

# Report

on an investigation into  
complaint no 05/C/04684 against  
Kirklees Metropolitan Council

28 February 2007

Beverley House, 17 Shipton Road, York YO30 5FZ

# **Investigation into complaint no 05/C/04684 against Kirklees Metropolitan Council**

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## **Key to names used**

Mrs Stewart	the Complainant
Mr Stewart	the Complainant's son
Housing Medical Advisory Officer	
Housing Manager	
Occupational Therapist	

# Report Summary

## Housing allocations

The complaint is that the Council failed to take into account the condition and suitability of a property offered to a disabled applicant who accepted it on the understanding that it would be adapted to her needs. The complainant was unable to move into the property until a broken stairlift was removed, the property was cleaned and various necessary adaptations had been completed. The complainant was unable to move in for eight months and therefore unable to claim full housing benefit to which she and her daughter as joint tenants were entitled. The Council took possession action to recover the property which resulted in a suspended court order and a four figure sum of arrears to repay.

The Council failed to make the tenancy in joint names even though both applicants completed a joint application and were awarded the tenancy on the basis of their joint medical circumstances. After taking court action against the complainant as sole tenant the Council then amended the tenancy to a new joint one without obtaining signatures from the tenants but refused to backdate it to the original start date. This resulted in further rent arrears and another possession order with associated costs. When the complainants refused to sign the new agreement because of the disagreement with the start date, the Council reverted the tenancy back to the sole status of the complainant, again without obtaining consent or a signature from the tenant. Because the tenancy was not backdated to the original start date the rent arrears were not covered by housing benefit.

The Ombudsman considered that the Council should have cleaned the property and removed the broken stairlift. The Council should also have considered whether it was suitable to offer the property without the necessary adaptations being ready because of the medical reasons why the property had been offered in the first place.

The Ombudsman found that there was:

- failure in communication between the several Council departments responsible for letting, repairs, rent collection and social services;
- failure to understand why the tenants had not moved in and that the rent arrears should not have required court action as the tenants were entitled to full benefit;
- failure to follow its own policies in dealing with rent arrears;
- failure to keep proper records of how the house repairs and the tenancy situation were dealt with.

Even after the difficulties with making the house suitable to live in were resolved, the tenants have for over two years been struggling to repay rent arrears and court costs which they feel should not have arisen. In addition, they have lost the opportunity to buy their home after two years under the Right to Buy scheme because of changes in

legislation which took place during the periods when the tenancy has been altered. The Ombudsman said that there were doubts about the Council's application of the legislation to the periods of tenancy. In her view there should have been a continuous joint tenancy from the initial offer date.

The Ombudsman felt that the failure to establish the joint tenancy correctly in 2003 and the refusal to backdate the joint tenancy when it was admitted that a mistake had been made was maladministration which has caused significant injustice to Mrs Stewart and her family.

### **Finding**

Maladministration causing injustice

### **Recommended remedy**

That the Council reinstates the original tenancy start date of October 2003 on its records. This should then be the date used for calculation of right to buy discount and for the application of the date of eligibility for exercising the right to buy.

That any rent or council tax arrears outstanding as a result of the maladministration be removed from the complainant's accounts and any credit due refunded.

That the Council make a payment of £3,000 in recognition of the injustice caused since October 2003.

## Introduction

1. Mrs Stewart complains that the Council:
  - a) signed her as a tenant to a property which was unsuitable for her to occupy because disabled adaptations were not carried out and the condition of the property was poor
  - b) did not address complaints made on her behalf with the result that she could not occupy the house and accrued rent arrears which resulted in court action by the Council
  - c) did not answer letters from her and her solicitors about rent arrears, housing benefit and the condition of the house
2. For legal reasons, the names used in this report are not the real names of the people and places concerned<sup>1</sup>.
3. An officer of the Commission has visited the complainant, has examined the Council's files and has interviewed officers of the Council.
4. An opportunity has been given for the complainant and the Council to comment on a draft of this report prior to the addition of the conclusion.

## Legal and Administrative Background

5. A secure tenancy can only be ended by the landlord (Council) obtaining a court order for the possession of the dwelling.
6. Where the landlord obtains a possession order, the tenancy ends on the date named in the order.
7. When making a possession order, or at any time before the execution of the order, the court may stay or suspend the execution of the order or postpone the date of possession<sup>2</sup>.
8. In the case of a joint tenancy, when one party dies the remaining tenant becomes a successor<sup>3</sup>.

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<sup>1</sup> Local Government Act 1974, Section 30(3)

<sup>2</sup> Housing Act 1985 Part 4, Section 82-85

<sup>3</sup> Ibid, Part 4, Section 88

9. Since 18 January 2005 a secure tenant does not become entitled to the Right to Buy their home for five years. Before then the Right to Buy applied after a period of two years<sup>4</sup>.

## Investigation

### Background and allocation of the Council property

10. Mrs Stewart is in her seventies and suffers from disabilities requiring assistance with bathing. She is unable to climb stairs without considerable assistance and also has mental health problems. She receives assistance with bathing on a daily basis arranged by the Council's social services department.
11. In 2003 she was sharing a property with her son, grandson and her daughter who has poor health due to kidney failure requiring use of dialysis equipment. Her son's property was located on a main street with stairs to the door. The bedrooms and bathroom of his property were on the first floor which made it difficult for Mrs Stewart to have a reasonable quality of life, even with assistance from carers.
12. Mrs Stewart's son applied to the Council on her behalf for adaptations to be carried out to the property. An Occupational Therapist surveyed the property and prepared a report in June 2003. The report included three options for alleviating Mrs Stewart's situation. Two of these options involved considerable building work to create either a first floor extension with a lift or the conversion of the basement into a bedroom and shower room with a ramped access. The third option was to rehouse Mrs Stewart nearby. There were considerable costs for the adaptation options and practical problems in achieving access from the street which may have made the schemes unfeasible from a technical point of view.
13. Shortly after the report was produced Mrs Stewart and her daughter applied to the Council's housing waiting list. The application was a joint application and both parties signed the form which stated that:

"a joint applicant will share the rights and responsibilities of a tenancy".
14. The form was dated as being accepted on 4 July 2003. Shortly afterwards, Mrs Stewart's son became aware of a vacant 3-bedroomed Council house not far from where he was living. He informed the local Housing Office that he wished his mother and sister to be considered for this property. The house was listed as an adapted property because it had a stairlift and this would have meant that the Stewarts would have had an advantage over general applicants because both joint applicants were disabled.

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4 Housing Act 2004 Part 6, S.180

15. The Council considered that the property was adapted but that the stairlift was broken. The social services records from the period in August 2003 show that Mrs Stewart's social worker was in contact about the prospects of the house being allocated to Mrs Stewart and her daughter. She was advised that the house was in high demand and that if the broken stairlift was removed the property would revert to general needs status and be let to the applicant with the highest points, which was not Mrs Stewart at the time.
16. During August, as the property neared readiness for re-letting Mrs Stewart's son wrote to the Housing Office to say that he had served notice on his mother and sister and that they would be homeless if the property was not offered to them. Housing Medical Advisory Officer, who works for the Council's Housing and Health Medical Advisory Service says that they felt under increased pressure to rehouse the Stewarts and that because other applicants with high medical points did not specifically require a stairlift, the property was allocated to them.
17. On 10 October Mrs Stewart's son viewed the property with a housing officer. He says that he was appalled by the filthy state of the house which had been occupied by a tenant with several dogs. The floors smelled and the floorboards, walls and window sills were stained and dirty. The bathroom suite was also dirty and the broken stairlift was stuck in a position which made it very difficult to get past it. As the only bathroom and toilet were on the first floor and it would be impossible for his mother to get upstairs or for any furniture to be put in the bedrooms, Mr Stewart expressed his concerns that the house was unsuitable to move into at present. The housing Medical Advisory Officer assured him that the house would be cleaned and put right before being let.
18. On 15 October Mrs Stewart signed for the property at her son's home. He was concerned that the agreement only had space for his mother's signature when the application was a joint one with his sister. He was concerned that both parties should sign the agreement because he wanted to guarantee his sister's security should anything happen to his mother and because the house had been granted on the combination of two disabled persons accruing sufficient points. He felt that if unsuccessful applicants discovered that his mother was the sole tenant there would be allegations of fraud.
19. The housing officer told Mr Stewart that he should get his mother to sign the agreement and he would check the application and have his sister sign the agreement also if this was correct. He was advised to do this because the property was in high demand. Mr Stewart says that his sister later went to the Town Hall and signed papers. There are copies of the agreement signed by both tenants on the Council's files, although the signature for Mr Stewart's sister is undated and there are in fact two copies of this document on file with different housing officers' counter signatures.

20. Mr Stewart says that he handed in completed Housing Benefit forms on 27 October. His mother and sister would have been entitled to full housing benefit as neither of them had an income other than benefits.
21. Mr Stewart says that he was led to believe that the following work would be carried out:
  - a) Collect rubbish from house and garden
  - b) Clean surfaces and fittings
  - c) Wash down floors, walls and ceilings
  - d) Clean woodwork, windows and bathroom suite with detergent
  - e) Cut garden and clear outbuilding
22. He says that none of the work was subsequently carried out. An officer of the Commission has checked the Council's records about the repair work carried out to the house. Housing Manager, who is manager of the local housing office says that the allocations process is carried out by her team but that at the time the repair of the property was carried out by a separate repair team. She says that the work was identified and carried out by the repair team and then the keys returned as ready for letting. Often a house would not be viewed by the allocating officer until the property was viewed with a prospective tenant who would have already received an offer.
23. There is paperwork for the repair works to the house offered to the Stewarts on the Council's records but it is of limited value. There is a copy of a form which schedules work required on an empty property which has an order number and which has a table of dates for completion by the Council's Direct Labour Organisation (DLO) and trades involved. The form is dated for gas and electrical tests and states that completion was required for 22 August 2003. The form is undated and unsigned and the DLO column is left blank. There is also a form for valeting and clearing out a property and the address is entered in the address block. This form is also unsigned and undated and there is no evidence to suggest that it was acted upon. There is a completed record from the Council's Pest Control Service to fumigate the property and this was recorded as being completed on 19 August. There is a certificate of acceptance of the return of the house from the DLO as completed on 7 October.
24. There is no evidence to confirm that the property was cleaned whilst it was empty and there is no mention at all of the broken stairlift on any documents, even though Mr Stewart had been told it would be dealt with. It is clear that Social Services and the Housing and Health Advisory Service were aware of the broken stairlift but there is no indication that the local Housing Office carrying out the allocation had arranged for it to be removed.
25. The Council says that the property was ready for letting at the time of sign up and that Mrs Stewart and her family did not make any written submission to comment on

the state of the house. Mr Stewart says that he was in continuous contact with the officers of the Social Services Department which was dealing with the adaptations which he says were necessary for his mother and sister to occupy the house. He believed that the two services were in contact with each other, the allocation was made as a result of co-operation between them. I have dealt with the involvement of Social Services under a separate heading.

26. On 5 November Mrs Stewart received a letter from the Council's benefits section which stated:

"Thank you for informing us that you are due to change address. I understand you have not moved in yet as it needs some work doing. You may need to contact the housing office to request them to amend your rent liability date as we normally only pay from the moving in date. Please let us know when you move in."

27. A further letter was sent by the Benefits Section on 14 November following contact from Social Services. The letter said that it had been advised that the tenants had not moved in and asked if they would contact that section when a date had been finalised so that a home visit could be made.

28. Mr Stewart says that some months after this period he discovered rent arrears letters dated from early November which had been sent to the new address. He says that both Social Services and the Benefits Service were writing to his mother at the old address but Housing was not. The records show that on 3 November the first arrears letter was sent to the house. On 10 November a Notice of seeking possession was entered into the arrears system and on 14 November the Housing Office served Mrs Stewart with Notice of Seeking possession in her sole name, claiming rent arrears of £154.53 outstanding.

29. Mr Stewart says that no-one from the Council wrote or visited his mother at either property. The manager of the local Housing Office says that weekly rent arrears were dealt with by a separate centralised section at the time and they were not likely to be aware of the situation. However, the Notice of Seeking Possession sent to Mrs Stewart was signed by the manager. She says that the fieldwork would have been carried out by the arrears recovery section and by Notice stage it would be assumed that the necessary personal contact had been made and had failed. The Council's tenancy agreement on rent arrears states that it will:

"try to prevent you getting into serious arrears by sending reminders at an early stage and by officers speaking to you or visiting you at home before any legal action is taken....negotiate affordable repayment arrangements with you if you owe money to Kirklees Council"

30. Mr Stewart says that he was not aware of the rent arrears until he was telephoned on 14 January 2004 by an officer from the arrears recovery section. He informed the officer that the house was not adapted for his mother to move in and gave him the details of the officer in Social Services who was dealing with adaptation. There is no evidence of any personal contact between the arrears recovery section or the local Housing Office before the notice was served.
31. There is a record of the arrears officer speaking to Housing Medical Advisory Officer. The arrears officer informed Housing Medical Advisory Officer that he had passed the case back to the local Housing Office because the non-occupation was a management issue. Housing Medical Advisory Officer spoke to Housing Manager and informed her that Mr Stewart was still waiting for the cleaning and adaptations to be carried out so that his mother and sister could move in. Housing Manager informed her that it was late in the day to start complaining about the condition of the property and indicated that she may pursue Social Services for the outstanding rent arrears. Housing Manager said that her office and the Occupational Therapist had expected Mrs Stewart to move in prior to the adaptations as she would have been no worse off than in her existing address. She also mentioned in her memorandum that:
- “it may be appropriate to remove the old stairlift (out of service and a possible hazard to Mrs Stewart) prior to fitting a new stairlift – please advise.”
32. Mr Stewart says that he telephoned the Local Housing Office on 27 January 2004 and was unable to get any helpful advice about the rent arrears situation or the cleaning of the house and removal of the former tenant’s rubbish. As he was now aware of the mounting rent arrears situation and the lack of progress towards making the house ready for occupation, Mr Stewart engaged a solicitor on 29 January who wrote to the Local Housing Office and the Benefits Section on 26 February. The solicitor outlined the reasons why Mrs Stewart had been unable to move in and asked the Benefits Section to consider backdating the housing benefit claim. The Housing Manager responded that: she was willing to meet at the property to discuss the matter, that this was the first time she had been aware of the complaints about the property condition, that the arrears remained outstanding and that further legal action would be taken if no payment was made.
33. Mr Stewart’s solicitor wrote back to the Housing Manager on 9 March and reiterated the problems facing his clients, asking for a meeting at the property on the following day. He also raised at this point the fact that the tenancy had not been put in joint names even though the housing application and the tenancy agreements had been signed with that intention. There was no reply to this letter. A further letter on 1 April asked the Council to send an officer to meet at Mr Stewart’s home to arrange to have the tenancy put into joint names. Instead, Mr Stewart says that an officer called at the property and asked for the keys to be returned. This caused distress to the Stewarts and their solicitor wrote again to express their concern and that the situation should be resolved. On 14 April Mr Stewart asked a Housing Medical

Advisory Officer at the Local Office about the joint tenancy and was informed that this could not be done and there was no decoration grant available for the house because it was in a high demand area. Mr Stewart asked the same Housing Medical Advisory Officer and Social Services on 19 April to provide him with copies of the original tenancy agreements to prove that it had always been signed in joint names.

34. Mr Stewart was still asking for the forms in July when his mother informed him that the Council had obtained a possession order for the house on 1 July. He was unaware of this action and no representation had been made to the court in her defence. The action was for £1,296.15 arrears and £130.00 court costs. Following negotiations between his solicitors and the Court Officer the Council agreed to have the order suspended on the terms of Mrs Stewart paying the weekly rent plus £2.80 per week. Mr Stewart was concerned that the Council had taken court action when his mother could not claim housing benefit because the property was not suitable for her to move into. As both his sister and mother were on full benefits the rent would have been paid entirely by housing benefit if they had been able to move into the house when the tenancy began.
35. Following further complaints by Mr Stewart, the Council agreed to valet the property again on 24 March. He says that 14 bags of rubbish and former tenant's possessions were removed from the house loft and outbuilding, indicating that the property was not valeted as the Council had claimed. On 27 April the old stairlift was finally removed and Mr Stewart's family began to redecorate the upstairs of the property, although some adaptation work remained to be done.
36. In June 2004 the adaptations were sufficient to allow Mrs Stewart and her daughter to move in. The rent was then covered by housing benefit, although Mrs Stewart continued to pay the arrears at the rate agreed with the court.
37. Following unsuccessful attempts to have the matter resolved by a new solicitor, Mr Stewart made a formal complaint to the Council in January 2005. He remained dissatisfied with the Council's response and complained to me in May 2005.

### **The involvement of Social Services**

38. Although Mrs Stewart's complaint is essentially about a housing matter, it is clear that the Social Services department had considerable involvement with the allocation of the property and the adaptations which subsequently led to the problems with arrears and tenancy issues. Mr Stewart was in contact with various officers from this department from before he was aware of the vacancy until well after the adaptations had been carried out.
39. The first involvement with the Council's Housing Department followed the difficulties which Social Services encountered with adapting Mr Stewart's own property to his mother's and sister's needs. His mother's social worker assisted with the completion of the joint application form and again when recommendations were provided for the

application for the adapted property. On 26 September 2003 an Occupational Therapist produced a report on Mrs Stewart and the allocation of the council property. In summary it said:

“Property ... has steps at access, internal stairs and bath. Mrs (Stewart) is unable to negotiate steps and access bath due to her disability. She has a medical need to bathe and the installation of a ramp, stairlift and level access shower is advised.”

40. On 13 November, some weeks after the tenancy had started, Mrs Stewart’s social worker did a reassessment. This is the basis of her care plan and notes in the section for ‘significant events/changes’ that:

“the family have accepted a tenancy in a local authority property in ... Before (Mrs Stewart) moves adaptations need to be completed.”

41. Mr Stewart says that this document, which his mother received in November, is the basis for his understanding that the Council was aware of the situation and that his mother could not live in the property as it was. He said that the social services officers and the housing staff they dealt with over the adaptations were fully aware that they had not moved and continued to write to them at the correct address.
42. When Mr Stewart spoke to the Occupational Therapist and to the social services officer who had been in touch with the Council’s arrears recovery section he noticed a change of tone in their response when he spoke to her in January 2004. He says that he was told the issues regarding occupation were a matter for the local Housing Office. There is no evidence of written communication between Social Services and the Local Housing office in the period from October 2003 to January 2004 about either the problem with moving in or the state of the house.
43. My investigator has interviewed the Occupational Therapist who is employed by the local NHS Trust, not the Council. She says that the property was in a poor state of cleanliness when she visited it but that generally she felt that Mrs Stewart would have been better off in the Council property than in her existing home even without the adaptations being carried out. She said that at least she would have had a separate bedroom and access to the property without the entrance steps and a staircase to the living accommodation. However, she was unaware at the time that the existing stairlift would not be removed until the following April. Mr Stewart says that his mother could not have occupied a house where she could not get to the first floor bathroom and where her carers and family would not have been able to get her past the broken stairlift. He also says that he could not practically begin decorating for his mother until the rubbish was removed, the house cleaned and disinfected and the broken stairlift removed. He also argues that at least in the existing home there were some minor adaptations such as grab rails and lever taps, and that in

the existing home she could access the bathroom with assistance, which she would not be able to do in the Council house with the broken stairlift in place.

### **The status of the tenancy**

44. Mrs Stewart and her daughter applied for a Council tenancy in joint names and the house was allocated on the basis of their joint circumstances. Mr Stewart questioned the single signature at the sign-up procedure and his sister later signed an agreement, copies of which are on the Council's files. Despite this the tenancy was registered in Mrs Stewart's sole name on the computer system and arrears recovery action was taken in her name.
45. Shortly after the Council received enquiries from the Ombudsman in June Mr Stewart was informed that the Council had agreed to amend the tenancy into joint names but only with effect from 4 July 2005, not from 20 October 2003. Mr Stewart objected to this because he felt it affected the succession rights of his sister and any discount should a Right to Buy be exercised later. He refused to agree to the later date because in his view the tenancy had been signed in 2003 and the failure to put this onto the records was entirely the Council's. Mr Stewart reminded the Council that he had been complaining about this issue since it was discovered in 2004. Despite Mrs Stewart's refusal to sign a joint tenancy from the later date, the Council amended its tenancy records without any new agreements being signed. The effect of this was to cause Mrs Stewart's housing benefit claim which had only recently been established to cease and new forms to be issued, each covering 50% of the rent for her and her daughter. Mr Stewart protested against this action on his mother's behalf and made it clear that it was unacceptable that they should sign the benefit forms when the tenancy should have been joint from 2003. As the arrears were already in his mother's sole name he told the Council that he did not want them to be added to his sister's name.
46. As a result of his concerns the Council told him that it would amend the records back to his mother's sole name from 2005. However, a new notice of seeking possession had been served on the joint tenants on 25 July and the 50% housing benefit for his sister's tenancy was never credited to the account. The Council wrote to me in response to enquiries on 6 February 2006 and stated that the rent account should be amended back to when the joint tenancy began. However, following this a new summons for non payment of Council tax was issued to Mr Stewart's sister on March 24 and Mr Stewart had to use the local law centre to help him contest the court action.
47. In a final response to my investigator's enquiries the Council stated that the tenancy was considered as a sole one in Mrs Stewart's name effectively from 20 October 2003 until the present time because, even though the joint tenancy was created without agreement, the tenancy was returned to the sole name at Mr Stewart's request. It accepts that the result of the court action caused a breach in the continuation of the tenancy when Mrs Stewart was considered only to be a tolerated trespasser because the possession action removed her status as a secure tenant.

The result of this is that she has lost Right to Buy discount from the period when the tenancy was ended by possession action in 2004 until the start of the new tenancy in July 2005. More significantly, because the legislation on Right to Buy eligibility changed on 18 January 2005, her tenancy requires that she is a secure tenant for five years before she is eligible to buy the house. Had she been accepted as a continuous tenant since October 2003 she would have been able to purchase the house two years after the tenancy commenced.

48. In a letter to Mr Stewart sent the day after the letter to my investigator, the Council accepted that it had made an error with the tenancy start date. It said:

“I accept that we made an error at the start of the first tenancy and that it should have been put in joint names and we attempted to put this right by making the alteration we did on 4 July 2005. However a decision was made by the operational manager that the tenancy could not be amended to a joint one from 20 October 2003 and that decision stands for the reasons already given.”

49. Mr Stewart says that the Council's failure to make the tenancy joint from the outset, together with the failure to make the house ready for his mother's needs have resulted in a significant debt for arrears, loss of Right to Buy discount and eligibility and reduction of succession rights. It has also resulted in significant stress for his whole family and inconvenience of waiting at least six months to move to an adapted property which they understood would be ready for use when they were given the keys. Mr Stewart says that he would have been prepared to wait for the house to be adapted if he had been assured that the tenancy would have started when the house was ready and he had been given an indication of how long this would be so that alternative temporary arrangements could be made. This did not happen.

## **Conclusion**

### **The condition of the Council property**

50. Mrs Stewart was offered a council property on the basis of her own and her daughter's medical needs. The property in question was offered because it was classed as being adapted for disabled persons by way of having a stairlift. The house was allocated to the Stewarts because of its suitability. However, when the property was handed over there are serious doubts about whether it could have been seen as suitable for their needs.
51. The process for carrying out the required adaptations did not begin until late October 2003 and it was not completed until May/June 2004. Some of the delay may have been due to budgetary considerations but most of this was due to the assessment and commissioning process. The time which the adaptations took may not have been excessive by normal standards and Mr Stewart says that he would

have accepted the timetable if his mother and sister had not been responsible for the rent during this period.

52. There is no evidence to say that the house was cleaned or valeted when empty and the fact that the Council arranged for this six months later would indicate that it was initially re-let in its vacated condition. There are no records to indicate that the broken stairlift was scheduled for removal even though the house was allocated to disabled applicants. The record keeping for the handover between the repair team and the housing officers is lamentable. It is not possible to identify what, if any, work was scheduled to be completed before the house was returned as ready for letting.
53. The repair works to the empty property did not involve the allocation staff at all. If the Housing Manager is correct about the possibility of houses being offered to applicants without a previous viewing by the allocation officer, the system is flawed. The officers who are responsible for signing tenants to a new property should be aware of the condition of the house and what work has been carried out to it, and if any works will be done in the near future. The Council has no record that the broken stairlift had been identified as a potential problem to occupation or even whether it had been identified at all by the allocating officers. This was maladministration.
54. Mr Stewart says he was led to believe that the property would be cleaned and the problems resolved after the tenancy began. There was no written confirmation from the local Housing Office about this and no record to suggest that it intended to schedule any further work. The allocating office should have been aware of the requirements of the applicants and that the tenancy was not a straightforward allocation of a sought-after property in a desirable area. Had the local Housing Office been aware of this it could have considered whether the starting date of 20 October was practical given the fact that no adaptation work had been commissioned at that time. The failure to consider the consequences of starting the tenancy date when the property was not suitable was maladministration.
55. The Council should review its procedures so that allocating officers and those responsible for day to day management are involved in accepting a property from the DLO following repair and other works. Tenants should not be offered properties that have not been inspected and that housing officers have not satisfied themselves meet the requirements of the selected applicants.
56. The many departments involved dealt with the case in isolation. The result was that a property was allocated when the tenants could not practically take up residence. The departments failed to communicate but the tenants were justified in believing that they were working together. When the tenants realised that they were dealing with different parts of the Council in isolation they were passed from one department to the other. This lack of co-ordination was maladministration.

## **The rent arrears**

57. Both Mrs Stewart and her daughter were entitled to full housing benefit as joint applicants and there would have been no rent arrears if the Council had acted properly.
58. They could not move in because the property could not be practically occupied and they expected additional work to be done. Mr Stewart completed housing benefit forms and submitted them promptly. He was told that they could not be processed because the tenants were not resident. The Benefits Section replied promptly and gave helpful advice, suggesting that they resolve the matter with the Housing Department. Mr Stewart did mention the rent issues with his mother's social worker who indicated that she would liaise with Housing. This did not happen until late January 2004. In the meantime the Housing Department sent the first arrears letter on 3 November and a notice of seeking possession was prepared as early as 10 November and served on 13 November 2003, less than four weeks after sign-up.
59. There is no evidence of personal contact with the tenants before starting the process to take possession of their home. This is contrary to the Council's policy statement provided with its tenancy agreement. There is no evidence to suggest that the manager of the local Housing Office was aware that the tenants had not moved in, nor that they should have been entitled to full housing benefit and had been in contact with the Benefits Section. One result of this was that the letters and the notice were sent to the Council property which was still unoccupied instead of the original home address.
60. Although the rent arrears collection was the responsibility of a separate section to the local housing office, there should have been attempts to make contact at an early stage to find out why the rent was not being paid. Two other Council Departments were corresponding with the Stewarts at the correct address during this period but the Housing Department which was effectively the landlord was unaware of the situation and did not know that its property was unoccupied. The Housing Manager of the Local Housing Office says that she assumed that all the correct recovery procedures had been followed before she signed the notice. She could have checked this assumption against the tenancy file which would have indicated that the tenants were disabled and on benefits and that there were reasons to make enquiries.
61. When the Housing Manager became aware of the reasons why the tenants had not moved in, in January 2004, she did not suspend any further arrears action pending enquiries but instead indicated initially that Social Services may be charged with the arrears. However, the tenants were pursued for the arrears even though at this time the adaptations had not been carried out and the broken stairlift had not been removed. Possession action was finally taken against these tenants on two occasions. The first time they were unaware of the court hearing which also

indicates that there was insufficient contact with the tenants or any other departments leading up to this action.

62. This failure to make proper enquiries before taking legal action was maladministration.

### **The tenancy status**

63. The application for council housing was made in the joint names of Mrs Stewart and her daughter. The property was allocated on the basis that it suited their disabled needs and that their joint circumstances merited sufficient points to meet the requirements.
64. When the tenants signed the agreement signatures were obtained from both parties. This did not happen at the sign up at Mr Stewart's home and it was only on his insistence that the second agreement was later signed at all. This was poor management by the Council as it should have been aware of the details of the applicants and that the offer was made on a joint basis, the tenants may not have qualified for the offer as individuals. Even though both tenants signed the agreement the rent account was not set up in joint names. Mr Stewart was unaware of this because the arrears letters were sent to the unoccupied house. He would have raised the matter earlier had the Housing Department sent the letters to the correct address.
65. The Notice of Seeking Possession and the subsequent court action was taken against Mrs Stewart in her sole name, even though her son had repeatedly asked for the copies of the joint tenancy which his mother and sister signed. Eventually the Council accepted that it had made a mistake and made the tenancy a joint one in 2005. This was against the tenant's wishes because they wanted recognition that it had always been a joint tenancy with backdating to October 2003. Had the Council done this it may have been able to backdate housing benefit for some of the period and perhaps write some off. The Council did not do this and made the tenancy a joint one against the wishes of Mrs Stewart and her daughter. This had the effect of cancelling the housing benefit claim in Mrs Stewart's name and requiring new, separate claims for 50% of the rent.
66. Mr Stewart advised his relatives not to submit the claims because they would acknowledge that they had no claim to the earlier joint tenancy by doing so, thus losing Right to Buy and succession benefits. The result of this was that more arrears accrued and further court action and costs were incurred. The Council then altered the tenancy to Mrs Stewart's sole name once her son had complained to me. Again he says that he did not request this and his mother did not sign a new agreement.
67. It is clear that the tenants were offered and signed a joint tenancy in October 2003 and the Council accepted this. The fact that only a sole name appeared on the rent account was an anomaly on the accounting system which went uncorrected initially

because the tenants were unaware of it, and subsequently because the Council chose to ignore Mr Stewart's requests.

68. The Council accepted that the initial sole tenancy was a mistake and offered to correct this. However the date of the new joint tenancy was unacceptable to the Stewarts. The Council says that the tenancy which it created was a legal one. I feel that this is unlikely given the fact that the Stewarts were in dispute over the start date and that they considered that they already had a tenancy from the earlier date.
69. The third tenancy on the Council's rent system was in Mrs Stewart's sole name and it appears to have been made without her consent, without an agreement and from a date which she does not accept.
70. In my view there was only one legal agreement signed by the tenants – that of 20 October 2003 and there should have been no reason to create any others. The result of the failure to accept the original joint tenancy is that the tenants have lost succession rights and also that the change in the legislation has effectively added three years to the period after which they can exercise their Right to Buy. The results of the court actions, due partly to the creation of the new tenancies and interruptions in the benefit claim, mean that the tenants have lost some time from the discount period which would apply to a Right to Buy claim. The Council says that this is due to periods when Mrs Stewart was a tolerated trespasser due to the possession action affecting her security of tenure. I do not accept this given that the dates for giving up possession were effectively suspended and no possession was given by the tenants.
71. The Council's failure to create the joint tenancy on its rent accounting system was maladministration. It led to later difficulties with benefit claims and unnecessary court action and costs. Mr Stewart tried to persuade the local Housing Office to check the files and to send him copies of the agreements for almost two years. The office ignored his requests and compounded the later difficulties his mother would have because of the amount of time which was allowed to pass when the issue could have been resolved much earlier. There is also doubt about the validity of the notice which was served on Mrs Stewart in November because it was served in her sole name with the amount for the total arrears and she could have argued that she was a joint tenant at that time who could only be responsible for 50% of the arrears at the most. These issues could similarly have been argued in court had her solicitors been aware of the original court hearing.

## **Remedy**

72. The Council should accept that failures in communication between departments led to the allocation of a house which was not suitable for the applicants when offered. It should ensure in future that there is proper co-ordination of services so that the dialogue between Social Services and the Housing Department does not cease when a property is offered. The Housing Department should ensure that its

allocations and management staff have direct involvement with the acceptance of empty properties returned from the repairs team.

73. The local Housing Office should be more closely involved with the rent arrears recovery process, and possession notices should not be served until the tenancy file has been considered and personal contact has been made with the tenant wherever possible.
74. The Council should reconsider the legal position regarding Mrs Stewart's tenancy and accept that the only tenancy which was valid and signed with the consent of all parties was the original one of October 2003. It should reinstate the rights of succession and the discount period and Right to Buy qualification to October 2003.
75. The Council should ensure that any rent arrears or Council Tax which is outstanding as a result of the actions taken since the 20 October should be removed from the accounts of the tenants to place them in the situation which they would have been had the house been ready for occupation and the housing benefit claims valid from that date. Any monies which Mrs Stewart has paid to the Council for periods when she should have been on benefit should be refunded to her.
76. In addition, I consider that the Council should make a payment of £3,000 to Mrs Stewart in recognition of the unnecessary inconvenience, distress and expense which her family have suffered since October 2003.
77. The Ombudsman is pleased to note that the Council has responded positively to draft copy of this report. It has accepted the facts and the finding of maladministration which led to the Stewarts' injustice. It has informed me that since these events occurred the Council has put in place an improved corporate complaints procedure which it believes would not have allowed this situation to develop in the way which it did. The Council has agreed to the remedy recommended in this report and hopes that this will put the complainants in a similar position to that when they took the tenancy in 2003.

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**28 February 2007**