

Fourth Annual Report of the Independent Adjudicator for London Borough of Lewisham 1 April 2009 – 31 March 2010

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This is the fourth Annual Report of the Independent Adjudicator for the London Borough of Lewisham*. It covers the period from 1 April 2009 to 31 March 2010. It is organised as follows:

- Section 1: Background and role of the IA**
- Section 2: Procedure**
- Section 3: Performance**
- Section 4: Observations and issues from the casework**
- Section 5: Recommendations**
- Appendix: Case digests**

**The report covers the Council and its partner organisations. A separate annual report has been produced for Lewisham Homes as well.*

Although some of the housing cases I dealt with, and included here, involved only the Council's partners, throughout this report I sometimes refer to 'the Council'. This is both for simplicity's sake, and because my role has been to consider complaints about the Council, which ultimately is the body held responsible by the users of Council services and by the Local Government Ombudsman.

Section 1: Background and role of the IA

In September 2006, the Mayor and Cabinet agreed to introduce an Independent Adjudicator (IA) at stage three of the Council's complaints procedure, following a review of the procedure commissioned by the Chief Executive on behalf of the Mayor. The main objectives of the IA role were to give complainants a better service with a detailed and independent review of their complaints, as well as reducing the number of complaints going to the Local Government Ombudsman (LGO) for consideration. Subsequently, the Mayor and Cabinet agreed to make the IA position permanent. It was also agreed that the IA would deal with stage three complaints against the Council's partners.

The role of the IA is defined as follows:

- To thoroughly investigate third stage complaints, and where necessary and appropriate, arrange meetings with the complainant and officers;
- To contact the relevant service area/partner to discuss any aspect of the complaint, where necessary;
- To keep the Council's Corporate Complaints and Quality Manager and her team up to date on the progress of complaints;
- To attend a quarterly review meeting with the Council's Head of Service Development;
- To make recommendations within 30 days of receiving the complaint;
- To present an annual report summarising the outcomes of third stage complaints and include lessons to be learnt;
- To be proactive in ensuring that a complaint is dealt with within the target time; to liaise with the service area/partner if they are not providing information within this defined timescale; and to escalate the matter if, and when, necessary;

- To offer advice to officers, and to negotiate and facilitate a satisfactory resolution to a complaint;
- To provide updates to the Council's Departmental Management Team (DMT) on lessons learnt from complaints, and to share the learning with service areas/partners.

Roger Jefferies, a former Housing Ombudsman with vast experience in local government, conducted the review referred to above, and piloted the IA role from November 2006 to October 2007. I filled the IA role on an interim basis from October 2007 to June 2008, when the decision was made to make the post permanent and Linzi Banks took on the role of IA. Ms Banks was seconded from the Local Government Ombudsman, initially for one year (until the end of May 2009) and with her investigative experience she brought yet another perspective to the IA role. Ms Banks' secondment ended in December 2009 and she returned to the Ombudsman's office. I have held the role since Ms Banks's departure, again on an interim basis until the permanent post is filled, which is now expected to be in autumn 2010.

I believe that in spite of the changes in IA since 2006, which have brought a range of experience and background to the role, we have developed a consistent and robust approach to investigating stage 3 complaints and feeding back lessons learned to the Council and its partner bodies.

I am grateful to Ms Banks for her invaluable support and advice during my second interim period as IA. I am also very grateful for the assistance I have received throughout from the Corporate Complaints Team, and from the complaints officers with whom I have liaised in the departments and partner organisations.

Section 2: Procedure

The protocol for the handling of complaints at stage three (developed, reviewed and improved where necessary by the IAs and Corporate Complaints Team over the past four years) sets out the obligations of the service departments within the Council in relation to providing background information to the IA; timescales; and the implicit obligation to accept the IA's findings, including the payment of compensation if recommended (any disagreement to be taken at executive director level and recorded as part of this report).

I and my predecessors have found that overall the protocol has worked well and we have had full cooperation from officers in terms of following the protocol. As my predecessor found, there has been a positive response to the IA role and no department has refused to accept my recommendations or awards. There have often been some delays, however, in providing background information, which has led to some delays in final decisions. There has also been a failure at times to produce a concise overview in response to the IA's request for information, and this has led to frustration on my part as well as the officers responding to me. I have not seen evidence that officers are now using a case analysis approach, as recommended by my predecessor. I will comment more on this in my Recommendations, below.

Improvements in procedure

My predecessor noted that she had seen an improvement in the quality of replies to complaints, with officers generally providing a chronology, comments on the complaint, evidence to support those comments and/or the relevant files, and the names of those involved so that I can talk to them if necessary. I agree that there is improvement, and for the most part officers are complying with the 5-day deadline for responding to a request for information on stage 3 complaints (for Lewisham Homes this is 10 days). Where an

extension is required this can usually be accommodated. However, it seems to me that the information requested should be readily available if a proper investigation had been carried out at stage 2. It should be possible to provide the IA, within 5 working days, with a chronology of actions, copies of correspondence, and details of what was investigated and how.

The Council has made a number of improvements to its complaints process in the past two years, and is now carrying out random quality checks on stage 1 and stage 2 complaint responses. This is a welcome development. I believe the efforts made to improve complaint responses are paying off in terms of clearer and more sensitively written replies.

Procedural independence

I am independent of the Council and have carried out my IA duties as a self-employed consultant. I believe this independence is important to complainants, and although it is true that the Council pays for the role, that does not afford it influence over my investigations or decision-making. As a mediator my approach has been to seek to achieve mutually acceptable resolutions to complaints where possible. In doing so I have emphasised my accessibility to both complainants and Council officers. Although the limited time available for handling stage 3 complaints means that it is not always possible to meet every request for a site visit or meeting, I have wanted to be as flexible and accessible as possible in my approach and make myself available by telephone to both complainants and Council officers.

The IA's role is not just to investigate and decide on stage 3 complaints. It is also important that the IA encourages learning from complaints across the Council, and that my findings identify not just redress for the individual complaining – where appropriate – but also any improvements that can be made in policies and procedures to help prevent future complaints.

In order to help ensure these improvements are understood, I have sought to have a dialogue with officers about my findings and recommendations. I am required to send officers a draft of decisions where I am upholding a complaint, and where appropriate I discuss with them the way forward in particular cases and the wider implications, if any, of the stage 3 complaints. This dialogue has resulted in many of the improvements in procedure listed below.

Similarly, I have considered comments officers make on my draft decisions, and I have taken their views into account. My decisions are a reflection of my findings and views, and so inevitably there are occasions when they do not accord with the Council's view, but I have been satisfied with the response I have received and the fact that the Council has not rejected any of my recommendations. The fact that my findings are sometimes challenging to the Council is, I believe, an indication of a robust and independent process.

In fact, I have found Council officers have been amenable to my suggestions for a way forward and keen to put matters right where they have gone wrong.

Section 3: Performance

This section sets out the statistical figures for the cases that my predecessor and I have handled in the year 1 April 2009 – 31 March 2010. It covers complaints about the Council and its partners, including those about Lewisham Homes (which are also covered in a separate report).

Section 3a: Performance 1 April 2009 – 31 March 2010**Total cases received and determined**

TOTAL CASES RECEIVED	NO. OF CASES DETERMINED	NO. OF CASES WITHDRAWN	NO. OF CASES OPEN AS OF 31/3/10
100	100*	4	4**

* This figure includes eight cases that were opened in the previous financial year but not determined until 2009-10.

** Four cases had yet to be determined as of the final date of the period covered by this report – 31/3/010.

Number of cases upheld

TOTAL CASES DETERMINED	UPHELD IN FULL	UPHELD IN PART	NOT UPHELD
100	27 (27%)	19 (19%)	54 (54%)

Time taken by the IA to resolve:

30 days and below	31 to 50 days	More than 50 days
89 (89%)	7 (7%)	4 (4%)

- Target 85%. The target for 2009-10 increased from the previous year's target of 80%.

Number of cases received: a comparison

The Council and its other partners	Lewisham Homes	Total cases received
59	41	100

Cases by directorate:

No. of complaints against each directorate and each partner - All Council (withdrawn cases in brackets)

Customer Services	Regeneration	Children and Young People	Community Services	Resources	Lewisham Homes	Regenter B3	TOTAL
44 (2)	5	1	2	1	41 (2)	6	100 (4)

Cases by subject:

No. of complaints by subject matter - All Council. Does not include cases that were withdrawn.

(Number upheld in full or in part in brackets)

	All Council	Council and other	Lewisham Homes only

		partners	
Housing: Repairs	23 (17)	5	18
Housing: Tenancy	17 (7)	4	13
Housing: Re-housing	7 (2)	6	1
Anti-social behaviour	4 (2)	1	3
Pest Control	4	0	4
Housing: Leaseholder	4 (3)	4	0
Housing Benefit	2 (1)	2	N/A
CAT	2	2	N/A
Refuse	1	1	N/A
Private-sector leasing	5 (2)	5	N/A
Planning	3 (2)	3	N/A
Educational	2 (1)	2	N/A
Trees	2 (2)	2	N/A
Building Control	1	1	N/A
Miscellaneous	4 (4)	4	N/A
Enforcement	4 (1)	4	N/A
Council Tax	10 (2)	10	N/A
Parking	1	1	N/A
Total for all Council	96 (46)	57	39

Note that although some complaints raised more than one issue, each was categorised according to the main or primary issue complained about.

Compensation:

Number of cases in which compensation was awarded*: 27

Up to and including £100	£101 - £500	More than £500
11	14	2

Total compensation awarded: £9,559.60 (of which £3,225 related to Lewisham Homes)

** This includes eight cases carried over from 2008-09, and does not include four cases still open as of 31 March 2010.*

Section 3b: Commentary on performance

Number of cases

The number of complaints received about the Council and its partners (excluding Lewisham Homes) has remained the same as last year, at 4.9 per month. (Note, however, that the total number of complaints, including those about Lewisham Homes, has increased to 8.3 per month, compared to 6.5 in the previous year.)

The number of complaints in itself is not negative, and an increase in complaints can be a sign of transparency and accessibility in signposting by the Council. One factor influencing the number of complaints is, as my predecessor noted, the Local Government Ombudsman's policy of Council First, by which complainants are expected to have completed the Council's own complaints procedure before going to the LGO. This ensures the local authority has the opportunity to consider the complaint fully and put things right where appropriate.

Complaint numbers overall

It is important to keep in mind the relatively small number of complaints that proceed to stage 3 of the Council's procedure. For example, in 2009-10, 2,824 complaints were dealt with at stages 1 and 2 (including Lewisham Homes but excluding MP, Mayor, and Councillor enquiries), and fewer than 3.5% of these progressed to stage 3. This is slightly up from the figure of 2% that has been consistent since the IA has existed, but it is still a very small percentage of complaints received.

The picture of escalated complaints is complex because complaints reach the IA at stage 3 in different ways. The 'normal' route is via stages 1 and 2, when the complainant remains dissatisfied with the responses received. By far the majority of complaints go through one or both of these stages. But complaints also very occasionally skip a stage, if the complaint is particularly serious or there have been delays at stage 1 or 2. In addition, enquiries to MPS, councillors and the Mayor can progress to stage 3 but by no means do they all.

Approximately one-quarter of complaints are escalated to stage 3 – in other words, one-quarter of those complaints considered at the preceding stage remain unresolved and proceed to stage 3. I believe the Council should monitor this figure and consider whether, if the percentage of escalated complaints continues upwards, it reflects a concern about the robustness of complaints investigations and responses at stages 1 and 2.

Upheld rates

The uphold rate of complaints against the Council is about the same as last year, at 46%. The rate of uphold against Lewisham Homes has actually decreased, from 71% to 56%, which is a promising development.

Over the years the IA has commented on the high uphold rate, which could signal ineffectiveness of the stage 1 and 2 complaints stages. It is far better – for the Council and for complainants – for complaints to be resolved at the earliest stage possible. Those progressing to stage 3 should be only the most intractable cases, and they are likely to have a lower uphold rate.

There will always be dissatisfied complaints, and challenging complaints, and it would be wrong for the Council to try to avoid any complaints being escalated to stage 3 or indeed to the Council. Having complaints is not a measure of poor service or performance, and as mentioned elsewhere in this report, they are a useful learning tool. The percentage of cases upheld at these escalated stages, however, can be used as an indicator of how well the complaints procedure is working at stages 1 and 2.

Although there is no benchmark for this figure, I suggest the Council should seek to decrease this percentage to nearer 30-40% across all complaints.

Time taken to resolve cases

The majority of cases (89%) were resolved by the IA within the 30-day timescale for IA investigations. (The target is now 85%.) Over the years this figure has improved considerably, and I believe this is a reflection of a number of developments: more familiarity by officers with the IA process, improved procedures and protocols for dealing with IA investigations; and possibly more time spent by the IA on cases.

However, the figures show that eleven complaints were not decided within the 30-day timescale. I do not know the reasons behind the delay in each case, but it is inevitable that some final decisions will be delayed. I am aware that there have been some cases in which the investigation has been more complex, and in some cases it has been difficult to obtain the information needed from the Council.

I believe it is important to keep complainants informed of any delay. Complainants for the most part understand that a stage 3 complaint can take time, and they prefer to have a thorough investigation rather than a rushed decision. When it is clear that a stage 3 complaint will not be concluded within the 30-day timescale, the complainant is sent a holding letter with an apology and a new 'resolve by' date.

There have been some expressions of dissatisfaction with the 30-day timescale. The reason behind the timescale is to ensure all information is collated and received in time for the IA to consider. In addition, the IA is not a full-time post, something not all complainants or officers are aware of.

By directorate and subject matter

The vast majority of complaints in 2009-10 related to Customer Services – 75% of complaints excluding Lewisham Homes. As noted in previous annual reports, this is not surprising given the services that come under the directorate – many of which are to do with housing, such as homelessness and allocations, and also Council Tax and Housing Benefit.

The other directorate that featured with more than one or two complaints was Regeneration. Three complaints involved planning, and several enforcement, often of alleged planning or environmental health breaches together.

Regenter B3, one of the Council's partners, had six complaints. I comment later in this report specifically on Regenter B3 and the issues these complaints raised.

Compensation and other remedies

The total compensation awarded in 2009-10 was £9,560. Although this appears much higher than for the previous ten months (£3,955), that figure did not include Lewisham Homes. The comparable figure therefore is £9,560 awarded in 2009-10 compared with £9,605 last year (£3,955 + £5,650). Compensation was awarded in 25 cases (15 last year).

The IA uses the Local Government Ombudsman guidance on remedies when determining compensation. It is helpful to point officers in the direction of this guidance, which is on the LGO website but also summarised on the IA sharepoint site, particularly when the compensation appears high to officers responding to the draft decision. This guidance is also useful to officers handling stage 1 and stage 2 complaints. I often see complaints that I believe could have been resolved if the compensation offered at an early stage of an upheld complaint reflected the full range of issues covered by the LGO guidance – including distress and inconvenience but also reimbursement of costs and lost opportunity. And of course compensation is likely to be higher at stage 3 because of the additional time and trouble, and sometimes cost, complainants have incurred in progressing their complaint.

Compensation is not the only remedy the IA recommends. Often the most appropriate remedy is a written apology to the complainant, from the relevant Head of Services. In some complaints I recommend that a specific action is completed – a repair, for example, or a processing of an insurance claim.

In addition, some complaints raise issues of procedure. Although not specifically a remedy for the individual complainant, recommendations to make improvements in procedures or to review a policy can help put matters right and may prevent future complaints.

Customer satisfaction

The IA does not directly measure satisfaction with its work. This is carried out by the Corporate Complaints Team and involves sending out satisfaction surveys to complainants and an online survey for Council officers and officers of partner bodies. The results of this work are presented in the annual report produced by the Corporate Complaints Team.

Problems

I have not experienced difficulties, noted by my predecessor, in the Council not meeting its target timescales for responding to my request for information. For the Council this is five working days. For Lewisham Homes it is ten working days. I expect that these timescales should pose no difficulties for the Council if they have carried out a full investigation at stage 2. The notes on that investigation should be readily available, and all that should be needed is to add any more recent information or correspondence.

However, one difficulty, referred to above, has been that I do not always receive information about the investigation carried out at stages 1 or 2. I am puzzled by this lack of evidence of what was done in earlier stages, including interview or file notes or a case analysis. Having evidence of investigations carried out at stages 1 and 2 would greatly assist the IA and reduce delays. In addition, it would help improve the confidence of complainants if the Council could demonstrate that it had carried out a thorough investigation and not simply asked one side for their response.

A number of recommendations have been made over the years in regard to complaint investigations. A previous annual report recommended that the Council should consider developing guidance for complaints caseworkers that includes compiling a case file and record keeping, such as file notes of interviews and notes of investigations. My predecessor recommended using a case analysis template – a sample of which she provided to officers – as a record of the investigation and findings. My perception is that these recommendations have not been acted on as thoroughly as they should be, as demonstrated by some of the incomplete responses I have received. I therefore urge the Council to revisit these recommendations and address the inadequacies in stage 3 replies to me.

Effectiveness

The number of IA decisions that are subsequently challenged and then upheld by the LGO is an important indicator of the effectiveness, or otherwise, of the IA role.

Information supplied by the Chief Executive's office at the time of writing this annual report shows that eight complaints investigated by the IA in 2009-10 have so far gone to the LGO.* (It is possible that this figure will be higher – complainants have 12 months to go to the LGO.) In three cases the LGO found no evidence of maladministration, in two the LGO used its discretion to close the case, in one the complainant was advised to accept the IA's remedy, and one was determined to be outside the LGO's jurisdiction. In one case the LGO made a different decision than that of the IA, by recommending that the amount of compensation awarded by the IA be increased from £100 to £300.

In a previous annual report I urged the Council to use this management information more effectively so that it can identify the reasons for IA decisions being taken to the LGO and assess whether there are any implications for the effectiveness of the IA stage. I am not aware that any action has been taken on this recommendation.

**Of which three related to Lewisham Homes. Note that not all complaints about the Council and its partners which the LGO considers have gone through the IA stage, because some are outside the remit of the IA.*

Section 4: Observations and issues from the casework

This section describes issues that have arisen in the IA casework this year.

Section 4a: General observations

Stages one and two

I have noted above that I have not been convinced that stage 2 complaint investigations are as robust as they could be. Several complainants have questioned whether any new information or investigations were carried out at stage 2, and if not, what is the point of this second stage. Complainants also appear to be sceptical that a different person carries out stage 2 from the one who dealt with stage 1.

This has been particularly a problem with some Lewisham Homes complaints, and is less true of those about the Council. I have already mentioned that it is puzzling to me why in some cases there appear to be no notes of the investigations carried out prior to stage 3, such as a case analysis. This affects me and hampers my investigation as IA. But the issue for complainants is that they will lose faith in the complaints process as a whole if they feel that each stage is a mere rubberstamping of what has gone before.

This is not true of all cases, and in general there is a positive message to be given about stages 1 and 2. The responses have improved, and I see a much clearer format being used in response letters than before. The tone appears to be less defensive and the information is more thorough.

Compliance with remedies

Generally compliance has been good – the Council has not refused to accept any IA recommendations, and in only a few cases have there been delays or other problems in implementing the remedies.

In a planning enforcement case, the failure to implement a remedy led the complainant to the LGO and back again to the IA. The complaint had initially been considered, and upheld, by the first IA. When the actions he recommended were not carried out, the complainant went to the LGO, who also upheld the complaint and recommended action be carried out. When that didn't happen, the complaint came to me as IA, and once again I upheld it.

The case was a difficult one for the Council in that it involved a decision on using its statutory powers to enforce a breach of a planning application condition involving ventilation equipment in a takeaway. Whether or not to take the enforcement action was a decision for the Council, not the IA or LGO. Recognising this, all those who had considered the complaint recommended that action be taken as promptly as possible and that the complainant be kept informed of progress on enforcement action. Neither happened.

The LGO found evidence of maladministration and recommended that the Council inspect the ventilation apparatus and take the necessary action as quickly as possible. This was in December 2008. In April 2009 a letter was sent by the Council to the LGO providing an update on the situation and saying that, unless the new extraction equipment is installed and operational by 20 May 2009, legal proceedings would be instigated without further notice with a view to prosecution. The extraction equipment was not installed and operational by that time, yet legal proceedings were not instigated. The complainant was understandably aggrieved, and therefore I recommended a further compensation payment of £100 for the additional time and trouble he incurred. I also recommended that he be given regular monthly updates on progress on the enforcement action.

The IA's assistant now follows up on remedies to ensure that apologies are sent, compensation is paid, and other actions are completed within the timescale specified in my decision. This is a helpful improvement that protects the credibility of the IA and the effectiveness of the complaints process.

Lack of clarity about ownership of remedies can cause difficulties. There are occasions when a remedy has not been acted on because there has been confusion as to which body is responsible – for example, in some housing cases when an investigation has identified failures of both the Council and Lewisham Homes. As IA I do not specify the responsible body in my letters or allocate a proportion of responsibility to the partners. I believe this is for the Council and Lewisham Homes to determine between themselves. It makes no difference to the complainant, who merely wants the remedy to be carried out.

Full and final settlements

I am sometimes asked by the Council to explain in my decision letter that the recommendation I am making – usually of financial compensation – is a full and final settlement of the claim. I am aware that this has sometimes been used by my predecessor and that in such cases the complainant is asked to sign a form confirming their acceptance of the settlement.

In several cases this year I have been asked to do the same, and I am aware that the Chief Executive's office has been keen to incorporate this into the procedures of the IA. However, I have concerns that it is not always appropriate to do so, and I have been reluctant to revise my final decision letter in order to incorporate terminology on full and final settlements as standard wording where compensation is involved.

I am happy to consider the Council's desire to get closure on complaints - this is reasonable. In one case, involving a private-sector leasing arrangement, I proposed a settlement of a damages claim made by the landlord, and she accepted this as a full and final settlement.

However, there are two concerns I have about adopting this as a matter of standard practice:

1) It is a requirement that the IA must signpost to the LGO regardless of the finding on the complaint. This is clear from the LGO's guidance on 'Running a complaints system' (para 36). It is not for the IA to decide whether or not it is appropriate for the complainant to go to the ombudsman. The hope is that where the Council has agreed to address the complaint - whether through compensation or through a specific action - this satisfies the complainant and they do not feel the need to go to the ombudsman, but that is for the complainant to decide. If the complainant goes to the LGO after receiving a remedy from the Council, it is then for the LGO to determine if they think a reasonable remedy has been provided - in which case they can decide not to investigate the case. They can do this on an initial analysis of the complaint and the IA's decision letter showing the Council's remedy. However, if the LGO believes an inadequate remedy has been provided, then it may recommend further compensation, as has happened in one case decided by the IA.

So, on that point, I believe the IA's decision letter should continue to include the LGO signposting, regardless of the outcome of the IA investigation. Standard wording on full and final settlement might suggest that a complainant accepting an IA remedy is barred from going to the LGO, which is not the case.

2) In addition, it is not always the case that compensation or any other recommendation constitutes a 'full and final settlement'. This applies in situations like that of the private-sector landlord with a damages claim - in other words, those cases where not all aspects of the complaint are upheld or can be determined, but things have gone wrong and the Council has accepted this, or the Council is agreeing to make a goodwill gesture in the interests of closure. The remedy is a global settlement, and the Council needs confirmation from the complainant that they have accepted this and that it covers all aspects of the complaint. This signed form, along with my decision letter, can then be sent to the LGO if the complainant then goes on to the LGO.

But this won't be true of all complaints where a remedy is recommended, or even all complaints where compensation is recommended. For example, in my view compensation offered as redress for repairs not being carried out should not be presented as a full and final settlement waiving the tenant's right to pursue any disrepair claim.

Section 4b: Housing management

As with previous annual reports, the majority of complaints coming to the IA relate to the day-to-day landlord management function of the stock, particularly repairs, neighbour nuisance and leasehold management.

The role of partnership bodies

One issue, mentioned above, relates to confusion in some cases as to which organisation is responsible for paying the compensation awarded in an IA decision. Other issues raised in complaint about Lewisham Homes are covered in a separate report.

Complaints about Regenter B3 have led me to give feedback to both the Council and Regenter B3 about procedural failures. Regenter B3 is a consortium of three organisations – Pinnacle, Higgins and Equipe – delivering housing services to Lewisham residents. I have found in a number of cases that there is at times inadequate communication between these three organisations and a confusion about which of the three is responsible for ensuring that a remedy – compensation or other action – is carried out. Important information, such as a tenant having disabilities that might increase the impact of certain repairs – is not shared among the three, so that the organisation responsible for repair, Equipe, will be aware of an issue that is not on the tenant's file with Pinnacle.

Other procedural concerns include insurance claims for which there appears to be no procedure, and medical assessments. In one case, involving a disabled tenant who had suffered with mould and condensation and had written a plea for help to replace her ruined bed, I asked Regenter B3 to take actions regarding their procedures and record keeping, including:

- revising the procedure on insurance claims, and producing a leaflet or information sheet so that tenants are informed how to make a claim;
- ensuring their tenant records accurately reflect any disabilities and medical conditions

Insurance claims

When personal property or furnishings are alleged to have been damaged as a result of the Council, such as during repairs work, the tenant can make an insurance claim. The Council has a form for this purpose, and once submitted, the claim is reviewed and passed to the Council's insurers. Where necessary, the Council or its insurers may ask the tenant for more information or evidence, or a loss adjuster might visit to inspect any damage.

I have found that some of the Council's partners do not have clear procedures for insurance claims and are not proactive at informing tenants of their right to make an insurance claim and how to go about it.

In one case decided by my predecessor, the complainant alleged that Higgins – part of the Regenter B3 consortium – had damaged her washing machine when moving it to carry out work on her home. The IA did not uphold the complaint because she could not determine what had caused the damage and because the complainant could take out a legal claim against Higgins, something which the IA felt precluded her determination. She also noted that the complainant could make a claim against Higgins' insurers, and she asked Higgins to provide the complainant with a form to do so.

I have had to remind Council partners that insurance claims do not require receipts, something confirmed by the Council's Insurance and Risk section. The indemnity principle offers indemnity to the market value of the item damaged at the time at which it was damaged. The insurers take into account factors such as betterment, wear and tear, and depreciation in value. It is reasonable that, given items may be several years old and given the lack of invoices or receipts, insurers make reductions from the current market prices of the items today.

Receipts are helpful, clearly, and make it easier to process a claim. But tenants are unlikely to have receipts for old items – microwaves and sofas, for example – that need to be replaced. The policy is that items will be covered not on an as new basis, replacing old for new, but on an 'as is' basis.

I am concerned that I still come across tenants being told that their insurance claim has been refused because there were no receipts enclosed.

I have also seen complaints in which an insurance claim is forwarded to a contractor to deal with, or a tenant is told to deal directly with a contractor. The tenant's relationship is with the Council, not the contractor, and it is essential for the Council and its partners to take responsibility for ensuring that a fair, thorough, and user-friendly approach is taken – and taken consistently – to insurance claims by tenants.

Many of the issues with insurance have arisen with the Council's partners, and in particular Regenter. The Council appears to have clear information for making claims, with guidance on the website, for example. Forms are given to those who indicate they want to make a claim. This does not appear to be true for Regenter, and I have advised Regenter to follow the Council's own approach to insurance claims.

Finding practical solutions

Some complaints present a challenge to the Council in that there is no evident failure in service but there is evident suffering. I find these situations can occur when someone has incurred loss or damage as a result of repairs undertaken. There is no evidence as to the cause of the damage and the claim has been refused. But that is not proof that the contractors carrying out the repair may have inadvertently caused the damage. I have urged the Council and its partners to consider what practical remedy can be implemented, in a goodwill basis, in order to address the issue.

Private-sector leasing

The Private Sector Leasing Scheme (PSL) provides for the Council to lease a property from an owner which it then rents out to one of its tenants, with the Council taking on all the responsibilities of a landlord including collecting the rent. The scheme is also subject to targets on how many properties of a certain type will be leased.

In one such case I considered, the landlord, complaining of damage to her property after the end of a tenancy, cited a clause in the lease covering dispute resolution. In two sections the lease refers to a dispute resolution procedure that, in my view, indicates the appointment of an external arbitrator, either by mutual agreement of the parties or by appointment made by the president of the Royal Institute of Chartered Surveyors.

The Council believed these clauses were no barrier to attempting to resolve such disputes through its complaints procedure, with the IA as the ultimate independent expert. In my view the appropriateness of this, however, would depend to some extent on the issues in dispute - major structural problems or damage might necessitate an expert surveyor, whereas minor repairs and damage could possibly be dealt with by the IA.

So far none of the stage 3 complaints relating to PSL has involved major structural damage and has been considered by the IA. However, the Council should ensure that it is clear – both internally and to the private-sector landlords with which it contracts – how these clauses in the lease are intended to be used. I believe the lease should be reviewed by the Council's legal department to ensure that it clarifies what types of disputes would merit use of independent arbitration, how is the arbitration process initiated, and who pays the cost.

Section 5: Recommendations

Stage 3 complaints are a hugely valuable source of information and provide the Council with important feedback from service users. I urge the Council to take advantage of the learning that arises from these complaints and to address areas that require improvement.

The coming years will bring increased pressure to bear on the Council and its partners, and across the public sector. I am concerned about what this means for complaints handling, for the staff dealing with complaints, and for complainants themselves. Many complaints bodies are experiencing higher volumes of complaints in the current economic climate. Such pressure can lead to low staff morale and burn-out, as lack of resources means more must be done for less.

I urge the Council to consider how it can focus resources to better ensure it can effectively and successfully cope with complaints into the future, and in particular to:

- Use the case analysis approach recommended by my predecessor – this will ensure valuable time is not spent on an unfruitful stage 2 investigation and will minimise the time needed to respond to stage 3 complaints.
- Ensure record keeping – especially on repairs – is improved, so that the Council and its partners know and can demonstrate what has been done when.
- Ensure good communication across all partner bodies so that key information – on repairs, on tenancy issues or on disabilities, for example – is shared by all those who need to know and can act on such information.
- Aim to see a decrease in the percentage of complaints upheld at stage 3.
- Monitor the percentage of escalated complaints and consider whether, if the percentage of escalated stage 2 complaints continues upwards, it reflects a concern about the robustness of stage 2 complaints investigations and responses.

A specific recommendation relates to the Council's Private-Sector Leasing (PSL) scheme. I encourage the Council's legal department to:

- Review the PSL lease in order to ensure that it clarifies what types of disputes would merit use of independent arbitration, how is the arbitration process initiated, and who pays the cost.

In addition, to help prevent unnecessary complaints and to facilitate the process of responding to complaints, Lewisham Council should ensure that its Housing Partners, including Lewisham Homes and Regenter B3:

- Log all repairs and record the outcome of repair works. Such records should be retained for at least six years, in accordance with the statutory timeframe for disrepair claims.
- Put in place consistent and user-friendly procedures for making insurance claims and consider such claims properly, following the approach used by the Council.