in conjunction with the evidence provided by Mrs C’s Advocate. My investigator also sought information from the Welsh Government about certain guidance documents referred to within this report. I have not included every detail investigated in this report but I am satisfied that nothing of significance has been overlooked.

4. Both Mrs C and the Association were given the opportunity to see and comment on a draft of this report before the final version was issued and their comments were taken into account before I finalised my conclusions. The Association, despite my instruction, also shared the draft report with other RSL’s and the Council all of whom also wrote to me. I have considered what they had to say.

Relevant legislation, policies and procedures

Legislation
5. Amongst other things, the Housing Act 1996 ("the Act") deals with duties that councils (as local housing authorities) may owe to those who might be, or are, homeless,\(^3\) and the process by which housing belonging to local councils should be allocated.\(^4\) The Act also allows councils not to award priority to or allocate to certain people (treating them as "ineligible" for an allocation) but, where such a decision is taken, there is an obligation to notify applicants and afford them a right of appeal. A decision to suspend an applicant (so they cannot be made or considered for an allocation) can be made if a person is deemed guilty of "unacceptable behaviour". This is strictly defined in the Act and again is set out in Appendix 1. Whilst these obligations through statute apply directly to the Council in this instance, they do not directly apply to Registered Social Landlords ("RSLs"), such as the Association (unless otherwise so prescribed – see below). A summary of the salient provisions is set out in Appendix 1.

**Guidance / Policies and Procedures**

**Government guidance**

6. The Welsh Government has issued a Code of Guidance ("the Code") to local councils in Wales on the Act’s provisions. It has also issued draft guidance (via draft circulars) to RSLs. Relevant paragraphs are set out in Appendix 1. The draft guidance sets out the Welsh Government’s expectation that RSLs will follow the same requirements of the Act as apply to councils when dealing with allocations to, or any suspension of, a housing applicant due to unacceptable behaviour. I am told that the Welsh Government’s practice is to circulate draft circulars to all relevant parties for comment/information, usually with a three month consultation period. In this instance, this would include distribution to all RSLs and the Heads of Housing of all local authorities (as well as the WLGA and CIH).\(^5\) There is no reason to suppose this process was departed from here.

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\(^3\) Housing Act 1996 Part 7

\(^4\) Ibid Part 6

\(^5\) Welsh Local Government Association – the WLGA is an umbrella body that represents all local authorities in Wales. Its primary purposes are to promote better local government and its reputation, supporting the sector in development of policies and priorities.

Chartered Institute of Housing – the CIH promotes good practice within the housing sector, so its work is applicable to all RSLs and local housing authorities
7. The draft circulars were never issued in final form albeit reference is made to the intention to do so within the Code (see Appendix 1). They have also been referred to as guidance in various documentation and reports published since the drafts were circulated.6

Model Concerns and Complaints Policy (“the Model Policy”)

8. The Model Policy was established to create a common and effective model across the public service spectrum in Wales (other than the NHS which has its own arrangements). The guidance on the Model Policy has been issued through the Welsh Government and applies to the providers of public services in Wales; this includes all RSLs. It defines a complaint broadly as “an expression of dissatisfaction or concern” on action/inaction of a public body or about its standard of service where a response is required. The Model Policy guidance goes on to say that an investigation of a complaint should be undertaken “once and well”. Public service providers should provide “honest, evidence-based explanations and give reasons for decisions”, and if failings/errors are found, these should be apologised for in a meaningful way.

Procedures for the allocation of social housing locally

9. On 30 November 2009, the Council proposed to transfer its housing stock to the Association. On the same date, both parties together with two other RSLs operating locally proposed that they should sign a Common Housing Register Partnership Agreement (“the Partnership Agreement”). This agreement (from the copy I have seen) was ultimately signed by all parties and re-dated 1 December 2009. The Partnership Agreement sets out the manner in which all parties (“the Partners”) would work together in delivering and allocating social housing in the county of Ceredigion, thereby assisting the Council in its statutory functions. It would do so by ensuring all available stock for letting in the county was let in accordance with a Common

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6 They are for example cited in: “Homelessness and Stock Transfer: A guide to the issues and best practice” February 2007 - Cymorth Cymru (a publication supported by the Welsh Government) at page 7 and “Making Headway - Effective working between local authorities and housing associations to prevent, tackle and respond to homelessness” – WLGA and Community Housing Cymru at page 10
Allocations Policy and Common Housing Register (referred to as “CAS”). The CAS was drafted to comply with the provisions of the Act setting out categories of applicant and the points scheme. Fuller extracts of relevant provisions can be found at Appendix 1.

10. In brief, the Partnership Agreement stated that the Council would receive all housing applications, process and point them (awarding priority where necessary) in accordance with the CAS. The Association and other RSLs would agree to assist the Council in housing certain applicants (e.g. homeless applicants owed a duty by the Council); otherwise for each vacancy arising the Partner RSLs would prepare a shortlist and normally agree to make an offer to the top applicant. If for any reason a Partner provider wanted to overlook an applicant, or make “an out of turn offer” to lower placed applicants, they would need to record this, with reasons, and contact the Council within three working days. In addition, the Partner providers would be required to provide a quarterly report to the Council of any out of turn offers setting out all reasons, any appeals from applicants and results of an appeal, in order for the Council to monitor.

11. The Partnership Agreement confirmed that any applicant deemed ineligible by reason of behaviour should be notified in writing and given the opportunity to seek a review/appeal. The CAS (in an appendix) set out the detailed processes for reviews /appeals in line with both the Act and the Code (see above and Appendix 1).

**The Association’s Complaints Policy (2009 version)**

12. The Complaints Policy says that a complaint can be made by any person or a representative on their behalf. It can be made in person, by telephone, and by letter or e-mail. The Complaints Policy is framed in three stages.

13. The first stage affords the member of staff dealing with the case an opportunity to resolve the concern within 10 working days, if dissatisfied the complainant can ask to move to stage two. The second stage is considered by the Director of services who will review stage one and seek to resolve the
complaint within 10 days of its referral to the second stage. The third stage involves an investigation of the complaint by the Chief Executive who will report on the outcome of that investigation within 21 working days. Thereafter, a complainant is told they may complain to my office.

**The background events**

**Background**

14. Mrs C had previously been a tenant of the Association with her partner but left that property to move elsewhere (there is a dispute about the circumstances of giving notice to the Association). Subsequently, her relationship broke down and she (along with her two children and a granddaughter) made an application to the Council as homeless in **March 2011**, together with an application for social housing. She was in priority need and so was provided with interim (temporary) accommodation (see Appendix 1). After looking into her circumstances, the Council notified Mrs C on **18 April 2011** that it had concluded she was not intentionally homeless. So she was owed the “full housing duty” (an offer of longer term accommodation – again see Appendix 1). She continued to be housed temporarily (through another RSL locally) but, as it turned out, this was not ideal in terms of its location. It was some distance away from where Mrs C’s youngest child attended school and, as Mrs C did not drive, she and her daughter would catch a bus at 5.45am in order to get her to school on time. Mrs C would wait in town all day before both then made the return journey.

15. Mrs C’s housing application was processed and awarded points in line with the CAS and Partnership Agreement above. A large majority of social housing stock in the area where Mrs C wished to live was now owned by the Association. The following key sequence of events were noted from the records examined (I have included some quotes from relevant documents):

**June 2011**- The Council asked that Mrs C be housed by the Association in light of information about her circumstances.
3 June - The Association refused. Its Senior Housing Adviser (“the Senior Adviser”) e-mailed the Council as follows:

“...we will not be accepting this lady as she owes us £680 in rent arrears, abandoned her tenancy in [address] on 31.10.10 and we had to go looking for her in her workplace to get the keys.”

24 June – An e-mail was sent by a member of the Council’s Housing administrative team (“the Team”) to the Council’s Housing Strategy Manager (“the Strategy Manager”) conveying the above. It asked whether it should be “suspending applicant on these grounds”.

28 June – The Strategy Manager responded. The entry on the housing computerised database (known as “academy”) recorded as follows:

“[The Strategy Manager] agreed applicant NOT to be suspended. Applicant has been advised to contact [the Association] to attempt to repay arrears.”

7 November - An e-mail from the Council’s Strategy Manager resolved to award Mrs C’s application additional points as “she has shown exceptional stamina in continuing to take her son(sic) to school in that area on the local bus”.

2012
13 January – A print out from the Association’s list for vacant Property 1 (a property suitable for her needs) revealed that Mrs C was the top pointed applicant for this property. As against her name were noted the following words “do not offer until previous tenancy issues are resolved.”

18 January – One of the Team’s officers e-mailed the Senior Adviser enquiring about a property for Mrs C in her preferred area (where Property 1 was situated). The Senior Adviser responded (referring to the arrears)
“...therefore answer is no”. The Team officer e-mailed again asking “Is [Mrs C] suspended from the list?” The Senior Adviser replied as follows:

“No I assume not as she was declared unintentionally homeless and was placed in a [named RSL] property but tc [the Association] are not in a position to accommodate her with these amounts outstanding although she has been making arrangements to reduce the debt...”

25 January - A print out from the Association’s list for vacant Property 2. This was a property suitable for her needs being the former tenancy Mr and Mrs C had held with the Association. The document also revealed that Mrs C was the top pointed applicant. Again the same words above were recorded.

10- 14 February – Mrs C sought advice from the Advocate who made enquiries of the Council and Association. On 12 February, the Advocate wrote to the Association’s Director of Housing and Support (“the Director”). They explained Mrs C’s difficulties in her current temporary accommodation, queried why there had been a delay in notifying Mrs C about the rechargeable items, contended that she had already reduced the rent arrears by half, and said that that her support worker had been told Mrs C was not offered a suitable property because of these outstanding sums. The Advocate asked for the Association’s comments about the allocation when Mrs C was top of the list. They contended the Association was being “unreasonable” and that Mrs C “was very distressed to have lost the opportunity of a property [in her preferred area] which would have been perfect for her housing needs.”

13 February - The Council wrote to the Advocate to confirm Mrs C’s points and waiting list positions. As at that date Mrs C was now first on the list for both three and four bedroom properties in her preferred area, and first for three other localities.

14 February - A print out from the Association’s list for vacant Property 3 (a property suitable for her needs) revealed that Mrs C was again the top pointed applicant. The same words as set out above were recorded. [I am satisfied from the documents seen that after this date no vacant property of the size required, and in the location preferred by Mrs C, became vacant before she was ultimately housed.]
16 March – The Director wrote to the Advocate, apologising for the delay in responding. The letter said Mrs C’s case had been investigated. It went on to detail the circumstances in which it was said Mrs C and her husband had left the Association’s previous tenancy with outstanding rent and rechargeable repairs. The letter concluded:

“As I am sure you’ll appreciate Mrs [C] has not acted in a tenant like manner and I would reiterate that she needs to come to an agreement with [the Association] to clear her indebtedness.”

19 March – The Advocate responded stating that information from the Council suggested Mrs C had not been excluded from the Housing Register. It asked for confirmation that she would be in the future afforded the appropriate priority, disputed the financial issues, and said it believed that a property in Mrs C’s preferred area had become available for allocation. It asked she be considered for it.

29 March – The Association’s Housing Adviser sent an e-mail to Association colleagues and a Team officer querying Mrs C’s application, whether one daughter was living with her, and whether she remained on the Housing Register. It detailed the arrears owing.

30 March – The Team member receiving the e-mail forwarded the request on to other colleagues noting the following:

“...I believe that [we have] been told that she is paying off her arrears, but from the information below she wouldn’t normally be an active applicant on HR...[we] believe that [the Service Manager] made the decision for her to be active. This has come to a head because she has been passed over twice for allocation and I complained about it. [The Advocate is] involved with this and are representing her against [the Association]...”

A Team colleague responded confirming that Mrs C had been advised she was in the top three for particular properties, concluding:
“Looking at historic notes on academy and applicant’s HR file, [the Service Manager] has previously discussed this applicant with [named Team member] 28.6.11 and has said that the applicant should not be suspended as she was found unintentionally homeless…”

28 April – The Director replied to a letter from the Advocate, citing details of the debt it was said Mrs C owed and, in relation to her housing application, stated as follows:

“… [The Council]’s Team administer the processing of applications and there is an ongoing dialogue taking place concerning Mrs [C]’s indebtedness to [the Association]. [The Association]’s officers have interpreted the significant outstanding former tenant debt at [former tenancy] to be ‘unacceptable behaviour’ and that an outright Possession Order would have been granted against the tenancy.”

15 May – The Association wrote to Mrs C to say that (following her initial contact with my office) her complaint would be investigated in line with its Complaints Policy at the third stage; by its Chief Executive (“the Chief Executive”). My office did not therefore intervene at this stage.

29 May – The Advocate sent a pre-action judicial review protocol letter7 to the Association challenging the lawfulness of Mrs C’s “suspension” from its waiting list for accommodation. They also asked it to reverse its suspension of Mrs C.

1 June – The Chief Executive wrote two letters – one to Mrs C and the other to the Advocate. The first 1 June letter to Mrs C said that he had “personally reviewed” the matter of her housing application but required further information from the Council before he could conclude the investigation of her complaint. He also said that he had requested a meeting to discuss her case

7 This is the first formal step required before proceedings for a judicial review of the actions of a public body can be filed with the Administrative Court
with the Council’s Head of Housing. It went on to say that he was satisfied the three allocations (Properties 1-3 above) had been allocated in accordance with the CAS. Given Mrs C’s indebtedness he would:

“...consider it reasonable to expect that an agreement to repay is made. This issue is now further complicated in that [the Advocate] have written on your behalf to challenge...Two earlier vacancies were allocated to the most suitable highest pointed applicants who were not indebted to the Association.

... As stated, my primary concern is the welfare of...your family. Since my investigation is likely to take some further time and involve meetings with senior Council Officers, I have tried to establish what can be done to try and help you in the meantime...”

The Chief Executive went on to suggest two adjoining vacant flats that “were a lot nearer” to Mrs C’s preferred area which could be made available to her. The **second 1 June letter** was sent to the Advocate in response to the pre-action protocol letter. In it the Chief Executive said he was “both surprised and disappointed” at the threat of judicial review proceedings before first referring the matter to him. It enclosed a copy of his letter to Mrs C with the proposed solution until matters were resolved. His letter concluded:

“This case raises a number of wider issues around homelessness and the Ceredigion Common Housing Register / Allocation Policy, which I intend discussing with [the Council’s Service Manager]. It may well then be useful for us to hold a multi agency case conference about this particular case and any lessons which may arise from it. I trust in the meantime that you will not be proceeding with judicial review proceedings and would be grateful if you could confirm the same by return.”
11 June – The Advocate responded by saying that the proposed flat accommodation might not be suitable; there was no public transport so it would still be difficult for the family leaving Mrs C’s elder daughter unable to get to her workplace from there. The letter went on to say:

“...
4. Our client was re-housed in temporary accommodation in March 2011. The Association did not request payment of the rechargeable repairs until January 2012. The local authority have confirmed to us that their partners can view information on the Common Housing Register, and our client’s address since March 2011 was therefore readily accessible by your officers...

... 6. We have been informed by the local authority that the Association does not have the power to suspend an applicant from the Housing Register...any decision to suspend can only be taken by the Housing Strategy Manager or, approved by that person...There is no evidence in the documents that we have seen that the Housing Strategy Manager...took a decision, or approved a decision by the Association, to suspend our client from the Register.

7. For the reasons set out...we consider that you have not complied with the Common Allocations Policy.
...you have had ample opportunity to investigate our client’s complaint, and indeed, you appear to have concluded already (point 6 of your letter to our client) that the Association has acted properly...”

14 June – The Chief Executive replied to say that the outstanding issues were still under investigation and asked for additional time to conclude. The letter revisited the indebtedness issues and confirmed that the Council had not taken the decision to suspend Mrs C’s application. It said that the Association’s decision was “to refer your client’s application back to the Council’s registration team”. The letter commented:
“The ultimate responsibility for allocating [The Associations]’s homes lies with the association, and I have concluded that it was right and proper for the [Association]’s officer to refer your client’s application [for]registration back to the Council’s registration team with their concerns regarding the outstanding debt. The Association has both a regulatory and a fairness duty to ensure that the allocations policy is applied in a correct and consistent manner. We have referred back other applications in the past, and in recent weeks, due to other mistakes discovered in pointing calculations and awards…”

25 June – The Chief Executive responding to another letter from the Advocate, commenting:

“I disagree with your assertion that the Association does not have the power to refuse any applicant. Our Regulator has made it very clear that it is our responsibility to ensure fairness in allocations and that we cannot delegate that responsibility to the Council. Whilst the Council would usually take the decision to suspend an applicant, (sometimes prompted by a request from a partner RSL) the Association has the right to determine whether or not to offer a tenancy. In this particular case, we advised the Council via e-mail that we would not offer accommodation to your client until an agreement had been made to reduce the outstanding debt. I consider this to be a reasonable action given the high level of debt owed...

It is not disputed that the Association itself decided not to make an allocation to your client, pending an arrangement being made to reduce the outstanding debt owed. It is entirely within the principles of fairness and justice to expect an arrangement to be made prior to an offer of another tenancy.

...I gave my personal assurance in my latest letter that your client would be offered the next available three bedoomed property that becomes vacant in [the preferred area]...”

16. Ultimately, a meeting involving the Association, the Advocate and the Council was convened for 3 August. Thereafter, Mrs C accepted the offer
made of a flat on a temporary basis pending a permanent allocation becoming available. She moved in on **29 August** just before the start of the new school term. Further exchanges of correspondence ensued between the Advocate, the Association and the Association’s solicitors debating the allocation and debt issues. On **11 September**, the Council’s solicitor wrote to the Association’s Chief Executive (this letter was stamped as received on 12 September) stating that it was his view that the Association’s “actions in this matter breach the [Partnership] agreement”. It asked that Mrs C be offered the next available property or that a meeting be arranged to discuss why not.

17. **On 12 September,** the Association’s solicitors wrote to the Advocate:

   “...Our client confirms that if a three bedroom property becomes available, it will consider your client in accordance with the Common Allocation Scheme...
   Our client has not suspended your client from the Common Allocation Scheme. Neither has it deliberately ‘overlooked’ your client...
   For the avoidance of doubt, the above is not conditional on your client making a proposal to deal with the debt. Our client will deal with the debt as a separate issue...”

18. Ongoing correspondence continued between the Advocate, the Council/its solicitors and the Association/its solicitors. On **8 October**, the Council’s solicitor wrote to the Advocate to confirm that Mrs C was the top pointed applicant for Properties 1-3 and no other RSL had a vacant property in her preferred area after 12 February 2012. She remained the top pointed applicant. It also confirmed that it had not received any notification from the Association of Mrs C being overlooked or of an out of turn offer being made. The Council also said that it disagreed with the Association’s assertion that it retained discretion to refuse allocations under the CAS given the document specifically said that it “shall... allocate dwellings ...in accordance with” the common register.

19. **On 26 November,** Mrs C took up a permanent tenancy in her preferred area offered by another RSL partner. On **28 February 2013**, my
office received the complaint about the Association’s handling of Mrs C’s housing application from the Advocate.

Mrs C’s evidence

20. Mrs C’s evidence was submitted by her Advocate and is mostly set out in the background evidence above. Through her Advocate Mrs C continued to dispute the circumstances leading to her former tenancy ending and the rechargeable repairs the Association claimed were due. These issues were not matters for my investigation.

21. Mrs C’s time in temporary housing was made difficult by virtue of it being some distance away from the main town where one of her daughters attended school and her sibling worked. There were limited public transport links and Mrs C did not drive. She moved into more suitable accommodation almost 18 months after becoming homeless and then to a permanent home three months thereafter. The Advocate and Mrs C submitted that this had meant a significant period in unsuitable accommodation for Mrs C and her family whilst the Association had wrongly overlooked her for allocations.

Tai Ceredigion Cyf’s evidence

22. In its response to my office the Chief Executive said that initially Mrs C had not followed the Association’s Complaints Policy. The Advocate had then sent in a complaint (received 26 April 2012) to which an acknowledgement had been sent, on 15 May, by his PA indicating that “it was being fast tracked to stage three at my request in recognition that the relevant Manager and Director had already been dealing with enquiries from [the Advocate]”. The Chief Executive said that “the complaint was thoroughly investigated by myself” and he had sent an interim response on 1 June with a final reply on 6 July (see above). The initial response he said was therefore sent within the 21 working days set out in the Complaints Policy.

23. The Chief Executive said he was “satisfied that the evidence” showed why Mrs C was not allocated a property at the time; due to arrears and the cost of rechargeable work to her former tenancy. It said that it had “worked
persistently” with the Advocate to attempt to resolve the dispute regarding Mrs C and had called a multi-agency conference for 3 August to try to move things forward. The Chief Executive said he had made a commitment at that meeting to offer the next available suitable property to Mrs C if she made an agreement and started to pay regular sums to reduce the amount owed. However, he said that the Advocate had “continued to threaten judicial review proceedings” against both the Association and the Council. He considered the actions of the Advocate to have “been unreasonable and detrimental to joint agency working with the Council and Tai Ceredigion”.

24. The Association said that the decision to house Mrs C in a previously unsuitable location was the Council’s. The Chief Executive added that if the Council’s Head of Housing had raised the issue with him personally, and asked him to review the decision not to offer temporary accommodation he would have done so favourably “in the interests of the child’s educational needs”. When it was brought to his attention he felt that his actions demonstrated this; an offer of a temporary flat was made to Mrs C on 29 August 2012 (see above). Despite this, he said, Mrs C still “refused to enter into” a repayment plan for the debt.

25. With regard to “out of turn offers” the Chief Executive said that the “Council would have received copies” of allocation records “in quarterly strategic meetings” in accordance with the Partnership Agreement. However, he said that more recently meetings had concentrated on discussing the CAS.

26. Finally, the Chief Executive said that the Association’s actions in Mrs C’s case had been “taken in good faith and were reasonable and proportionate given the previous tenancy history of Mrs [C]”. He said once Mrs C’s formal complaint was received he had fully investigated it and sought to broker an acceptable way forward. He was “personally pleased” that the Association was able to offer Mrs C a more suitable temporary flat and that another RSL had ultimately been able to offer her a permanent home. The Chief Executive concluded by saying that it was
“…unreasonable… to expect any RSL to re-house a former tenant back into the exact same house that they abandoned without notice in an unacceptable state of repair and cleanliness… This complaint was reported to…the full Board on a number of occasions…and my Board of Management were very much of the view that the Association would be severely criticised in the local community had we not taken the decisions that we took. I trust that your investigation of this complaint will reach a similar conclusion and uphold the principle that our regulatory body has made clear about the need for independence of RSLs in taking allocation decisions, despite being members of a collaborative Common Register partnership with the County Council and other local RSLs.”

Analysis and conclusions

27. Mrs C and her estranged husband were former tenants of the Association. There is a dispute about the circumstances of that tenancy ending. From the evidence, this has affected what happened. Mrs C maintains it has meant her being overlooked, more than once, for an allocation from the Association. She complains that as a result she had to live in unsuitable temporary accommodation, in terms of its distance from key services such as her daughter’s school, for an unacceptably long period. She is also unhappy with how the Association dealt with her subsequent complaint made via her Advocate, who in turn submitted this complaint to me. Both parties have in commenting on my draft report questioned my decision not to investigate the circumstances of the tenancy ending, the arrears and rechargeables. I consider it wholly appropriate not to have done so given the level of dispute and legal argument between both parties as to whether the amounts were owed or not. To decide that legal question is not my function.

The allocation issue

28. The Council is entrusted under the Act (see above and Appendix 1) with certain decisions. These include whether someone is accepted as fulfilling the homelessness criteria and whether they are eligible for an allocation of
housing. The eligibility decision for the Council is a two-fold one for each applicant – the first being linked to an applicant’s immigration status (not relevant in Mrs C’s case) and the second a question relating to a prospective tenant’s behaviour which might result in them being suspended (see paragraph 5 above and Appendix 1).

29. Applying to events here, it is unequivocal that Mrs C was homeless, owed the housing duty and eligible for an allocation. The Council had accepted her application, registered and pointed it, and it had not concluded that she was to be treated as ineligible or suspended. This is abundantly clear when the Association and Council Housing Team colleagues made enquiries of each other, as set out above. The Strategy Manager (who had the final say in such matters) confirmed that Mrs C was “NOT” suspended. The use of capitals in the e-mail on 28 June 2011 (see above) reinforced the point it seems to me. It left no one in any doubt as to what the position was. She went further to award Mrs C additional points in November, and her decision was reiterated (30 March 2012) when the question again arose through the Association.

30. In the past, Mrs C would have expected to spend a period of time in temporary accommodation and then be offered a property from the Council. The difficulty now is that the Council no longer has any stock of its own, having transferred it in 2009 to an RSL; in this case the Association. This has been the case in recent years for a number of councils in Wales. However, the Council’s statutory duties remain as they were.

31. The stock transfer was evidently approved by the Welsh Government as meeting its specific Transfer Guidelines (see Appendix 1). The Partnership Agreement was entered into to regulate, amongst other things, how the Partners would interact in both allocating accommodation and in assisting the Council to fulfil its statutory functions. I have set out the salient provisions of the Partnership Agreement in Appendix 1 and in some detail the key documents and events leading to this complaint. The Partnership Agreement is very clear and the extracts quoted from relevant documentation examined during this investigation, in my view, equally so. I need not therefore go through them in any great detail again to reach the conclusions I do below, but I have some comments to make.
32. Mrs C was eligible and “top of the list” in her preferred area for the size of property she required by early 2012. I am satisfied from what I have seen that no suitable property had become available before then. The Association had already declined to assist the Council in housing Mrs C, questioning whether she was suspended in light of the money said to be owed. The Strategy Manager had already confirmed, in the clearest terms, that she was not. It is clear from the Association’s note against each of the three properties becoming vacant (January-February 2012), that Mrs C’s former tenancy, and the debt said to be owed, was the reason for her not being considered for any offer.

33. It appears to me, despite the Association’s (and the solicitor’s) assertions to the contrary (see above and paragraph 15), that it was seeking to suspend Mrs C in line with the Act (even though the debt remained a matter of dispute). The phrases “not acted in a tenant like manner” (16 March 2012) and [finding her actions] to “be ‘unacceptable behaviour’ and that an outright Possession Order would have been granted” (28 April 2012), as used by the Director, are the wording of the Act. However, these tests are to be applied by the Council in this instance – both under the Act and the terms of the Partnership Agreement. The Partnership Agreement plainly stated that all lettings owned or managed by the Partners in the county were to be allocated under the CAS (see definition at Appendix 1) and that any applicant deemed ineligible should be afforded the right to a review. In commenting on the draft of this report, the Association argued that “tenant like manner” is a phrase used in common law for many years and not confined to the Act. Had that been the only phrase used I would agree, and would likely not have commented on it, however, it does not explain why then the remainder of the phrase (see above) was used. That is clearly a creation of the Act used when a housing applicant is to be suspended by a housing authority (the Council here). The intention was seemingly clear – the Association was treating Mrs C as being suspended, albeit she knew nothing about that believing she was being considered as she had been accepted onto the register.

34. Even if it had been a decision for the Association alone, the draft guidance issued by the Welsh Government, together with the Code’s current wording, plainly advocates that RSLs adopt the same test (see Appendix 1),
and when doing so, RSLs should also follow the same notification and review process as the Act stipulates for councils. The guidance is widely known about and acknowledged, even if it has yet to be implemented as a final document. It is proper for me to take it into account and the Association’s failure to follow it if it considered it was entitled to suspend, or treat Mrs C as suspended.

35. In practical terms, the Association could decide who to allocate a vacancy to, and indeed overlook a top pointed applicant (by making an “out of turn offer”). The Partnership Agreement says so and to that extent I would accept what the Chief Executive argues in his response to my office. However, what he overlooks is that this right was restricted by the Partnership Agreement, I imagine, in part, to avoid what happened here. Any RSL was obliged to record reasons and inform the Council within three days, as well as producing a quarterly report. I have seen no evidence of such a notification from the Association. Furthermore, the Council confirms it has not received any (see above). When commenting on the draft of this report the Association said that it had provided the list to me during the investigation and to the Council—that however is somewhat late in the day. Additionally, it argued that none of the partner RSLs worked to the documented notification process (as set out above). This was echoed by the other RSLs who wrote to me individually. This is a matter of concern. The Association commented:

“...the partners recognise that there is a difference between what the Common Allocation Agreement says and the actual practical working practices developed by all the partners, including the Council. The partnership is currently reviewing the Common Allocation Policy, Local Lettings Policies and the Common Allocation Strategy in order to reflect changes in guidance from the Welsh Government and actual working practices agreed between the partners in the light of experience of what is operationally viable...”

36. This leaves me in no doubt that the Association failed to deal properly with Mrs C’s eligibility for accommodation in this instance. I find both maladministration and service failure. It failed to inform her of it having
(lawfully or not) “suspended” her from being actively considered, thereby denying her the opportunity of challenging its actions. It failed to notify the Council in accordance with the Partnership Agreement, thereby rendering it unable to comply with its statutory duties. The Association took matters into its own hands with a complete disregard for the Partnership Agreement it had willingly entered into, the law and government guidance and all good practice. What is concerning is that, from the Chief Executive’s response to my office, it appears he and the Association’s Board of Management considers it to have done nothing wrong. I cannot overlook the possibility that this is not an isolated case. It may also be a wider problem in Wales where housing stock has been transferred. For this reason, I will be bringing this report to the attention of the Welsh Government. I uphold Mrs C’s complaint.

37. From the comments received upon my draft findings, it is certain that others in Ceredigion have been affected by the practices adopted by all housing partners. The CAS as the published document says nothing about making an out of turn offer or effectively treating an applicant as suspended when they are not. The Partnership Agreement provides it is possible only within the restrictions set out above. A failure to follow a documented and/or published policy/process is maladministration, despite the Association’s attempt to argue to the contrary. Given the widespread practice has been ongoing for some time, such is my level of concern that I will be bringing the matter to the urgent attention of the Welsh Government as Regulator. Nevertheless, I am pleased that all parties are now working towards changing their documented process and/or the CAS – had no one confirmed this it would have been a recommendation of this report that this was undertaken as soon as possible. However, this does not remedy past actions and neither does the fact that others have acted similarly excuse or justify the actions of the Association. The complaint here is one against the Association; I would have been just as critical had it been against any of the other partners in similar circumstances.

38. In terms of injustice to Mrs C, as the Association points out, the fact that she was in unsuitable temporary accommodation for many months from the outset is not wholly the Association’s fault. It was arranged for her by the Council in compliance with its duty under the Act. Issue was not taken with it
for nearly a year until she was represented by the Advocate, who, rightly in view of the circumstances described, questioned its suitability. This led to Mrs C getting another temporary home at the end of August 2012. As I have found above, potentially, and this is as far as I can go, Mrs C might have been allocated a property sometime between January and February 2012 given the three suitable vacancies that arose. This would have brought the unsuitability of her living circumstances to an end then. There is no certainty about this, as the Association could have legitimately overlooked her, making an out of turn offer as it did, if it had followed the correct process. I agree it did not do so. Mrs C might have turned down any offer made, albeit that is probably unlikely given where she lived at the time. I consider the timeframe for injustice therefore to be from January to August (a period of eight months).

**Complaint handling**

39. I would bring the Association’s attention to the Model Policy on complaints (paragraph 8 above) as issued by the Welsh Government and recommended for adoption by all providers of public services. In particular, I would draw its attention to what it says about what constitutes a complaint. In other words, it confirms that the actual word “complaint” need not be used at all. A concern requiring a response is sufficient.

40. It seems to me that the Advocate’s first letter to the Association’s Director (12 February 2012) ought to have been recognised as a complaint under the Model Policy’s guidance. It was written to a senior officer and, in my view, was more than an expression of concern. The letter cited delay in bringing the full extent of sums owed to Mrs C’s attention, disputed the outstanding sums owed, asked for reasons why the Association had not considered Mrs C’s circumstances, and used the words “unreasonable” to describe its actions. That should have been sufficient to warrant it being formally considered under the Association’s Complaints Policy. The Director considers matters at stage 2 (see above). In commenting on the draft report, the Association argued that its Complaints Policy was misrepresented and that stage one complaints are dealt with by a manager. That is not however what the policy produced to me says (paragraph 13 above). If that is what happens, the policy should have been amended to explicitly reflect what happened.
41. Once initial contact had been made with my office the Association did refer the matter to the third stage to be investigated by the Chief Executive. Arguably this ought to have happened a month or so sooner. Whilst I accept that the Chief Executive required time to investigate the complaint, he does not appear to have done so objectively; rather, the Association has continued to defend its actions in this case. This is despite clear evidence of its failure to comply with an agreement it willingly entered into. I accept that once he had replied for the first time matters escalated, and the complaint was consolidated in correspondence about the potential legal proceedings. To the limited extent identified, I uphold the failure to properly deal with the complaint.

42. In commenting to me the Association argues that the Welsh Government approved its Complaints Policy, so it ought not to adopt the Model Complaints Policy; not least as it says it is not a public body. Whilst its policy may have been approved at the time (2009), the Welsh Government now encourages the adoption of the Model Complaints Policy by all providers of public services. I do not accept the Association’s argument given it is a provider of a public service. It is now the owner and manager of the social housing stock by transfer from the Council – stock which has received significant public investment over the years. Further, it is a body under my jurisdiction which makes it a public body for my purposes. It is disappointing that the Association states it will not agree to my recommendations. I would suggest it now reflects on its position and agree to do so.

**Recommendations**

43. I have a number of recommendations to make as follows, each to be implemented within one month of the issue of this report (unless otherwise stated). I shall require evidence to be produced to my investigator in due course of their implementation:

   a. The Association should through its Chief Executive apologise to Mrs C for the failings identified;
b. It should also offer redress to Mrs C for those failings in the total sum of £1,000; reflecting how it dealt with her housing application, for the failure in complaint handling and time and trouble in pursuing the complaint;

c. The Association should (in conjunction with its partners) continue with the review and within two months provide a copy of the new allocations process and of any amended agreement with its partners when finalised to me. It should also confirm that appropriate staff will be trained in its application.

d. The Association should within two months revisit its Complaints Policy with a view to adopting the Model Policy, supplying a copy of its revised document within a month of its completion.

Peter Tyndall                26 November 2013
Ombudsman
Appendix 1

Housing Legislative Provisions
Housing Act 1996 Part 7

Should a council have reason to believe that someone may be homeless or threatened with homelessness, then it must carry out inquiries to satisfy itself as to whether the council owes any of the duties set out in Part 7. Where the person has dependent children then s/he is “in priority need” so that the council must provide temporary housing pending its decision as to whether any further duty is owed. Once satisfied that the person is not intentionally homeless, the council owes a range of duties including securing longer term accommodation – “the full housing duty”. Such accommodation could be in the form of social housing, from either the council itself or from a registered social landlord, such as a Housing Association.

Housing Act 1996 Part 6

This sets out provisions obliging councils to prepare an allocation scheme for their housing including specific groups of persons to whom preference should be given. Included in the preference groups are those persons found to be homeless, and those homeless people owed a housing duty by a council.

Provisions within the Act stipulate that despite being in a preference group, a council may decide such a housing applicant should not be awarded any preference, given reduced preference, or be suspended from the allocation scheme altogether. In such an instance it is deemed that the applicant is “unsuitable to be a tenant” because of some “unacceptable behaviour”. Examples might include rent arrears or other behaviour (see below). The Act sets out a process of notifying the applicant. The council must also afford the applicant a right to request a review (i.e. to appeal) the decision taken.

The Act itself stipulates that preference could be reduced or not awarded to any applicant who, if they were a tenant of the council at that time, would be someone against whom an outright possession order of their tenancy could be obtained. Guidance has been issued to councils to supplement the Act in
describing what might constitute unreasonable behaviour warranting no preference, or a suspension from the housing allocation scheme. The Welsh Government issued such guidance in 2003 and, more recently, revised guidance in 2012 (“the Code”). Salient paragraphs from the Code are reproduced below.

At s170 the Act states:

“Where a local housing authority so request, a registered social landlord shall co-operate to such an extent as is reasonable in the circumstances in offering accommodation to people with priority on the authority’s housing register.”

**Government Regulation and Guidance**

**Regulatory Code for RSLs**

This sets out key expectations for RSLs, including the following relating to provision of access to housing and working in partnership with local authorities (councils):

“Para 1.1.1 RSLs should work in partnership with local authorities...and provide for the housing-related needs of the area.

Para 1.3.2 RSLs should work in partnership with relevant local authorities on the allocation of housing (including assisting local authorities to meet their obligations to house homeless people...

Para 1.3.3 RSLs should have a fair selection policy and seek to achieve a balance in housing allocation between:

- The needs and preferences of applicants and transferees
- The need to maximise social inclusion
- The need to build stable communities
- The need to make best use of a publicly funded resource

**Code of Guidance**
At paragraph 3.28 of the revised Code (within the section dealing with suspensions due to unacceptable behaviour) it stipulates that the Welsh Government is

“...in the process of developing regulatory guidance for housing associations”.

**Housing Transfer Guidelines 2009**

These guidelines have also been produced by the Welsh Government to assist with procedures where a council housing authority intends to transfer its housing stock to an RSL. They state that the transfer contract drawn up between the two bodies should include information concerning nomination rights and allocation procedures, details about the ongoing relationship between the council and RSL including how the latter intends to assist the former in its strategic housing function, as well as an agreed dispute resolution procedure.

As the Welsh Government is required to consent to such a stock transfer, its consent will not be forthcoming if the transfer contract does not contain information about these issues.

**Draft Guidance (Circulars) issued from the Welsh Government to RSLs**

**Suspension due to Unacceptable Behaviour**

This document brought the regulatory framework for RSLs in line with the requirements placed on councils by the Housing Act 1996. In other words it set out the Welsh Government’s expectation that RSLs should follow the same process as councils; they are permitted to exclude/suspend housing applicants “only in circumstances where their behaviour is serious enough to make them unsuitable to be tenants”.

It went on to define “unacceptable behaviour” in the same way as is described in the Act; i.e. if the applicant had been a secure or assured[^8] tenant

[^8]: Assured tenancy is the most secure of tenancies that an RSL might offer to a new housing applicant
at the time, the behaviour would have entitled the RSL to an outright possession order.

The document also set out a number of policy development considerations for RSLs. It began with the following preamble:

“The Welsh Assembly Government believes that barriers to social housing should be minimised... Where a decision is made to exclude (or not give any preference to) applicants on the grounds of unacceptable behaviour, [RSL]s should develop policies that are supported by robust procedures for implementation.”

It went on to suggest what considerations should be taken into account in the development of such policies, which included the following:

- Their roles as brokers of social housing which was subsidised stock.
- The need to specify the grounds for determining if a person was ineligible ensuring the determination was both reasonable on a case by case basis (not a blanket approach).
- Set reasonable timescales for the period of exclusion and so consider adopting the term “suspension” instead. Reviewing them regularly.
- Introduce appeal mechanisms.

A separate section dealt with notification and appeals setting out a detailed framework which mirrors that prescribed by the Act for councils. RSLs should notify suspended applicants and afford a right to request a review which should be undertaken by a different person from the decision maker. The review could be heard orally at a hearing or submitted in writing. If a hearing was requested, applicants should be told of their right to bring a representative/advocate to the hearing to speak/ put questions to persons on their behalf.

Local Authority nominations to tenancies with registered Housing Associations

This document set out the detail as to how nomination agreements and procedures should be framed. It stressed that it was fundamental that RSLs
should work in partnership with relevant local authorities and other RSLs on the allocation of housing and help authorities meet their statutory duties and local objectives. It suggested that formal agreements between a council and local RSLs should specify the procedure for dealing with any disagreements which might arise in dealing with nomination referrals.

Local procedural documents for housing allocation matters

The Common Housing Register Partnership Agreement 1 December 2009 ("the Partnership Agreement") entered into between Ceredigion County Council, Tai Ceredigion Cyf and two other RSLs operating locally

This provides that every organisation party to the agreement (referred to collectively as "Partners") will work with the Council to assist in delivering its strategic housing function including its statutory housing duties (e.g. assisting in housing those who are homeless). As long as the Common Allocations Policy remains in being the right of the Council to nominate applicants as candidates for housing to RSLs is suspended. This does not prevent it from asking the other partners to assist in housing an individual, such as a homeless applicant to whom it owes a duty. The Council is to take the lead role in preparing and administering the Common Housing Register (a register of people seeking affordable social housing). The following specific provisions deal with issues of eligibility for allocations, how allocations are made and how any disputes will be resolved:

"1.6. The Partners agree with the Council that
1.6.1 The Available stock in Ceredigion is subject to the agreed Common Allocations Policy and it has been further agreed that where an allocation is made the Partners will supply full reasons for each allocation.
...

3. The aims of the Common Allocation Policy and Common Housing Register
...
3.6 To be open, accountable and to provide applicants with information in order that they can make informed choices in respect of their current and future housing options."
3.8 To promote equality of access to housing and choice for all, including those who are homeless...

3.12 To enable applicants to access appropriate housing before their needs become acute, where possible thereby preventing homelessness.

3.13 To provide a transparent service that is understandable and easy to explain to applicants and their advocates.

4. Definitions:

“Available Stock” means those dwellings belonging to or managed by the Partners within the County of Ceredigion.

“Housing Team” means the staff employed by the Council.

“Out of Turn Offer” means offers of accommodation which are made to applicants other than those who are at the time of the allocation at the top of the housing register.

6. Eligibility

6.1 The Common Housing Register and Common Allocation Policy agreed by the Council and Partners will promote and operate an open registration system to those applicants deemed eligible within the Housing Acts.

6.4 Persons who are considered ineligible for registration under section 160A 1996 Housing Act (test of unacceptable behaviour) or other legislation will be notified in writing and given the opportunity to seek review/appeal through the partnership panel (within the confines of housing legislation).

6.5 Reviews/appeals will be undertaken in accordance with existing housing legislation through the partnership panel.

7. Joint Action Plan

The Partners and the Council agree:
7.7 The Council will expect a complete listing from all Partners on a monthly basis of all Available Stock which is vacant or has been vacant during the month and is available for letting together with any Voids within Ceredigion for monitoring purposes. Lettings will be reported to the Council on a monthly basis.

7.9 It is accepted by all Partners to this Agreement that the Common Allocations Policy will reflect housing need and legislative requirements, including the Preference Groups.

7.13 The application process will be managed by the Council’s Housing Team.

7.16 Eligible applicants, once registered on the Common Housing Register will receive a letter confirming their points total...

9. Operational protocol

9.2 Partners should consider eligible applicants ranked at the top of the shortlist (this should include the top 5 applicants)...This should be done in a methodical way from the top applicant downward until the dwelling is let or the list exhausted. If applicants are overlooked for whatever reason, this must be recorded and the Council advised within 3 working days.

10. Refusal of Formal Offers
10.1 Where an applicant refuses a suitable offer of accommodation the Partner will advise the Council accordingly within 2 working days detailing the application...name(s) of applicant(s) and the address...When a total of two reasonable offers have been made and refused from any of the Partners the application may be suspended.
10.2 If the refusing applicant is statutorily homeless the Partner should allow 3 working days for the applicant to reconsider the offer and the possible consequences of that refusal...During this time the property must be held open and not offered to any other applicant until a decision had been made.

...  
10.4 Where a Partner wants to make an Out of Turn Offer, the reasons for refusing the applicant(s) will be recorded on the relevant form and monitored accordingly by the steering group.

10.5 Partners must provide a quarterly report to the Council detailing any refusals and ‘Out of Turn Offers’. This should include the reasons for actions taken and if the applicant has appealed the decision and the result of that appeal. The Housing Team will monitor reasons for refusals as part of the overall monitoring process.

The Common Allocation Policy and Common Housing Register (“the CAS”)

This document provides as follows:

“This policy has been written to comply with the legal requirements of [named Acts and the Code] ...and the Welsh Government’s regulatory code for Housing Associations....The applicant’s entitlement to an allocation will be assessed in accordance with the attached points scheme.

All applications to the Register will be assessed and pointed by Ceredigion County Council...The Council and Partner Landlords allow applicants to express their preferences as to the size and location of the accommodation they would like to be allocated and, wherever possible, the Partner Landlords will endeavour to offer applicants a choice of location of allocated accommodation.

...  
Eligibility for Housing  
...

The Housing Act 1996 (as amended)...states that accommodation can only be allocated to people who are eligible. There are two categories of
applicant who may NOT be eligible, or may be suspended from the waiting list whether they apply for housing alone or jointly with others.

Mandatory Category

- Persons subject to immigration control...

Discretionary Category

- Applicants or a member of their household who have been guilty of “unacceptable behaviour”, making them unsuitable to be a tenant at the time the application is considered. Unacceptable behaviour is defined as that which if the applicant was already a tenant of the Partner Landlords this would entitle them to an outright Possession Order...Applicants guilty of unacceptable behaviour will be suspended from the waiting list...

There is an appeal provision whereby applicants who are under suspension from the waiting list may request their application is reviewed at any time...

...If an application is ineligible the applicant will be advised in writing of the reasons for this decision, including details of the facts relied upon by the Council in arriving at its decision.

...The decision in respect of the allocation will be made by the Partner Landlord’s organisation.

...

Applicants have a right to request a review of a decision regarding the following aspects of an application:

- Eligibility
- Unacceptable Behaviour
- Any facts upon which the Council has relied

...
Requests for the review should be made in writing within 28 days of notification of the decision. The procedure for carrying out the review is attached at Appendix 1.

... “