

## Scottish Parliament Region: Central Scotland

### Case 200600487: South Lanarkshire Council

#### Summary of Investigation

##### **Category**

Local government: Housing

##### **Overview**

The complainants (Mr and Mrs C) raised concerns about the way a tenancy offer made to them by South Lanarkshire Council (the Council) had been withdrawn. Mr and Mrs C said that an allegation of anti-social behaviour had been fabricated by the Council and that they had no opportunity to respond to the allegation.

##### **Specific complaints and conclusions**

The complaints which have been investigated are that:

- (a) the Council offered a property that had been offered to Mr and Mrs C to someone else on 16 February 2006, even though Mr and Mrs C were only informed that the offer had been withdrawn on 20 March 2006 (*not upheld*);
- (b) the Council fabricated a complaint of anti-social behaviour against Mr and Mrs C in order to justify having offered the property to someone else (*not upheld*);
- (c) Mr and Mrs C were shown no evidence they were responsible for anti-social behaviour (*not upheld*); and
- (d) Mr and Mrs C were not given the opportunity to respond to the complaint of anti-social behaviour that had been made against them (*upheld*).

As the investigation progressed, I identified further concerns and, therefore, informed the Council and Mr and Mrs C that the investigation would additionally consider whether the Council:

- (e) failed to keep adequate records of their investigation (*upheld*); and
- (f) failed to follow their Estate Management Procedures (*upheld*).

##### **Redress and recommendations**

The Ombudsman recommends that the Council:

- (i) use this report to inform their review of their Estate Management Procedures and address the failures in record-keeping that have been highlighted;
- (ii) address my concerns regarding failure to follow procedures as part of their planned review of the Estate Management Procedures; and
- (iii) apologise to Mr and Mrs C for their failure to follow their Estate Management Procedures in investigating the allegations made against them.

The Council have accepted the recommendations and have already begun implementing them.

## **Main Investigation Report**

### **Introduction**

1. On 30 May 2006, the Ombudsman received a complaint from Mr and Mrs C about the withdrawal of a tenancy offer by South Lanarkshire Council (the Council). On 20 March 2006, the offer was withdrawn following an investigation into an allegation of anti-social behaviour that had been made against Mr and Mrs C. The complainants believed that the complaint of anti-social behaviour had been fabricated by the Council in order to justify the fact that they had offered the tenancy to someone else on 16 February 2006. In addition, they believed that they had not been given the opportunity to respond to the allegation and that no evidence had been produced in support of it.

2. The complaints from Mr C and Mrs C which I have investigated are:

- (a) the Council offered a property that had been offered to Mr and Mrs C to someone else on 16 February 2006, even though Mr and Mrs C were only informed that the offer had been withdrawn on 20 March 2006;
- (b) the Council fabricated a complaint of anti-social behaviour against Mr and Mrs C in order to justify having offered the property to someone else;
- (c) Mr and Mrs C were shown no evidence they were responsible for anti-social behaviour; and
- (d) Mr and Mrs C were not given the opportunity to respond to the complaint of anti-social behaviour that had been made against them.

3. As the investigation progressed, I identified issues concerning the Council's record-keeping and the way they followed their investigation procedure. I, therefore, informed the Council and Mr and Mrs C that the investigation would additionally consider whether the Council:

- (e) failed to keep adequate records of their investigation; and
- (f) failed to follow their Estate Management Procedures.

### **Investigation**

4. The investigation of this complaint involved obtaining and reading all the correspondence between the Council and the complainants. In addition, I have had sight of: a letter from the Council dated 22 March 2006 offering the tenancy to another member of the public; two letters from Mr and Mrs C's neighbours, submitted by Mr and Mrs C's solicitors; a letter from Mrs C's sister and two letters apparently from Mrs C's sister's family; an anti-social complaint record sheet dated 3 February 2006, filled out by a member of the public, detailing a

complaint against Mr and Mrs C; a file note detailing verbal evidence provided by Mr and Mrs C's neighbours; a statement from the Anti-Social Investigation Team Manager (Officer 3); and a copy of the Council's Estate Management Procedures, which detailed the procedures for investigating complaints of anti-social behaviour.

5. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr and Mrs C and the Council were given an opportunity to comment on a draft of this report.

### **Background**

6. The Council received a complaint of anti-social behaviour against Mr and Mrs C on 3 February 2006. The Council carried out two separate investigations into the complaint (the Council disagree that two separate investigations were carried out and comment on this issue is included paragraphs 59 to 63 below): one was carried out by Housing Officers between 16 and 20 March 2006; the other was carried out by the Anti-Social Investigation Team (ASIT) between 5 and 9 May 2006.

7. On 17 March 2006, a Housing Officer (Officer 1) and a Team Leader (Officer 2) visited Mr and Mrs C's block to interview neighbours. The investigation found information that corroborated the initial complaint: a file note dated 17 March 2006 recorded that three neighbours said Mr and Mrs C's family were responsible for anti-social behaviour in the form of loud music; vandalism to the close; threats and intimidation by visitors and alleged drug use. The Council told me that another neighbour was contacted by telephone and also confirmed the allegations. The Council confirmed that, although neighbours were willing to speak about their concerns, they were unwilling to make written statements as they feared recriminations.

8. The Council told me that they discussed the complaint with the Police, who advised that individuals who were visiting Mr and Mrs C's home were well known to them and were subject to ongoing investigations of a criminal nature. The Council told me that the Police confirmed to the Council that residents should not approach those individuals.

9. The Council said that Officer 1 telephoned Mr and Mrs C on 17 March 2006 to inform them that a complaint of anti-social behaviour had

been made against them and corroborated by neighbours in their close. Officer 1 asked Mr and Mrs C to attend the Council's offices on 20 March 2006.

10. On 20 March 2006, Officer 1 interviewed Mr and Mrs C and told them that the tenancy offer was being withdrawn. The Council told me that details of the complaint made against Mr and Mrs C were communicated to them during the telephone conversation of 17 March 2006 and the meeting on 20 March 2006. They told me that Mr and Mrs C did not make any comment on the allegation. At the conclusion of the meeting on 20 March 2006, Officer 1 handed Mr and Mrs C a letter stating that, with regard to their tenancy offer, 'due to anti-social behaviour complaints received this offer has been withdrawn'.

11. The Council told me that, in view of the corroborating evidence obtained during Officer 1 and 2's visit on 17 March 2006, and the further information supplied to them by the Police, they considered, on the balance of probabilities, the complaint was justified. As a result, they decided that Mr and Mrs C's tenancy offer should be withdrawn. The Council told me that was in line with their Allocations Policy, which states:

'4.7 Transfer Applicants – Breaches of Tenancy Conditions

Respect for Others:

Where tenants have a history of causing nuisance, annoyance or harassment, they will not be considered for an offer of housing until they have demonstrated their ability to adhere to the terms of tenancy over a period of 12 months.'

12. Although the Council told me, in response to my further enquiries, that the investigation carried out by Officers 1 and 2 found that the complaint was justified and that action was taken in line with the Allocations Policy as a result, that was not what they initially told Mr and Mrs C in correspondence with them nor what they initially told me in response to my enquiries. The letter given to Mr and Mrs C on 20 March 2006 (see paragraph 10 above) stated that the tenancy offer had been withdrawn pending the outcome of the Council's investigation. A further letter from the Council, which responded to a complaint lodged by Mr and Mrs C stated:

'... On 20 March 2006 [Officer 1] wrote to you to advise you that the offer of accommodation was being withdrawn as you were subject to investigation of anti-social behaviour.

On 23 March 2006 you called into the [Council Office] to attend an interview with [Officer 2]. She confirmed that the Council were investigating claims of anti-social behaviour against you and that as a result of this no offer of housing would be made to you until investigations had been completed.'

There was, therefore, some confusion regarding the outcome of the Council's investigation and this is discussed in detail later in this report.

13. In addition to withdrawing Mr and Mrs C's tenancy offer, the Council referred the matter for further investigation by the Council's ASIT. The Council explained that they felt the matter required further investigation because the first investigation had established that the anti-social behaviour was of a more serious nature than simply being an estate management issue and their preliminary investigation led them to believe that the situation and incidents highlighted warranted further investigation and perhaps further sanctions being applied.

14. The Council appeared particularly concerned that the investigation carried out on 17 March 2006 found that Mr and Mrs C were being visited by a person, Mr D, who was known to the Police and the Council for his anti-social behaviour. As a result of that, the Area Services Manager instructed the Council's ASIT to carry out a further investigation, in liaison with the Police, to establish if they could obtain additional information in relation to any of the individuals involved. The Council said that referral to the ASIT was a direct consequence of the findings of the initial investigation.

15. On 5 May 2006, Officer 3 carried out a further investigation into the complaint. The Council provided me with a copy of an undated statement by Officer 3. It recorded that he carried out a full door-to-door investigation during which neighbours in the block confirmed the allegations of anti-social behaviour against Mr and Mrs C, but were reluctant to provide statements because they feared recriminations. The statement records that some of the neighbours interviewed identified Mr D as frequently visiting Mr and Mrs C's home and being responsible for some of the anti-social behaviour.

16. Officer 3 considered that enough verbal evidence had been gathered to interview Mr and Mrs C. Officer 3's statement recorded that, during an interview on 9 May 2006, Mr and Mrs C said that Mr D was their daughter's boyfriend and

acknowledged that he had a reputation for anti-social behaviour in the area. They denied that Mr D was responsible for vandalism to the close, although they did admit to playing loud music from time to time. The statement records that they agreed to sign an Acceptable Behaviour Contract (ABC) which would refer only to the complaint about noise, although this is disputed by Mr and Mrs C. The statement goes on to record that Mr C called later the same day to say that he and his wife would not sign the ABC. The statement recorded that no reason was given for this by Mr C. Officer 3 decided that, as there were no witnesses who would provide statements regarding the anti-social behaviour, the case should be closed.

17. The Council told me that the case was then referred back to Area Housing Services for continued monitoring.

**(a) The Council offered a property that had been offered to Mr and Mrs C to someone else on 16 February 2006, even though Mr and Mrs C were only informed that the offer had been withdrawn on 20 March 2006**

18. Mr and Mrs C believed that the property they had been offered was offered to someone else on 16 February 2006, before the offer to them had been withdrawn. They told me that they had spoken to the new tenant and that she had confirmed this to them. They submitted a letter from Mrs C's sister which stated that she frequently passed the property in question and that, around 25 February 2006, she noticed work being done in the property. The letter stated that while initially Mrs C's sister had believed it was the Council carrying out work someone then told her that Mrs C had turned the property down and someone else had been offered and accepted it. Two further letters, apparently from Mrs C's sister's family, stated respectively that the current occupier of the property was in it decorating at the end of February and that the current occupier's father was in the property decorating around 20 February 2006.

19. The Council told me that they formally withdrew the offer they had made to Mr and Mrs C on 20 March 2006. They said that on 22 March 2006, they offered the property in question to someone else. They provided a copy of a letter dated 22 March 2006 showing when that offer had been made.

*(a) Conclusion*

20. The Council provided documentary evidence showing the date when they withdrew the offer they had made to Mr and Mrs C and the subsequent date that they made a new offer to someone else. I note the letters submitted by

relatives of Mr and Mrs C in support of their complaint, but I do not consider them to represent strong, reliable evidence in this case. Consequently, I do not uphold this complaint.

**(b) The Council fabricated a complaint of anti-social behaviour against Mr and Mrs C in order to justify having offered the property to someone else**

21. The Council provided me with an anti-social complaint record sheet, dated 3 February 2006, which showed that a member of the public had made a complaint against Mr and Mrs C. Mr and Mrs C's solicitors submitted two letters from Mr and Mrs C's neighbours both of which stated that they did not believe Mr and Mrs C were guilty of anti-social or threatening behaviour.

*(b) Conclusion*

22. The Council provided documentary evidence showing that they had not fabricated a complaint against Mr and Mrs C. I note the letters submitted by Mr and Mrs C's solicitors but consider that they show only that certain of their neighbours had no concerns about their behaviour. The letters do not negate the fact that a complaint was received and subsequently corroborated. Consequently, I do not uphold this complaint.

**(c) Mr and Mrs C were shown no evidence they were responsible for anti-social behaviour**

23. The Council told me that there were limits on what information could be supplied to people accused of anti-social behaviour, because they had to protect the confidentiality of the complainant and those who had corroborated the complaint.

*(c) Conclusion*

24. I accept the Council's view that, when investigating complaints of anti-social behaviour, they have a duty to respect the confidentiality, and ensure the safety, of those who had made or corroborated complaints and that as a result there are limits on the evidence that can be shown to those complained against. I accept that it was reasonable for the Council not to share with Mr and Mrs C details regarding who had made the complaint and who had spoken to the officers investigating it. I do not find fault on that particular issue.



**(d) Mr and Mrs C were not given the opportunity to respond to the complaint of anti-social behaviour that had been made against them**

25. The Council told me that Mr and Mrs C were given the opportunity to respond to the complaint during a telephone call on 17 March 2006 and an interview on 20 March 2006. The Council's position is set out at paragraphs 9 and 10 above.

26. On 9 May 2006, Mr and Mrs C were interviewed by Officer 3 as part of the ASIT investigation. Officer 3's statement records 'Both [Mr and Mrs C] attended the interview ... I informed them of the nature of my business and the allegations which had been made against them'.

*(d) Conclusion*

27. I have some concerns regarding the Council's record-keeping. The Council's Estate Management Procedures (the Procedures) detail the procedures that should be followed when investigating a complaint of anti-social behaviour and contain specific guidance on record-keeping. Section 3.8, entitled 'Carry Out Necessary Investigations', states that when speaking to the person complained about officers should:

'Explain the nature of the complaint and seek their views on the matter, record their views on the standard interview report sheet (BT3).'

The importance of keeping accurate records is stressed in Section 3.4, entitled 'Establishing Case File', which states:

'It is extremely important that accurate records are maintained of complaints. As soon as a complaint is received the Case History Record Sheet BT2 should be initiated ...'

'For the sake of accuracy reports of telephone conversations and interviews in relation to the complaint should be completed as soon as possible to the date when the conversation actually takes place.'

28. Although the Council told me that Mr and Mrs C had been telephoned on 17 March 2006 and subsequently interviewed on 20 March 2006, and that the nature of the complaint was explained to the complainants at those times, neither the telephone call nor the interview were documented. I would have expected to see written evidence (in the form of a telephone note or an interview report) recording what was said on those key occasions. Indeed, as stated at paragraph 27, the Procedures called for forms BT2 and BT3 to be

filled out. I found that neither of the two forms were used to record Officer 1's contact with Mr and Mrs C during the investigation and that as a result there was only an imperfect record available to me for review.

29. The Council's failure to follow their procedures and to keep adequate records means that there was no contemporary record of the occasions when the Council claim Mr and Mrs C were given an explanation of, and a chance to respond to, the complaint of anti-social behaviour. It is, therefore, not possible to verify that they were given an opportunity to respond to the complaint made against them. The absence of adequate records constitutes maladministration. Consequently, I uphold this complaint.

30. In commenting on a draft of this report, the Council said that they did not believe it would be accurate to say that Mr and Mrs C were not offered an opportunity to comment as they maintained that discussions had taken place on the telephone on 17 March 2006 and at a meeting on 20 March 2006. However, the Council acknowledged that it would have been more appropriate for Mr and Mrs C and the Council's officers to have adequate time to review the discussions. The Council said they would improve their procedures to ensure that adequate time is allowed in future for third parties to review information presented to them and for the Council to then review their comments. I note the Council's comments and welcome the improvements they have undertaken to make to their procedures.

**(e) The Council failed to keep adequate records of their investigation**

31. In addition to the specific failure in record-keeping highlighted at paragraphs 28 and 29 above, a number of other instances of poor record-keeping came to my attention during the investigation. I detail these at paragraphs 32 to 37 below.

32. The investigation file held no record of communication between the Council and the Police. In response to my enquiries, the Council told me that evidence provided from Mr and Mrs C's neighbours had been tested and further corroborated by information received from the Police. However, there was no record on file of the Council's communication with the Police or of the information the Police gave. It was unacceptable that information relied on in order to help reach conclusions on whether a complaint was or was not justified went unrecorded. This was in clear breach of the Procedures detailed at paragraph 27 above.

33. The investigation file held no record of the telephone conversation the Council told me that Officer 1 had with one of Mr and Mrs C's neighbours on 17 March 2006 (that neighbour had not been at home when Officers 1 and 2 carried out their door-to-door investigation). Again, it was not acceptable that information relied on to reach a decision was not recorded on the investigation file.

34. The investigation file showed no record of key decisions and actions taken by the Council's officers. For example, there is no record that the complaint against Mr and Mrs C was found to be justified as a result of the Council's first investigation and there is no explanation of the reasons why the Council reached that conclusion. There was also no record of the action that had been taken as a result (withdrawal of tenancy offer) or of the reasons why that action was taken. The latter failure was clearly in breach of Section 3.13 of the Procedures, which state:

'3.13 Actions

Outlined below are a range of possible actions which can be undertaken in order to deal with a situation. Officers require to identify the action which is most likely to resolve the situation. It is important, at this stage, to ensure that the action is noted on the case file and the case history record sheet (BT2).'

35. The only record of the further investigation carried out by the ASIT is an undated statement, which gives a retrospective account of the investigation. No interview record sheet (BT3) was filled out after Officer 3 interviewed Mr and Mrs C. In addition, the requirements of the Procedures regarding establishing a case file (see paragraph 27 above) were clearly not followed in this investigation: case history record sheet BT2 was not filled out.

36. As with the Council's first investigation, the outcome of the further investigation by the ASIT was not clearly and properly recorded. Officer 3's statement recorded that there had been agreement from Mr and Mrs C to sign an ABC (although this point is disputed by Mr and Mrs C), but that that agreement was subsequently withdrawn. Officer 3's statement ends '... as there were no further witnesses the case was closed'.

37. The Council told me that the outcome of the investigation was that the case was referred back to the Housing Department for continued monitoring.

However, that is not clear from the file and there is, again, a lack of contemporary records charting the Council's actions and explaining the Council's decision-making. It is not recorded what conclusions the ASIT drew as a result of its investigations (indeed, there is no record of whether or not the complaint was found to be justified).

38. The Council told me that 'the reason why there is limited paperwork in respect of the investigations is that none of the residents who complained about Mr and Mrs C, or the visitors to their home, were prepared to provide detailed statements or act as a witness due to their fear of reprisals against them and as a result of their fear, each resident was only willing to confirm their concerns verbally'. The Council did accept that 'the documentation in this case could have been better recorded'. The Council also told me that the Procedures were due to be reviewed to reflect changes in working practices and that that was an objective in the Technical Resources Service Plan for 2006/2007. They told me that the Executive Director (Housing and Technical Resources) had undertaken to ensure improvements in the area of record-keeping were made during the review of the Procedures.

*(e) Conclusion*

39. The Council's failure to keep adequate records of their investigation is a matter of concern. For Mr and Mrs C, the potential consequences of the Council's investigation were substantial in that it could have culminated in them being referred to the Courts, which could decide to grant an Anti-Social Behaviour Order or even an eviction. Regardless of whether the allegations against them were substantiated or not, they had the right to expect that the Council would follow their procedures in investigating the complaint and in keeping adequate records. I consider it unacceptable that an investigation into serious allegations of anti-social behaviour was not properly recorded. The Council's records of the investigations are very poor and cannot be relied on to give a full and detailed picture of how the investigations progressed or what they found. Had the Council followed the guidance outlined in the Procedures, then a clear audit trail charting the progress of the investigation would have been available for review, both by the Council when they reviewed the case in response to Mr and Mrs C's complaint and by me during the course of my investigation. I conclude that the Council's failure to keep adequate records of their investigation constitutes maladministration.

*(e) Recommendation*

40. I recommend that the Council use this report to inform their review of their Estate Management Procedures and address the failures in record-keeping that have been highlighted.

**(f) The Council failed to follow their Estate Management Procedures**

41. I had concerns regarding the way the Council administered their investigation procedure as set out in the Procedures. Below are key extracts from the Procedures:

'3.9 Is the complaint justified?

Once all investigations are complete it is necessary to assess whether the complaint is justified. All evidence should be collated (statements, letter, petitions etc) and the decision should be made. If any ambiguity remains then advice should be sought from senior officers ...'

'3.11 Complaint is justified

Once all investigations are complete, if the decision is taken that the complaint is justified, it is essential that the appropriate course of action is identified.

The decision as to what action is appropriate will be determined by the particular nature of the complaint. If an officer decides that a situation requires an action beyond a written warning then they should discuss and agree the action with the team leader...'

'3.13 Actions

Outlined below are a range of possible actions which can be undertaken in order to deal with a situation. Officers require to identify the action which is most likely to resolve the situation. It is important, at this stage, to ensure that the action taken is noted on the case file and the case history record sheet (BT2) ...'

Management Sanctions ...'

Management Options:- ...

Suspension of transfer application – In accordance with the allocation policy, the transfer application could be suspended.'

### '3.14 Transfer Suspension

Where it has been established that a tenant has acted in an anti-social manner and, therefore, breached the terms of their tenancy they will be advised that any application for a transfer of house will be suspended in accordance with the Council's Allocation Policy.'

### '3.15 Notify Complainant that Action is to be Taken

Standard letter BT8 should be issued to complainants. This letter sets out the nature of action being taken and the applicable timescales ...'

## '5. Target

5.1 The following timescales will apply when dealing with complaints of anti-social behaviour:

### Non Urgent Complaints

Acknowledge complaint within three working days;

Interview complainant within five working days;

Carry out all investigations within 15 working days subject to receiving all necessary information from external sources;

Notify complainant of action being taken within 20 working days ...

5.2 All complaints of anti-social behaviour will be dealt with in accordance with the procedure and guidance outlined above.'

42. The Council acknowledged that they had not adhered to their timescales in investigating the complaint against Mr and Mrs C. They told me that was due to staff shortages. They said that the issue would be addressed with the Area Services Manager to ensure that, as far as possible, timescales were met. I welcome the action the Council proposed to take to avoid similar failures to adhere to the Procedures' timescales in future.

43. In their first substantive response to my enquiries (a letter dated 17 October 2006) the Council told me that:

'... when dealing with complaints of anti-social behaviour, it is the Council's policy to investigate every complaint. In the first instance, complaints are dealt with by the local Housing Officer. The local Housing Officer carries out preliminary investigations to determine whether the complaint is justified. If it is considered that the complaint is justified, the most appropriate action will also be considered at that time. In some

cases, the Housing Officer will be able to deal with the complaint and resolve it to the complainant's satisfaction. In other cases, it is necessary to refer the case to ASIT for further investigation.

In this instance, preliminary investigations were carried out by the Housing Officer .... Following the Housing Officer's investigation, the complaint was subsequently passed to ASIT for further investigation as it was felt that information gathered in the initial investigation had corroborated the initial complaint. As the initial investigation established the complaint warranted further investigation, a decision was taken, in line with Council policy to withdraw the offer of housing that had been made to [Mr and Mrs C] until the investigation had been concluded. The decision was taken by the Area Services Manager following discussion with the officers who carried out the initial investigation ...

... it is Council policy that, where 'tenants have a history of causing nuisance, annoyance or harassment they will not be considered for an offer of housing until they have demonstrated an ability to adhere to the terms of the tenancy over a period of 12 months'. For the protection of other tenants, it is normal practice in situations like this to withdraw an offer where ASIT are investigating allegations of this nature.'

44. I had some concerns regarding what the Council told me. I, therefore, informed the Council in a letter dated 24 October 2006 that I could find no indication in the Procedures or the Allocation Policy that a tenancy offer would be withdrawn while complaints and allegations were being investigated. My understanding was that a complaint needed to be justified and all investigations completed before a management sanction was applied. I asked the Council for further comments in light of my concerns.

45. In a letter dated 22 November 2006, the Council told me that the investigation carried out by Officers 1 and 2 had found the complaint to be justified and that that investigation had been completed prior to Mr and Mrs C's tenancy offer being withdrawn. They told me that a further, separate, investigation was then carried out by ASIT in liaison with the Police, because there was evidence that Mr D was involved in the anti-social behaviour. They told me that:

'The referral to ASIT was a direct consequence of the initial finding and was a separate matter from the decision which had been taken regarding the tenancy ...

The Council's Area Housing Managers are the arbiters when dealing with sensitive issues of anti-social behaviour like this and do have to weigh up the evidence presented to them and take a view on whether it is reasonable to continue with the offer or whether further action is required. In this case, the Area Manager decided that the offer should be withdrawn.'

46. I wrote to the Council on 4 December 2006, detailing a number of concerns I had regarding the administration of the Council's investigation process. Amongst other things, I asked the Council to explain:

Why, if they were satisfied after Officers 1 and 2's first investigation that the complaint was justified, was a separate investigation carried out into the same complaint?

How carrying out a preliminary investigation, finding fault and applying a sanction and then carrying out a further investigation fitted into the Procedures?

Why, on several occasions during correspondence with the complainants, and originally when responding to my enquiries, the Council had stated that the tenancy offer was withdrawn pending investigation?

47. In a letter dated 9 January 2007, the Council repeated that the referral to ASIT was due to the fact that there was concern, from information gained from residents and the Police, that Mr D was involved in anti-social behaviour. In addition, the Council told me:

The preliminary investigation was undertaken on the basis of an estate management issue, however, during this investigation it was established that the anti-social behaviour was of a more serious nature and whilst the sanction of withdrawing the offer was the first stage, the initial preliminary investigations led us to believe that the situation and incidents highlighted would warrant further investigation and perhaps further sanctions to tackle the behaviour which was prevalent.

48. In response to my question regarding how their actions fitted the guidance in the Procedures, the Council responded:



The Procedures set out that the Council is committed to ensuring that residents maintain 'quiet enjoyment' of their home. It further states that all reasonable actions will be taken to protect this right. If a complaint is received the Council will investigate the matter and will identify and implement the most appropriate resolution. The Procedures are currently under review and, whilst they do not specifically provide detailed procedures to tackle this type of issue, they do state (paragraph 3.12) 'having identified possible options to remedy the breach of tenancy officers are required to make a decision as to the appropriate course of action to be taken.'

In addition, they also emphasise 'that the key objective is to resolve the problem and allow for residents to quietly enjoy their home. Officers must weigh up the different options and establish the most appropriate resolution.'

49. In response to my third question at paragraph 46 above, the Council told me that the wording of their correspondence could have been more appropriate and that, as it stood, it was confusing. They said that their letters should have stated that the offer was being withdrawn because the complaint had been found to be justified following Officers 1 and 2's investigation.

*(f) Conclusion*

50. I note that the issue regarding timescales for investigation will be addressed with the relevant manager in order to ensure that, as far as possible, timescales are adhered to in future. I welcome the action the Council propose to take on the issue.

51. Turning to my main concerns, I note that Council officers are given some discretion under the Procedures to take any reasonable action, and to find the most appropriate course of action, in order to ensure that tenants can quietly enjoy their home. However, the Procedures do provide very detailed guidance on how investigations should be conducted and, in my view, the Procedures were not followed in this case.

52. I note that the Procedures are very clear in stating that a decision on whether or not a complaint is justified should be taken 'once all investigations are complete'. The Procedures do not refer to sanctions being applied after 'initial' or 'preliminary' investigations. Indeed, the Procedures do not refer to

'further' investigations or to two investigations being carried out into the same complaint, particularly when a management sanction has already been applied.

53. It was acceptable, and a matter for officers' discretion, for the Council to involve and make a referral to ASIT, particularly if they considered that a situation might be more serious than it was believed to be initially. However, I consider it unacceptable, under the Procedures, for the Council to apply a sanction first and then make a referral to ASIT. Despite the arguments put to me by the Council, I cannot reconcile their actions in this case with the guidance set out in the Procedures.

54. Leaving the Procedures and their requirements aside for a moment, I also have a basic concern regarding the concept of a single complaint being investigated twice. As I intimated at paragraph 46 above, it seems illogical to investigate again a complaint that has already been found to be justified. Although I note that the Council had concerns regarding Mr D, his potential involvement and the seriousness of the complaint, surely those concerns should have been fully investigated as part of the first investigation. Indeed, I consider that the Council's argument regarding the seriousness of the complaint is substantially weakened by the fact that over a month elapsed between the end of the first investigation and the start of ASIT's investigation.

55. Turning to the Council's assertion that Mr and Mrs C's offer of housing was withdrawn because the complaint against them was found to be justified, rather than being withdrawn because a complaint was received and under investigation, I note that there is no contemporary evidence to support the Council's assertion. I have already noted above the serious failures in the Council's record-keeping and those failures have proved unhelpful in determining this particular issue.

56. The only contemporary evidence available showing the reasons why the housing offer was withdrawn is in the form of letters written by the Council to Mr and Mrs C (see paragraphs 10 and 12). Those letters state, in no uncertain terms, that the offer of housing was withdrawn because a complaint was under investigation. The very same reason was put to me when the Council initially responded to my enquiries (see paragraph 43 above). Although the Council have since told me that they considered the wording of those letters to be confusing and inappropriate, I note that the letters represent the only documentary record of the reasoning employed by Council officers at the time.

I would have expected, had the reasons given to Mr and Mrs C for the withdrawal of the offer been wrong, that the Council, on reviewing the case when responding to my enquiries, would have immediately brought that to my attention rather than repeating inaccuracies in response to my investigation. That did not happen.

57. To sum up, there are two possible scenarios for what happened in this case: the scenario suggested by the limited evidence available and the scenario put to me by the Council. They are respectively that:

The complaint was not found to be justified after the first investigation but rather the first investigation found that further investigation was required. A management sanction was taken because complaints were received and an investigation was under way.

The complaint was found to be justified after the first investigation and a management sanction applied. A further and separate investigation, into a complaint that had already been found to be justified, was initiated due to concerns regarding the potential seriousness of the anti-social behaviour and the involvement of Mr D.

Regardless of which scenario is accepted, and the poor nature of the evidence available means that the matter might only be decided on the balance of probabilities, it is clear that neither scenario adheres to the guidance in the Procedures: in neither case were 'all investigations complete' before a management sanction was applied.

58. I, therefore, consider that the Council applied a management sanction to Mr and Mrs C prior to having completed all their investigations, in breach of the Procedures. Consequently, I conclude that there was maladministration in the Council's handling of their investigation into allegations of anti-social behaviour against Mr and Mrs C.

59. In commenting on a draft of this report, the Council maintained that the complaint of anti-social behaviour was not investigated twice. They said that the investigation was carried out in two phases by two separate individuals but that that was done in relation to one overall investigation. They said that the involvement of the ASIT, following the initial enquiries by Officers 1 and Officer 2, was in support of an investigation which was managed and controlled overall by the Area Services Manager and the office involved. The Council said

that such a two phased approach would not be unusual in investigating cases of anti-social behaviour.

60. The Council said that they did not feel the report reflected the complexity and diversity of the situations managed by the Council and which the Procedures covered. The Council said that the complexity of the case required actions to be taken which were appropriate to the facts established at different stages of the investigation. The Council said those actions were: firstly, the suspension of the housing application due to the outcome of the investigation by the office and secondly, the recommendation of an Anti-Social Behaviour Contract following the involvement of the ASIT.

61. While I note the Council's comments, I consider that withdrawing the offer of housing from Mr and Mrs C was a management sanction and that the application of such a sanction was only acceptable, under the Procedures, where a complaint of anti-social behaviour had been found to be justified. In my view, the decision to deem a complaint justified can only be taken at the end of an investigation, once the persons investigating are satisfied that all relevant evidence has been considered.

62. I understand that the Council would want to retain discretion in dealing with cases and in finding the most appropriate responses to situations that will vary case-by-case. I can see why some investigations would appropriately be carried out in two phases, with the ASIT taking over or being referred to if serious problems appear to be present. That is not my concern in this report. Rather, my concern is that sanctions should only be applied at the conclusion of all investigations and that, if a sanction is applied, it must be assumed that all investigations have been completed. The Procedures state that all investigations must be complete prior to sanctions being applied and I consider that this requirement of the Procedures is sound and designed to ensure that investigations are conducted fairly and that decisions are only taken on the basis of full evidence and completed investigations.

63. I stand by my view that two investigations occurred into the same complaint in this case, because of the fact that a management sanction was applied after the first investigation. I could have accepted that this was 'phase of investigation' rather than an investigation in itself had no sanction been applied but that was not the case here. Consequently, while I note the Council's arguments, I cannot agree with them.

(f) *Recommendation*

64. I recommend that the Council:

- (i) address my concerns regarding failure to follow procedures as part of their planned review of the Procedures; and
- (ii) apologise to Mr and Mrs C for their failure to follow their procedures in investigating the allegations against them.

20 June 2007

**Explanation of abbreviations used**

Mr C and Mrs C	The Complainants
The Council	South Lanarkshire Council
Officer 3	Anti-Social Investigation Team Manager
ASIT	Anti-Social Investigation Team
Officer 1	Housing Officer
Officer 2	Team Leader
Mr D	
ABC	Acceptable Behaviour Order
The Procedures	The Council's Estate Management Procedures

**List of legislation and policies considered**

The Council's Estate Management Procedures

The Council's Allocations Policy