REPORT

by the

PUBLIC SERVICES OMBUDSMAN FOR WALES

on an

INVESTIGATION INTO A COMPLAINT

against

Cardiff County Council
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PREAMBLE

This report is issued under [s 16] of the Public Services Ombudsman (Wales) Act 2005 ("the Act"). In accordance with the requirements of the Act details which might identify individuals have been omitted so far as that can be done without impairing the effectiveness of the report. The report accordingly refers to the complainants as Mr Davies and Miss Brown.

The report is preceded by a summary.
SUMMARY

Miss Brown was a Council tenant living in a high rise block. She and her partner Mr Davies complained that she had been subject to anti-social behaviour including amplified music and threatening behaviour from a neighbour, also a Council tenant, for a period of six years. They said that they had complained to the Council repeatedly and had completed nuisance diaries as requested to assist the Council with addressing their complaints. They said that the Council had not communicated with them adequately nor did the different sections that were involved in their complaint appear to be working together. They had also made complaints through their MP and councillor but the problems continued. They said that the neighbour would have been on an introductory tenancy when he moved in and they could not understand why he had not been evicted early on in his occupation or subsequently after the complaints became more serious in nature and when he received a criminal conviction.

By the time my investigation was completed the perpetrator of the nuisance had been transferred by the Council in October 2008, for reasons unconnected with the complaints against him, however he remained in close proximity to the complainants and they said that they continued to live in fear.

My predecessor had issued a public report on Cardiff County Council in January 2007 in which he upheld complaints brought on behalf of three residents by Julie Morgan MP. They complained that they had suffered unaddressed anti social behaviour from a perpetrator for periods extending into years. He found that the Council had failed to consider the full range of legal remedies available to deal with the behaviour and his report made various recommendations for improving the Council’s response to anti social behaviour including improvements to internal communications and training for staff. The Council accepted the recommendations and implemented an action plan that was completed in March 2007.
Having concluded the investigation into Miss Brown’s complaint, I was concerned that further failings in the Council’s response to anti social behaviour had been identified, including the fact that it does not act appropriately in relation to terminating unsatisfactory introductory tenancies and that its procedures and actions do not take appropriate regard of human rights legislation. I also noted that long after the period for compliance on the last report, the Council had continued to fail in its responsibilities to the complainants and in particular had failed to consider the full range of legal remedies available to it to protect its tenant and bring the nuisance to an end.

The Council in its response to my draft report advised that it did not accept all of the failings listed nor was it prepared to accept my recommendations in full.

In my report I recommend that the Council should transfer Miss Brown to suitable alternative accommodation, apologise for the failings and pay her £7,500 in recognition of the difficulties she had experienced. I also recommend that it should revise its procedures for dealing with anti social behaviour to take account of human rights and homelessness considerations and should provide further training to its staff in dealing with anti social behaviour sanctions including demotion of secure tenancies and termination of introductory tenancies. I also recommend that it should take steps to further improve internal communication.
Report under Section 16 of the Public Services Ombudsman (Wales) Act 2005, of an investigation into a complaint made against Cardiff County Council

THE COMPLAINT
1. Mr Davies complained that it had taken too long for the Council to address complaints that he and his partner Miss Brown had made over some years about the anti-social behaviour of a neighbour, Mr Williams. The parties lived in a block of flats and Mr Williams and Miss Brown were council tenants. Mr Williams lived in the flat directly below Miss Brown's. Mr Davies also complained that there had been numerous communication failings on the part of the Council and that these events had resulted in detriment to the health and employment prospects of himself and Miss Brown.

MY INVESTIGATION
2. Information provided by the complainants and the Council have been examined together with relevant Council files. Interviews have taken place with the complainants and with relevant officers of the Council. Both parties have been given an opportunity to comment on the draft report and any comments made have been considered prior to its finalisation.

THE RELEVANT LAW AND PROCEDURE
Cardiff Council’s Procedures
Conditions of Tenancy
3. The Conditions of Tenancy in place at the start of Mr Williams’ introductory tenancy said that the tenant, other members of the household or visitors to the premises were prohibited from:-

2(d) (v) Creating noise which causes a nuisance or interferes with the reasonable peace and enjoyment of other residents in the locality. This
includes noise generated by television, radio, high fi, dogs barking and “do-it-yourself” activities or by any other means.

2(d) (vi) Doing any damage to the premises including the Council’s fixtures whether caused by yourself, by anyone in your household or by any visitors to the premises.

2(e)(i) You and the members of your household and visitors to the premises will not do anything or cause anything to be done which is likely to cause nuisance or annoyance whether or not including noise as referred to in clause (d)(v) to others residing, visiting or providing services in the locality of the premises.

2(e) (ii) You and members of your household and visitors to the premises will not carry out acts of harassment.

2(g) (vi) No dog or dogs are allowed to be kept in multi storey flats or sheltered housing schemes except that guide dogs for the blind and partially sighted are allowed in all property types.

The Tenancy Conditions also state that:-

For similar failures to observe or perform your obligations contained in this agreement or having other statutory grounds the Council can terminate introductory tenancies without proving its case in court although the Council will:-

i) Serve a notice to bring the tenancy to an end. This notice will give the reasons for the Council’s decision to apply for an order of possession.
ii) Provide you with information on the right of a review of this decision if you reply to the notice within 14 days.
Nuisance Policy and Procedure
4. The Council has a detailed and comprehensive procedure in place for dealing with nuisance. This includes a description of the legal and non legal remedies available, examples of when each should be considered together with the grounds on which they could be sought and the burden of proof required. For example, it describes the Anti-Social Behaviour Injunction which would be used in an emergency to protect a victim or witness who had been threatened and for which the civil burden of proof, being "likely to have happened", would be required. The grounds for seeking this remedy would be conduct that is capable of causing a nuisance or annoyance to any person and affects the housing management functions of a landlord.

5. The procedure includes a flow chart which directs staff to devise an action plan and to conduct a formal assessment of the complaint if it is not resolved.

6. It advocates weekly or monthly updates to the complainant at all stages of the complaint and speedy action at all stages; for example, where there has been violence or threats of violence or deliberate damage to property, the matter should be dealt with immediately but not more than 24 hours after the report. All emergency cases should be discussed with the Housing Team Manager within 24 hours.

Introductory Tenancy Procedure
7. Cardiff Council has a detailed procedure to guide staff in the management of introductory tenancies. This sets out the responsibilities of the tenant and the powers available to staff. The procedure includes information as to how to terminate or extend an introductory tenancy should breaches occur.

Housing Act 1996
8. S124 of this act introduced the optional power to grant introductory or "probationary" tenancies to last for the first twelve months of occupancy. The aim
was to make it easier for landlords to evict those tenants who persistently engage in anti social behaviour before they can achieve security of tenure, although their subsequent use has become more wide-ranging. The provisions as set out in DOE Circular 2/97 are described in its paragraph 4 as “…designed to help the fight against anti social behaviour…”

9. Under an introductory tenancy, the Council needs only to satisfy itself that it is reasonable to seek possession, then serve notice and offer the tenant a right of appeal. If these procedures have been followed the court must grant an order for possession and the Council does not have to prove its grounds to the court. Local authorities are not obliged to offer introductory tenancies but may “opt in” to the powers to do so.

Human Rights Act 1998
10. Article 8 of the Human Rights Act 1998 sets out the right to respect for an individual’s private and family life, the home and correspondence. This is a qualified right and the definition of “private life” extends to such issues as being able to live one’s personal life as one chooses and for protection of one’s physical and mental well being. Any interference with the way a person lives needs to be justified. An individual has the right to enjoy their home peacefully. Before taking decisions affecting people’s rights under Article 8, a public authority will have to weigh all the competing interests carefully so as to justify any interference, normally through an explicit proportionality exercise.

Legislation concerning Anti Social Behaviour
11. Social landlords have a range of powers available to them to help enforce good behaviour. These include:

- Various forms of mediation
- Acceptable behaviour contracts
- Anti social behaviour orders
- Injunctions
Court action to enforce tenancy conditions

12. The Crime and Disorder Act 1998 allowed for orders to be made to tackle patterns of behaviour which may cause alarm, harassment and distress to the community, which are commonly known as anti social behaviour orders (ASBOs). Where there are existing criminal convictions a criminal ASBO or “CrASBO” can be sought from the courts to restrict the activities of the perpetrator. Powers of arrest can be attached to orders and injunctions where there is a risk of violence.

13. The Anti Social Behaviour Act 2003 extended the powers available to local authorities to tackle anti social behaviour (ASB), including racial harassment within the community and became effective in Wales in April 2005. It introduced the power to demote a tenancy to the status of an introductory tenancy, with loss of security of tenure. The period of demotion lasts for twelve months and if a notice of seeking possession is served within this period, the tenancy will remain demoted, even if the twelve month period has ended, for up to six months from the date of service.

14. When seeking possession of a demoted tenancy, there is no requirement upon the landlord to demonstrate to the Court any of the grounds for possession and possession can be sought on grounds totally unrelated to the reasons for which the demotion was granted. At the possession hearing, the courts only consider whether the correct procedure was followed and do not consider the facts on which the landlord’s decision was based or the merits of its decision. Where the court is satisfied that the correct administrative procedures have been followed then possession must be granted.

15. Additional powers were introduced under the Anti Social Behaviour Act 2003 to attach power of arrest to an injunction obtained previously where there
was threat of violence and powers to seek anti social behaviour injunctions against those causing a nuisance.

**Guidance**

16. Guidance on dealing with ASB is widely available through a large number of bodies and publications including those available from the Welsh Assembly Government and the Chartered Institute of Housing. The Home Office has a website for housing practitioners with information on dealing with ASB.

**Policy Perspective**

17. The Anti Social Behaviour Act 2003 required authorities to publish a statement of their policies and procedures with regard to anti social behaviour no later than October 2005.

**Responsibilities to Homeless People**


19. S.183 places a duty upon the authority to commence enquiries immediately if a person applies to it for accommodation or for assistance in obtaining accommodation or if it has reason to believe that s/he may be homeless or threatened with homelessness. A person is defined as homeless if s/he has no accommodation available to them that is reasonable for them to occupy. When deciding whether or not it is reasonable for a person to occupy their particular property, if present, factors such as perceived threat and violence should be taken into account.

20. Importantly, it is not necessary for a person to specifically request that the Council should commence these enquiries or ask to be housed as being homeless; rather the authority should be triggered to make enquiries on the basis of the circumstances of the individual. This is a statutory duty.
21. The enquiries which the authority must make under S.184 of the Act are of a basic nature to establish whether the applicant is eligible for assistance and if so whether a duty is owed to him. Andrew Arden, a leading QC, has written that the enquiries need not be of “C.I.D complexity”.

22. General guidance is that decisions should be made within 33 days of the commencement of enquiries and must be notified promptly to the applicant with information as to the decision made. The individual should be given reasons for the decision and advice as to their right to appeal against the decision.

The Environmental Protection Act 1990.

23. The Environmental Protection Act 1990 (EPA) provides councils with powers to serve Abatement Notices where it considers that noise amounts to a statutory nuisance. A number of instances where a statutory nuisance arises for the purposes of the EPA are set out and include noise emitted from premises so as to be prejudicial to health or a nuisance. Although not defined within the EPA, “health” is to be interpreted broadly so as to include both physical and mental health. Whilst the EPA does not define “nuisance” either, the House of Lords has held that for the EPA to apply, it must be either a private or public nuisance at common law. At common law a private nuisance is a substantial interference by the owner or occupier of property with the use and enjoyment of neighbouring property.

24. If, despite the notice, acts of nuisance continue the council may prosecute the person(s) it believes to have contravened the Abatement Notice. Prosecution is undertaken in the Magistrates’ Court and carries the criminal standard of proof (beyond reasonable doubt). An individual convicted of such an offence can be punished by a fine. In addition, a council may do whatever may be necessary to secure compliance with an Abatement Notice. This includes the power to seize and remove any equipment which it appears to the council is being, or has been,
used in the emission of noise from premises such as to be prejudicial to health or a nuisance.

**PREVIOUS RELEVANT OMBUDSMAN REPORTS AGAINST CARDIFF COUNCIL**
25. On 10th January 2007, my predecessor issued a public report referenced 200501496/7/8 upholding complaints against Cardiff County Council by three separate complainants who had all suffered anti social behaviour from the same neighbour for varying periods of time, according to the duration of their occupancy, between 2002 and 2006.

26. The findings of the investigation were that although the Council had detailed and comprehensive procedures in place for dealing with nuisance, its staff had failed to follow the procedures in this case and demonstrated a lack of awareness of how and when to act under the procedures. It also found that the Housing Department had failed to consider all management measures such as injunctions, tenancy demotion or anti social behaviour order and that,

“….the Council’s Pollution Control division was left to deal with the issue to the exclusion of all other considerations”.

27. Although a notice of seeking possession had been served on the perpetrator at one stage, this was not followed through even though there appeared to be have been sufficient grounds to have done so. Additionally, there was a delay in referring the case to the legal department for proceedings to be taken and failings on the part of the Housing Department to keep the Environmental Health Team informed.

28. The report’s recommendations included financial redress to the complainants and urgent action to improve the Council’s implementation of its nuisance procedures, including better cooperation and communication between
departments and more effective monitoring of cases together with additional training for staff on how to manage nuisance cases.

29. Cardiff Council accepted the Ombudsman’s recommendations and implemented an action plan between January 2007 and March 2007 to address the recommendations in the report.

EVENTS LEADING TO THE COMPLAINT

30. Miss Brown took up her tenancy in October 2001 and Mr Williams took up his in September 2002. Before the end of 2002 Miss Brown started submitting noise nuisance diaries to the Council about noise nuisance, describing either the flat above hers or Mr Williams flat as the sources of the noise. She submitted nuisance diaries covering October 2002 through to January 2003, which included eighteen incidents of banging noises, a dog barking, shouting, loud music and other disturbances from visitors. A housing officer visited and witnessed prolonged hammering and drilling from the flat above and arranged to interview that tenant. In January 2003, a housing officer confirmed that further noise nuisance was coming from the flat below, being that of Mr Williams.

31. The Council continued to receive frequent complaints and further nuisance diaries from Miss Brown and her solicitor spoke to the Council on her behalf about the nuisance in January 2003 and wrote to the Council in February 2003 to say that she was still being subjected to nuisance and requesting that an ASBO should be considered. The housing officer interviewed Mr Williams in March 2003 and he was given a warning and the matter was referred to Pollution Control. The Council files held Miss Brown’s complaints and a letter dated May 2003 from the tenant of a flat below Mr Williams who said he had also complained previously to the Council and wrote of eight months of daily nuisance since Mr Williams had moved in. He too complained of amplified music along with swearing, shouting and doors slamming.
32. Miss Brown continued to submit nuisance diaries including amplified music being played late at night and she also complained to the Council of Mr Williams’ behaviour becoming more threatening towards her.

33. The Council interviewed Mr Williams and gave him repeated warnings about his behaviour and asked him to be more considerate to his neighbours. South Wales Police also called on Mr Williams in July 2003 regarding a complaint of threatening behaviour and a copy of the note which they left him on this occasion was on the Council’s file. The complaints continued until mid 2003 when, according to the complainants, Mr Williams was not living in the flat and things were quiet.

34. In May 2004 there is a record of Miss Brown complaining to the Council that someone was firing an air rifle out of one of the flats in her block and this was followed up by the Council.

35. In July 2006 there was a severe altercation when Mr Williams went to Miss Brown’s flat and head butted through the Georgian wired glassed panel in her front door. She reported the matter to the Council and they interviewed Mr Williams who denied the matter, saying Miss Brown had been responsible as she had closed the door on his head. The Council accepted this and took no further action until after Miss Brown pressed charges through the police over criminal damage and threatening behaviour. Mr Williams was convicted in October 2006, with costs to be paid to the Council for the damage to the door. The Council then served a notice of seeking possession on him on the grounds of his criminal conviction but did not pursue it to court.

36. In September 2006, Miss Brown continued to make complaints including complaints about late night parties, an example of which was one when the friends of Mr Williams ran through the block banging all the doors in turn but
when they came to Miss Brown’s door, they kicked it repeatedly for a long time and shouted threats.

37. By December 2006 the Pollution Control section was investigating the complaints that had been referred to them by Housing but decided that the case was too dangerous to be put to its “out of hours” service due to the perpetrator’s violent history and the consequent risk to the safety of staff.

38. In January 2007 Miss Brown made a formal complaint to the Council regarding lack of action over noise nuisance complaints spanning four years and this was not responded to until May 2007. In February 2007, Mr Williams applied for a transfer to alternative accommodation.

39. Miss Brown continued to submit nuisance diaries including one example from the 9 February to 23 March that had eleven separate incidents of amplified music and other disturbances; her other diaries were similar in content. In April 2007, Pollution Control served a noise abatement order on Mr Williams. Similar reports continued to be made through the year and by October witness statements were being obtained from Mr Davies and Miss Brown to support legal action by Pollution Control. An email between Housing staff and Community Safety at this time acknowledged that Miss Brown was in fear for her safety as she was the main complainant and had reported hearing Mr Williams make verbal threats to kill her and her boyfriend. The housing officer asked for advice from Community Safety on security measures for the flat and a community alarm and additional locks were provided.

40. In June 2008 Mr Davies and Miss Brown advised the Council that in the face of continuing complaints and lack of promised action by the Council that they had lost faith in its willingness to bring the nuisance to an end and they withdrew their witness statements and asked for a transfer instead. Pollution Control explained that they could not proceed with action under EPA without their involvement and tried to persuade them to continue but they did not do so. The
Council took action to register the transfer request in November 2008 but Miss Brown had not been moved at the time of writing this report.

41. In October 2008 the Council transferred Mr Williams to another flat on the same estate which is in a nearby block and has windows facing the windows of the flat occupied by Miss Brown and Mr Davies. The Council said that the transfer was not connected with the complaints that had been made against him and had taken place within a timescale that was normal for that estate.

WHAT THE COMPLAINANT HAD TO SAY

Interview with Mr Davies and Miss Brown

42. Miss Brown said that she had been complaining about noise in relation to two different neighbours since late 2002. However the events that had caused her the greatest concern were in relation to Mr Williams, who lived in the flat directly below hers. They said they had seen a number of different officers in relation to the complaints since 2002 and also had gone to Councillors and the MP. Miss Brown had asked her solicitor to write to the Council in 2003 asking it to consider taking out an ASBO on Mr Williams but did not receive a response. Mr Davies had moved in with her in 2004 and had been a witness to events from that time and had become directly involved in the complaints to the Council and others.

43. They said that they found the housing staff to have an extremely off hand manner and did not appear to be taking matters seriously when they made complaints. They had found that when they phoned up they were often told that the officer who had previously dealt with their case was no longer there and they had to tell the whole story again to somebody new. For this reason they said that most of their contact with the Council had been over the telephone. They had not kept full records of all of the contacts made but presumed that the Council’s files would have these as that they had had many lengthy office interviews with different officers.
44. They said that they came to the view fairly early on that Mr Williams must have mental health problems given the extreme nature of his behaviour towards them and said that various people had hinted as such; but they could not understand why the Council persisted in maintaining his tenancy for so many years, even with its duties towards such individuals. They said they and others had made complaints against him in the early months of his tenancy and they did not understand why he had been allowed to remain as he must have initially been on a 12 month introductory tenancy; the purpose of which, they understood, was to show suitability to become a secure tenant and they believed that he had amply demonstrated that he was not suitable.

45. They said they had submitted nuisance diaries from late 2002 into mid 2003 and that after this there were two periods of time roughly eight months in length when they were not complaining because Mr Williams was away from the property and things were quiet. They say that on these occasions they were told by a Council officer and a police officer that he was in prison. They were frustrated when they resumed their complaints as the Council dealt with it as a fresh complaint with no reference to the lengthy history and they felt that this was unsatisfactory as the events were of the same nature. They said that Mr Williams’ flat was a daily source of loud music, general noise disturbance and parties often into the early hours and that he would often be drinking on his balcony with friends, surrounded by cans of lager. They said they had also seen Mr Williams and his friends spitting over the balcony at children and mothers when they were walking alongside the block to go to and from the local school. The often erratic manner of his driving on the estate gave them concern for his safety and that of other residents. They included such matters in their diary reports and in verbal contact with the Council.
46. They felt that even when the Council responded in relation to their complaints this was not done in a subtle manner as there was a traffic of people to their flat to witness events, bringing equipment which only served to make Mr Williams aware that they were the source of the complaints against him. He made that clear to them through the abuse that he shouted at them on a regular basis. They said that the nuisance often consisted of short bursts of very loud music which Mr Williams would terminate before the arrival of the Pollution Control officers; also that the camera entry system allowed him to see when officers were attending to witness the noise and he tailored his actions to cause maximum distress to them while knowing there was little prospect of penalty for his actions.

47. They said that they were never given a key worker within the Council to whom they could direct their complaints and sometimes when they rang Housing they would be referred to Pollution Control; sometimes when they phoned the police they would be referred back to Housing and vice versa. They said that the process of informing and engaging with the relevant bodies had been very difficult and stressful, particularly as the different agencies who were involved did not appear to be liaising with each other and when they did make contact they had to repeat the history to them again.

48. They said that officers from Pollution Control gave them the impression that action would be taken only to be told at a later stage, when they enquired, that the noise wasn’t sufficient for action. They said there had been many changes of staff and this turnover which prevented continuity on their case and they always seemed to be starting “from square one” again. They said that they had reported the noise and the threats to kill them to the police and the Council. They said they were given a personal attack alarm in the last year of their complaints and some extra locks which they appreciated. This security work however did not take place until December 07. They had thought that up to that
point they had repeatedly been fobbed off or not taken seriously and wished these measures had been taken much earlier.

49. Their perception of events was that they had to keep ringing people to find out what was going on as no-one ever phoned them with an update. They felt that they were expected to chase every Council officer to take action and to do their job. They also say that the Council mentioned that Mr Williams had a hard life but Ms Brown was annoyed by this because when she moved into the block she was told that there was a requirement for her to be quiet neighbour to live in this location. They could not understand why the same requirement did not apparently apply to Mr Williams and why for example he had been allowed to keep a dog in a high rise flat.

50. Miss Brown said that the situation had had a particularly bad effect on her health and career, having lived in fear of Mr Williams for so many years. For example he would shout at her “I know when your boyfriend is out, I’m going to come and get you” and other words to that effect. They said that when they reported things there was often a gap of four months before there was a response and this appeared to be a significant timeframe within the Council because everything took four months, including the response to their formal complaint.

51. Miss Brown said that in 2006 she lost a stone and a half in weight in six weeks through the stress of her situation and that her doctor was very worried that she was severely underweight as a result. The stress continued to make Ms Brown physically ill and she began to suffer severe stomach pain for which she had to have exploratory surgery. She was then diagnosed as having irritable bowel syndrome which the doctor told her was caused by long term stress. The surgery delayed her being able to provide a witness statement for the Council when it said it would consider taking Mr Williams to court. They said that the Council had not offered to assist them in preparing their statements.
52. Miss Brown said the situation had a direct impact on her career and that she had been unable through stress and ill health to gain the full qualifications that she needed for her job. She said that this had limited her employment prospects and resulted in her salary being lower than might otherwise be the case.

53. Mr Davies said that he had lost two jobs as a result of the problems, not only because of the impact on his health but because of his need to be at home to offer protection and support to Ms Brown, particularly when she was ill. They said that cars that they had owned had been damaged after they registered complaints against Mr Williams; insurance had become expensive and they lost money through insurance excesses and repair costs.

54. An instance that Miss Brown had found particularly frightening was in 2006 when she was alone in the flat and having shouted abuse at her for some time, Mr Williams came up and head butted through the wired glass panel of the front door. Following this, Council staff wouldn’t come out to see them for some months because of the threat to their safety. The Council took fourteen weeks to repair the door even though it had broken glass and Mr Williams’ blood was still on it.

55. Miss Brown had pressed charges over the incident and gave evidence in court. She had found it very intimidating as Mr Williams was in the court at the same time and she said that he had sworn and been aggressive towards the prosecution solicitor. He was convicted and through the proceedings she obtained reimbursement for the Council for the damage to the front door. She did not understand why it had been left to her to pursue a prosecution for the actions of a Council tenant. The experience had left her feeling reluctant to be in Mr Williams’ presence again, even in a court of law. She did not understand why he
had not subsequently been evicted for his actions when there had been a
criminal conviction.

56. They said that they had to live their lives around Mr Williams’ movements
as far as they could; trying to avoid times when they thought he would be likely to
be going in and out of the block. They stopped inviting friends and family to the
flat through fear of what abuse they would be subjected to, which increased their
sense of isolation. If they had to use the lift they would be in fear in case the lift
would stop on his floor and he would come in to “get” them as there was a
camera entry system and every occupant can view anyone coming in to the
block.

57. When the Council had eventually served notice to take possession of Mr
Williams’ flat, they said that they had been reluctant to go to court as they were in
fear of reprisals and had already seen Mr Williams’ behaviour at first hand in the
criminal proceedings they had brought over the damage to the door. They said
that when they expressed their concerns they were told that they had to go to
court in order for the proceedings to take place. They could not believe that the
Council would expect them to do this and place themselves at such risk from
somebody who had made direct threats against them. They said that they were
not given the option of making hearsay statements for the possession
proceedings but would have done so. They later withdrew their statements from
Pollution Control and asked the Council for a transfer in June 2008 as they had
lost faith in the Council’s willingness or ability to deal with the nuisance.

58. Miss Brown and Mr Davies said that the nuisance caused made by Mr
Williams included dogs being left in his flat alone and barking for lengthy periods,
loud music, threats and criminal damage to their door. They also witnessed him
using foul language to others and appearing to be drunk when driving or leaving
his car. They had also seen him verbally abusing other road users and fly tipping
on the estate. They had reported these matters to the Council and also to the
police. They could not understand why Pollution Control had been reluctant to seize his musical equipment which would have helped to go some way to reducing the nuisance but they always seemed to be requiring more evidence. They were promised court action at one stage only to find out when they asked that a decision had been made that existing evidence was insufficient. They had not been made aware of this and had been under the impression that proceedings were underway.

59. Miss Brown said that the first death threat came in September 2007 and it coincided with a final warning from Pollution Control. Mr Williams shouted at them, from outside the block, words to the effect that he was “prepared to do 20 years for it” but he was going to get them and other neighbours heard it as well. However, the nuisance continued with gangs of his friends in the flat every day and night and this continued up to September 2008 when he moved to another flat. She often heard him threaten that he had a knife and would be waiting for them when they left the block.

60. The main person they had dealt with in recent times was the housing officer, and that the area manager had been to see them in November 2008, this being the first and only home visit by a member of the Housing Department.

61. The complainants advised that the current position was that Mr Williams had been moved by the Council in October 2008 but it had relocated him to the block of flats immediately next to theirs, with a window and balcony that looks straight across to their property. The Council did not tell them about the move and they only found out when, one day, they noticed some individuals sitting on a balcony looking at their property through binoculars and they recognised them as being Mr Williams and his mother. Since that point they had kept the curtains drawn on that side of their flat, although it made their rooms quite dark. They felt intimidated by his continuing presence on the estate and were surprised that the Council had relocated him to a flat in that position given the history of his tenancy.
and his threats towards them; they said that they felt intimidated and threatened by his continuing presence on the estate.

62. They said that they were left with the impression that none of the agencies who had been involved in their complaint had liaised adequately on the case because when they made contact they had provide a history of their case each time and keep repeating information they had already provided. They believed that the Council had only in the last few months started having regular liaison meetings on anti-social behaviour cases and this was far too late in the day to help them. They were keen that nobody else should go through the experiences that they had endured.

WHAT SOUTH WALES POLICE HAD TO SAY
63. When asked what records it held with regard to Mr Williams, South Wales Police advised that it was not in a position to comment about all of Mr Williams’ convictions as they did not relate specifically to the complaint by Mr Davies and Miss Brown. However they confirmed that they had dealt with the incident of July 2006 when Mr Williams had damaged Miss Brown’s door resulting in him being charged under a public order offence and that he had been bailed. They said that in relation to the damage to the door he was fined, had to pay costs and compensate the Council for the damage. In September 2006, he breached bail conditions and was taken back to court.

64. In October 2007, SWP said it had investigated a complaint by Miss Brown that she had been threatened by Mr Williams but they were unable to establish a sufficient link to enable them to take action. In December 2007 they investigated a complaint by Miss Brown that Mr Williams had climbed onto the balcony of her flat and all parties had been spoken to but no further action was pursued.
WHAT THE COUNCIL HAD TO SAY

65. The Council’s formal response to the complaint was divided into two sections, the first covering the actions of the Environmental Health Department in relation to action in relation to Pollution Control and the second covering the actions of the Housing Departments.

Pollution Control

66. The response in relation to Pollution Control said that the first complaint from Miss Brown and Mr Davies about Mr Williams was received by them on 27th January 2003; the department notified Mr Williams that a complaint had been received and sent a letter to Miss Brown confirming that they were looking into the complaint, enclosing nuisance record sheets. Another complaint was received from Miss Brown dated 4 June 2003 and letters were subsequently sent to Miss Brown and Mr Williams.

67. In late August 2003 they received a nuisance incident diary from the Council’s Housing service, which they felt did not suggest a statutory noise nuisance and they sent a letter dated 7th October to say that they were unable to help at that time; following this no further diary records were received until 21st July 2006 when they received a referral from the Council’s Housing service. Due to the long period of time that had elapsed since any previous correspondence with Miss Brown, a new complaint was initiated and letters were sent out to her and Mr Williams in August 2006. The situation was at that time assessed as needing further investigation and consideration was given to Miss Brown being granted access to Pollution Control’s “out of hours” officer witnessing service.

68. However, when conducting the health and safety risk assessment to initiate the witnessing scheme, Pollution Control noted the reports of violence on the part of Mr Williams and it was considered too dangerous to allow Pollution Control officers to attend. This decision was taken by the team leader having been informed of Mr Williams’ alleged history of violence, frequent late night
visitors and alleged use of drugs and alcohol. The case officer discussed these issues with the Council's housing officer in September and at this time the details of the police officer involved in the case were obtained.

69. Pollution Control officers attempted to contact the PC to arrange police attendance when they needed to visit to witness the nuisance and were advised that Mr Williams had been arrested for further violent offences. As Pollution Control were having difficulty at this time in contacting the PC, it was agreed with Miss Brown that a "Matron" noise monitoring system was to be installed on the 30th September 2006 and Mr Williams was written to again during this period.

70. When Pollution Control established contact with the PC, he told them that Mr Williams was due to appear in court in October 2006 to face charges for a public order offence, criminal damage and breach of bail conditions. The case was discussed and the police agreed to joint visits if given plenty of notice. At this time Miss Brown advised that things were quiet but subsequently she reported that the noise had became more persistent and Pollution Control advised her that they would be making arrangements with the police to visit if there were any substantial noise problems.

71. No further correspondence was received ether from Miss Brown or the Housing department until 6 December 2006 when the housing officer advised that they had served a notice of seeking possession on Mr Williams as he had been found guilty of criminal offences. Following further telephone conversations with Housing, Pollution Control decided to investigate further. It was then decided that as Mr Williams had not threatened Council staff, that access to the "out of hours" service should be provided to Miss Brown and this was granted from December 2006 to January 2007. During this period an officer visited the property and witnessed five minutes of amplified music but this was not considered to constitute a statutory nuisance, there were two further such
instances in December and January, consequently Miss Brown’s access to the out of hours witnessing services was extended to the end of February.

72. During February a further call out was made but when the officer visited the music had stopped before he got there. Although there had not much success in witnessing using the call out service, the Matron noise monitoring system was reinstalled for one week and Miss Brown’s access to the out of hours call out service was extended until the end of April 2007.

73. In April, the evidence obtained using the monitoring equipment was assessed and the case officer at that time was satisfied that with this evidence and the diary sheets that had been provided, there was a statutory nuisance under s.80 of the Environmental Protection Act 1990 and subsequently an abatement notice was hand delivered and posted through the door of Mr Williams’ flat. Copies of the notice along with a case statement were sent to Housing. Further complaints were received from Mr Davies in May and June 2007 and access to the out of hours service was extended to cover the period of June and July.

74. Pollution Control received several complaints of noise in June and July and officers called to witness but these events were not considered to be sufficient for action and warning letters were sent. However in August 2007 a Pollution Control officer witnessed 30 minutes of amplified music and was satisfied that Mr Williams was in breach of the abatement notice and he was formally advised of the breach of the notice. This was the first offence witnessed since the service of the notice in April 2007 that officers considered met the threshold for action under EPA and an assessment of the case was drawn up in accordance with the Pollution Control’s enforcement policy for initiating legal proceedings.
75. At this time, the Matron monitoring equipment was installed again on two occasions for a week however on both occasions the evidence provided did not constitute a breach. The out of hours service continued for Miss Brown over the period of August to November and nuisance statements were received from herself and Mr Davies in October which had to be returned for signing and these were added to the prosecution file. There was no further contact from Miss Brown or Mr Davies until February 2008 when they contact the service for an update with regards to prosecution. When putting the case through the review process it became apparent that it did not meet the criteria for a successful prosecution therefore it had been decided not to progress the matter to court.

76. However the reports of amplified music and threats continued and Miss Brown was re-issued with access to the out of hours service to cover February and March 2008. An out of hours duty officer was called and witnessed ten to fifteen minutes of amplified music in February 2008 but this was not considered to be a sufficient breach of the notice to justify further action.

77. A duty officer was also called in late in February where over an hour of amplified music was witnessed and this was deemed to be a breach of the abatement notice. A second breach of the notice was witnessed later in the month when amplified music was witnessed for over an hour. Pollution Control wrote to Mr Williams and issued an official notification of offence, advising Housing of the intention to initiate proceedings against Mr Williams and the legal file was assembled.

78. The Pollution Control section denied that they had failed to follow up on complaints from Miss Brown and Mr Davies and that they had responded to telephone contact that had been made and had attempted to provide a service to witness the music. It said that numerous visits had been made since the noise abatement order was served but most had not provided sufficient evidence to enable the service to take legal proceedings.
THE HOUSING DEPARTMENT’S RESPONSE

79. The Housing Department advised that Miss Brown had been a tenant since October 2001 and that Mr Williams became an introductory tenant in September 2002. It said that the first records of complaints against Mr Williams by Miss Brown dated back to January 2003 and related to noise nuisance. At this time the complaint was referred to Pollution Control and Mr Williams was interviewed by a housing officer. At that time it said that there was no evidence that a nuisance was anything other than an isolated event and it was decided to take no tenancy enforcement action and that Miss Brown was advised of this decision. Following this, no complaints were received by housing management until 30 May 2003 when Mr Williams was interviewed in relation to further allegations and denied them. They said that Miss Brown was advised of the outcome.

80. It says that the next complaint was received in August 2003 and was again investigated. Following this, Mr Williams was formally warned about his behaviour and after this warning there were no further complaints until July 2006. It felt that the complaints about noise nuisance in 2003 were dealt with appropriately and that the evidence against him at that time did not warrant any action against his tenancy.

81. It said that following the complaint in July 2006 which related to a serious incident including threatening behaviour and property damage, Mr Williams was interviewed and denied the allegations and made counter claims that the damage was a result of action by Miss Brown. It was concluded that Mr Williams was in fact the cause of the nuisance and a final written warning was issued on 24th August 2006. Mr Williams was charged with a public order offence and damage to property and the case was heard in October 2006.
82. Following confirmation of Mr Williams’ conviction, he was served with a notice of seeking possession in November 2006. Following this, the housing officer continued to liaise with Pollution Control for information on any further incidents at the property.

83. In January 2007 a formal complaint was received from Mr Davies and Miss Brown expressing concerns about the way the housing staff dealt with their complaint. Unfortunately due to staff shortages and heavy back log of work this was not responded to until May 2007 and a letter explaining this and apologising for the delay was sent on 26 April 2007. The letter sent at this time advised that the Housing Department was prepared to seek legal advice on possible court action.

84. In June 2007 the housing officer contacted the complainants to ask for witness statements to support possible court action but these were not received for some time. The case was discussed at Housing Management Community Safety/Noise Pollution case meetings in July and August 2007 and the case was discussed with the legal department in August 2007 but it was thought that legal action was not possible at that time.

85. Following this, the housing officer interviewed the complainants and updated them on the case. Witness statements were received in November 2007 following which the housing officer prepared the file to be reviewed by the housing team manager before being sent to the Legal department for consideration. There was a delay in completing this due to staff absences over Christmas and New Year but it was referred over at the beginning of 2008.

86. The response pointed out that the housing service had taken steps to provide additional security at Mr Davies and Miss Brown’s home at this time and it did not accept that the actions taken by the Housing Department had in any way been inadequate. It said that there had been liaison with other service areas
and the matter had been sent to the legal department to see if the case could be taken to court.

87. The response went on to say that while the complainants may believe that action could have been taken after the notice of seeking possession was served as a result of Mr Williams’ conviction, no further evidence of any further nuisance was received by the housing service until 5 April 2007 when Pollution Control advised they had served an abatement notice. There were then further delays as it took some time to get completed witnesses statements so that the case could be referred over to legal for advice. While the Council accepted that there were good reasons why there was a delay, including Miss Brown’s stay in hospital, this was not felt to be the responsibility of the housing service. The response denied that there had been a failure to respond to telephone calls.

WHAT THE OFFICERS SAID AT INTERVIEW
Interview with Officer A, Housing Officer

88. This officer said that she had been responsible for tenancy management on the estate from the end of 2003 to the present time and that she had been involved with the complaints about Mr Williams from mid 2006. She said that she would as part of her role liaise with other sections that have responsibility for maintenance, rents, benefits and transfers on the estate.

89. Asked about how she would deal with complaints about anti social behaviour on the part of a person holding an introductory tenancy she said that she would take information as to the nature of the complaint, look for supporting evidence and investigate the case as she would want to be certain of the nature of the problem and to eliminate the possibility of people “having a history” between them. She said that she would expect the same level of evidence in the case of an introductory tenancy as in the case of a secure tenancy.
90. She said that there was guidance within the Department on how people should proceed with enforcement action under an introductory tenancy and that the ultimate decision as to whether the introductory tenancy would be terminated would be taken by a panel which would consist of officers independent of the case.

91. When asked what remedies would be pursued with such cases she said that there would be interviews with the complainant and perpetrator and diaries would be handed out to be completed detailing the events also that she would take advice from the ASB unit and might consider making an application for information from the police. She said that there would be a warning letter followed up by a notice of seeking possession. If that did not bring about any improvement she would prepare a court file based on the evidence she had received and possibly also evidence from Pollution Control.

92. She said that there was a reluctance to take people’s homes away and she would want to be sure of having a good case to present to court. The ultimate decision on whether to proceed to court would be taken by officers above her level and in conjunction with the advice of the legal department. Asked at what point would considerations be made about perhaps demoting a tenancy or taking out an injunction she said that the department was not doing many injunctions at the time of the early problems with Mr Williams and she was not sure whether there would have been sufficient evidence to support this line of action.

93. She said that she was aware that the complainants believed that the Council had lost some of their complaint records but she said that she had checked the post records and there was nothing to show that anything that had been received by the Council had subsequently been unaccounted for.
94. It was put to her that some of the incidents reported would seem to have been of a nature that would have suggested that an application for an injunction should at least have been considered and while not disagreeing with this she said that the Housing Department was just not doing injunctions at that time. She said that procedures have changed more recently.

95. She said that the notice of seeking possession served on Mr Williams in November 2006 followed on from the conviction he received for head butting Miss Brown’s front door, this being a breach of tenancy conditions, but that it had not been pursued as things went quiet.

93. Asked whether there was any discussion with mental health professionals concerning proposed action against Mr Williams she said there were not, nor was she aware of any specific considerations under the Human Rights Act or under s.183 of the Homelessness Act 2002. She thought that the Human Rights Act was embedded in the Council’s procedures and pointed out that the threats against Miss Brown had resulted in a community alarm being placed in Miss Brown’s flat. She said that Miss Brown had not expressed a wish to move and had been in rent arrears at one stage. She said however that that would not have stopped her being moved if there were serious concerns for their safety.

94. With regards to the role of the Tenancy Support team who had been involved with both Mr Williams and Miss Brown at some stage, she said that their role was to help with budgeting, form filling, assistance with getting furniture and in paying utility bills for people who were in their first tenancy. She said that they worked independently of housing management staff. She said that a housing officer could make a referral to that team if s/he was concerned about a new tenant and this could include cases of anti social behaviour.
95. With regard to Mr Williams’ transfer to alternative accommodation towards the end of 2008, she said that she had had no dealings with this and presumed that he had come to the top of the list by that time and thought it was unrelated to the complaints about him. She said the housing officer role in transfers is to do property checks on the property that is being moved into and the property that is being left and that the allocation section deals with all other matters relating to the transfer.

96. With regard to how much training she had received in dealing with anti-social behaviour in recent times she said that she thought there had been two or three training sessions last year and that these may have included evidence gathering and work on injunctions. She said that she had not so far had any experience of taking out an ASBO or ASB injunction.

97. With regard to what support is being provided by the police, she said that it can vary in different locations in Cardiff and that it can be “patchy”. Due to the shift system that the police work to, she said that it is possible to wait some weeks to speak to an officer who is dealing with a particular case. With regard to live case reviews she said that she believed that there were meetings with the anti-social behaviour unit on a fairly regular basis but that housing officers don’t go to those meetings. At her level she would probably contact the PCSO, particularly as the police service had been centralised. In her previous location she used to have regular meetings with the police but had not been able to get the same thing running in the current area.

98. Asked whether Miss Brown and Mr Davies had been given the opportunity to give hearsay statements, she said that she thought that they would have been and that this was part of the procedure now. She said that Miss Brown had never advised her that she was afraid of going to court and had not raised concerns of this nature or asked to do a hearsay statement.
Interview with Officer B, Housing Team Manager

99. Officer B said that he had been involved with the estate since 2007 and had in February 2008 drafted a good deal of the Council’s response to the Ombudsman’s enquiry. He thought that when he joined the team, a decision had already been taken to refer the case to Legal and he recalled discussing the case with the solicitors. He said the housing officer had put the legal file together and he had interviewed Mr Davies and Ms Brown at the end of 2008.

100. He had a meeting with the legal department in August 2007 when this and some other cases were discussed. He pointed out that there had been problems in getting witness statements from Miss Brown. Asked whether she had been given the option of giving hearsay evidence he said that he was not aware of this but that it would usually be an option. He thought it was difficult to build a case where only hearsay evidence was given and said that it was better when people were prepared to go to court as the case was stronger. He believed he may have discussed this when he and the housing officer interviewed Miss Brown and Mr Davies at the office in August 2007 but he said he could not recall exactly what was discussed and he could not recall whether a file record was kept. He said it would have been the role of the housing officer to maintain such a record.

101. He said that his role was to manage a team of housing officers dealing with tenancy management issues and that he would be the signing officer for notices of seeking possession and notice to quit etc. He said that the recommendation to go to court would be taken in discussion with the area manager. He said that in relation to this case he was not aware whether any discussions about alternative remedies had taken place; he could not recall. He said that the decision to take legal action predated his involvement.

102. With regard to training on anti social behaviour he said that there had been training on injunctions, on ASBO’s and doing witness statements in recent months.
103. With regard to dealing with complaints of noise nuisance under an introductory tenancy, he said that he would work in partnership with Pollution Control and that Pollution Control worked in partnership with Housing. He thought that in relation to Mr Williams that the nature of the complaints and the actual outcomes of the early period would not have justified termination of the introductory tenancy and said that he regarded his role as to provide housing for people and help them maintain their tenancy rather than take it away, although he recognised the need to take appropriate enforcement action when necessary.

104. Asked whether he got involved in liaison with the police at his level he said that requests for police information went via the Community Safety Team. He said that he was involved with the Community Safety Partnership and with Problem Solving meetings with the Anti Social Behaviour officer. He said that in some parts of Cardiff there were regular meetings at front line level but practice varied. He said that at his level the following meetings take place, which can include discussions on individual cases to agree a way forward:-

- Monthly ASB problem solving group involving Housing, Police, Community Safety, Youth Offenders team and other social landlords.
- Monthly multi-agency forum to deal with racial and sexual harassment/ASB cases involving Housing, Community Safety, Police and other social landlords.
- Monthly ASB/Nuisance case meetings involving Housing, Community Safety, Pollution Control and the leasehold section. This is being expanded to include Private Sector Housing.

105. With regard to whether there were any databases to monitor progress on cases, he said that they had spreadsheets for monitoring purposes and that statistics could be drawn off from these for Welsh Assembly purposes and also for reporting to community groups. He believed that the Council is looking at
ways of improving this system but that it ensured that regular contact was recorded.

106. Asked how practice had changed in relation to dealing with ASB in the last eighteen months he said that the meeting structure outlined above reflected the changes which were aimed at information sharing and joint discussion i.e. agreeing a way forward. He also said that the Council has appointed a solicitor to deal with ASB cases and thought that this would help. He also thought that the Council was thinking of setting up a dedicated team within the Housing Department to deal with anti social behaviour.

107. With regard to the transfer of Mr Williams he said that he had not been involved with this and that he thought that Mr Williams had just come to the top of the transfer list, having applied for a transfer over a year previously. He thought that would be the normal timescale for a move within that estate and understood that the move was unrelated to the complaints.

108. With regard to considerations under the Human Rights Act in regard to proportionality or right to home life, he said that he was not aware of any specific considerations on the case but that felt that these were embedded in the Council’s procedures. He believed that the only cases that that have an explicit requirement to take into account the Human Rights Act were cases going to the Officer Panel. However he said the Panel was not primarily a forum for nuisance cases but that it looked at cases of a special or “one off” nature and these would include such issues as domestic abuse.

109. He said that the neighbour nuisance policy provides a framework and within that, each was considered on an individual basis. With regard to the Council’s response to the threats to kill Miss Brown and head butting incident he said that these had occurred before his time on this particular team.
110. With regard to the lack of complaint between 2003 and 2006 he said that given his understanding of how the post logging system works, it was exceptionally unlikely that the volume of complaints Miss Brown and Mr Davies had claimed they had made could all have gone astray. He thought that in all organisations there might be a possibility of a document or two getting missed but not everything that had come in within a three year period. He had checked the records and had not found anything that had been received by the Council and not passed on to the team.

111. With regard to the use of injunctions in ASB cases he said he thought that they were being considered more now than in the past and that there was an openness to use a range of options. He said that most cases of anti social behaviour or nuisance were resolved through non legal processes such as warning letters, mediation and ABC’s. He said that Cardiff funds independent mediation and that this has proved to be beneficial. Again he said that every case was looked at on an individual basis as to what might be the best means of dealing with it.

112. Asked how handling of ASB cases had changed he said that there may now be a referral to Community Safety if appropriate and that there might be more consideration of meetings with other agencies and different options such as parenting orders.

Interview with Officer C, Senior ASB Officer

113. Officer C advised that he is the Council’s Senior ASB officer and had been working within the ASB unit for four years, prior to which he had served as a police officer for 30 years. He said that there were two other ASB Officers in the team who joined the unit about a year ago. He said that the team dealt with various service areas and elected members from within the Council as well as taking enquiries from members of the public and other agencies. The team’s
remit included undertaking investigations and providing advice and guidance on action in ASB cases.

114. He said that his team attended the monthly multi agency ASB Problem Solving Group meetings which he generally chaired. Police representatives from all the sectors throughout Cardiff were normally present including officers of supervisory rank. The group discusses individual cases that have been referred from a variety of sources including service areas from within the Council. The cases are generally of a nature where the behaviour of the offender is escalating and interventions are required. Personalised information is shared by the various agencies in attendance.

115. He said that he also attended the monthly ‘Case Management Meetings’ involving the ASB Unit, Housing Management and Pollution Control. He said that these meetings also considered specific cases which involved two or more of the departments represented. He added that the main aim of the meetings was to share information, encourage early intervention on ASB problems and to prevent problems from escalating.

116. With regard to the case of Mr Williams, he said that the ASB unit had never had a direct referral on the case although it had been raised at a number of the case management meetings. By reference to the minutes of review meetings from September 2007, he said it was evident that the case was being dealt with between Housing Management and Noise Pollution. However, from what he had recently discovered about the case, he thought it was one where a referral to his team would have been appropriate and advice or action under the ASB process would have ensued, given the nature of the issues. He said that his role includes giving advice on the various legal remedies to bring nuisance under control and that he has mechanisms in place to ensure the flow of information between the Council and other agencies, including the police.
117. He said that he thought that things had moved forward to a degree within the Council in the last eighteen months in dealing with issues of anti social behaviour but considered that there was still a potential for cases to become disjointed particularly where they fell within the remit of different service areas. He said that different staff often have different agendas in dealing with cases and that he would personally welcome the formation of a dedicated neighbour nuisance team with officers from his team and Pollution Control working alongside. He said that the appointment of a solicitor to deal with anti social behaviour and general housing issues had been a step forward and thought that there was now more willingness to consider the use of legal remedies including injunctions. He expressed the view that there were still some training issues needed in respect of the various enforcement tools that are available and had a concern that there were other ongoing cases that should have been referred to his team.

118. With regard to whether there was a case management system in place, he said that they were setting up a new database which would have a case management system and that this would be shared between the Council and police and would be in place in mid 2009. These would form community wide records which would greatly assist in providing a more coordinated approach to dealing with individual cases.

119. He said that the strategy of his team in dealing with anti social behaviour involved a four stage process and he believed that early intervention was essential; commencing usually with a warning letter where enquiries had confirmed that the case needed action. The letter would normally be delivered to the offender and where appropriate, in company with the police. If there were further referrals, the second stage would then proceed and the offender would be invited in for interview. That would provide the opportunity to explain to the offender the impact that their behaviour was having upon the victim or victims
and seek to identify a remedy. It would also provide an opportunity to identify any need the perpetrator might have for support.

120. The third stage would be to consider an Acceptable Behaviour Contract being served, when a senior police officer would be present. He said that these contracts would include prohibitions relating to the specific circumstances of the complaint. He said that as this was a voluntary engagement there was sometimes the need for some discussion about the prohibitions so as not to impinge on an individual’s rights. He saw this as the stage before court proceedings would be considered and that in his experience, it had resolved the majority of cases.

121. Should the case require court action he said that he ensured that considerations of proportionality were made under HRA. He said that he always adopted a victim centred approach. He added that he encouraged those he worked with to put themselves in the position of the complainant and try and understand matters from their point of view. It was also important to find out what the victim’s expectations were in order to manage the situation and where practicable, meet those expectations. If that was not possible, then it should be fully explained to the victim so that the person is clear as to why certain action cannot be taken. He said that all formal requests by council officers for information from the police went through him and that he would ensure fluency in how requests were dealt with and that requests were not made inappropriately resulting in their being returned or rejected by the police.

122. He said that the mechanism for a housing officer to refer a case to his team was to complete a referral form, approved by their line manager. These forms gave his team seven days to respond. His initial action would be to look at the history and nature of the case and decide what the team could achieve. He would also look at whether any immediate actions such as seeking an injunction should be considered by the originating department.
Interview with Officer D, District Manager

123. Officer D said that he had been a District Manager since April 2004 and had been involved with the estate from around that that time.

124. Asked his view on the differences involved in seeking possession under an introductory as opposed to a secure tenancy, he advised that possession was easier to obtain than under a secure tenancy and that housing officers had received training on this. He thought that they should be aware of the actions to be followed and that they would need to be satisfied that termination was appropriate.

125. With regard to the notice of seeking possession which was served on Mr Williams for criminal convictions, he was unclear why this had not been pursued and had noted that in some instances a NOSP was regarded as a form of warning letter and that if there were no problems in the initial 28 day notice period, then it was not followed up and was sometimes even withdrawn.

126. He outlined the role of the Community Safety Partnership in dealing with ASB and that they were a resource for obtaining advice on cases and information from the police. He said that referrals would often be made if the ASB involved persons with whom the Housing Department had no relationship, such as children and youths involved in street nuisance. He said that similarly, the partnership could refer cases to Housing if it involved a tenant. He said that the Community Safety Partnership could arrange access to CCTV and the Architectural Advice Service.

127. Officer D said he was unclear as to why no direct referral was made to the ASB unit in this case but thought that as the case was minuted there should have been a degree of discussion and engagement.
128. With regard to whether alternative remedies for the ASB in this case had been discussed, he was not sure of this but thought that would have come up at the case meetings and would be reflected in the minutes. He was concerned that housing officers should not follow the route of serving notice of seeking possession slavishly.

129. With regard to improvements in dealing with ASB, he thought that there was now better liaison with Pollution Control and that relationships were being built. He had heard that consideration was being given to establishing a departmental ASB team and was hopeful that this would happen as there had once been a team, the Estates Initiative Unit that had given advice to estate staff and taken on significant legal cases but this had been disbanded in the past and a valuable resource had been lost. He thought that a more specialist approach was needed to deal with ASB as, if left to the housing officer, it was one of many competing priorities within their workload.

Interview with Officer E, Environmental Health Officer

130. Officer E said that he had been in post since June 2007 and had been involved with the case from that time from the Pollution Control perspective. Asked whether he could establish when the service first became aware that Mr Williams was potentially violent, he said that his reading of the file suggested that it had been sometime in 2006 when the previous environmental health officer had been attempting to contact the police to ask for joint visits. He said he was not sure whether there had actually been any joint visits with police in this case but the file showed that there had been difficulty in contacting the relevant police officer.

131. Asked why the initial intention to take legal proceedings had been halted in early 2008, Officer E explained that the case had not met the criteria for a successful prosecution at that time. Other events were reported but did not yield sufficient evidence of a statutory nuisance as the disturbance was not witnessed
for long enough or was not sufficiently loud. He said that in this particular block there is a lot of noise transmission from the communal hallway and external sounds may also be picked up on monitoring equipment. He had also noted that the camera entry system to the block would show everyone, including Mr Williams, who was coming in so that could hamper the collation of evidence.

132. After February 2008 and up to May 2008 three individual offences were witnessed and he was very confident at that time that the case met the criteria for a successful prosecution. He said that the case was ready to be passed for court proceedings when Mr Davies and Miss Brown withdrew their statements.

133. He said that the likely remedies would have been a fine on Mr Williams and possibly seizure of his music equipment. He had explained the consequences to Mr Davies of them of withdrawing their statements as the proceedings could not continue without the involvement of the person who had been affected by the nuisance. The officer advised that although evidence from a third party, such as an EHO is needed for a prosecution to be taken forward, the legislation did not allow such proceedings without the evidence and backing of a person resident in the premises where the nuisance and breach of the notice is witnessed from. He said that it was insufficient in statutory nuisance cases for there either to be third party evidence or witnessing such as the tapes or statements of the environmental health officers or evidence from the complainants alone. Both elements had to be in place. Complainants need to remain involved with the complaint as statutory nuisance is defined as a material interference with the enjoyment of an individual’s property and all evidence would need to be witnessed from within the complainant’s property.

134. Asked whether there had been any mental health considerations in the case he said that was part of the standard checklist used by Pollution Control for proceeding to prosecution; there was a question specifically asking whether the defendant was suffering from mental health problems. In this case, Pollution
Control was not made aware by Housing of any history of mental health problems affecting Mr Williams and he had never made contact with environmental health in response to the letters, so nothing of this nature had come to their attention. He said that the referral form does allow for additional information to be inserted, such as mental health issues, health and safety concerns, potential violence etc although it was rare for such information to be passed through in the initial stages of a complaint.

135. With regards to improvements made in the service since the previous Ombudsman report (paragraph 23), he said now all staff in Pollution Control could view cases and see what action was being taken and advise other departments accordingly. He said that there was a new quick access link or email box where information on cases could be sent between Housing and Pollution Control; once received, it is then sent to the appropriate officer. If necessary, the information received could then be flagged up for discussion at the next monthly meeting.

136. He thought that there were improvements in the working relationship between Pollution Control and Housing and that there was a new referral system in place. However he said that although Pollution Control copied all information to Housing including copies of notices that had been served, they did not often receive information back as to what action was being taken by Housing on a particular case or what could potentially be done by housing staff by way of remedy. He felt that he and his team were unaware of when housing remedies should be considered in a particular case or indeed whether they were being considered. Whereas EHO was driven by statutory nuisance legislation to follow a particular route, they were unclear what parallel action the Housing Department could or should be taking.

137. His general feeling was that everyone involved in the Council dealing with ASB was trying to work more closely and that the casework system now in place
meant that things didn’t stop when someone went on leave. Everyone in Pollution Control could now see information on all current cases. He thought that there may be benefits to be achieved from establishing a dedicated team to deal with housing nuisance, ASB and tenancy breaches and thought that this could provide a more coordinated approach and assist with information sharing.

138. He said that through the changes that had been made, Pollution Control had now cut down the period between witnessing nuisance and serving abatement notices so that this could now take place immediately. Before, events occurring during the evening things had to be passed to other officers on the following day, unless the complainant had prior approved access to the out of hours duty officer service. Now there are two night time duty officers available all week and other improvements had been made in the availability of the out of hours service. The new night time duty officers are empowered to attend and investigate situations having little or no background information.

139. Officer E believed there was now more consideration of injunctions and acceptable behaviour contracts within the Council generally as potential remedies than had been the case in the past.

140. With regard to Miss Brown’s complaint, he said that he thought it was unfortunate that the department did not get sufficient evidence to progress the case to court in the early stages of monitoring but that when they did obtain sufficient evidence they were ready and prepared to act.

Interview with Officer F, Specialist Housing Solicitor

141. This officer advised that he had been in post as a housing law solicitor for five months and had been previously working in private practice. He said that he advocated early action on ASB cases and was available to housing officers to give advice at the early stage of cases if necessary and that he divides his time between County Hall and Wilcox House so that he is readily accessible to staff.
142. With regard to the current complaint, he said that he had been asked to do a review of the case and had identified additional failings in relation to a lack of coordination and passage of information between the departments dealing with Mr Williams and also thought that when the notice of seeking possession had been served upon him in December 2006 for rent arrears it should have also included nuisance grounds which should have been well known at that time.

143. In relation to action on introductory tenancies he was concerned that housing staff had advised my investigator that they regarded the same level of evidence as being required for introductory tenancy as for a secure tenancy. He said that he had noticed this tendency in that when he received instructions to proceed to terminate an introductory tenancy, housing officers were appending a great deal of evidential information and he had started to advise them that this was not required in such cases. He said that the very purpose of bringing in introductory tenancies was to enable unsatisfactory tenancies to be terminated speedily and in particular to avoid the impact on other residents.

INFORMATION FROM COUNCIL FILES

Health and Safety Risk Assessment by Environmental Health Officer dated 8 October 2007

144. Under the heading “Offence/Offender-Any known history of violence” it says,

“The alleged offender has been taken to court by the complainants after smashing the glass to their door. After talking to Council housing they informed me that [Mr Williams] seems a very pleasant man and they have no evidence of him being violent to anyone other than the complainants – they do have him on file as being potentially violent if provoked. As the complainant and the alleged offender are on separate floors you should not come in contact or even be seen by the alleged offender”.

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145. Under the heading “Additional Control Measures to be Implemented” it says,

“It is recommended that the officer rings the complainants from their car before entering the block to ensure that the alleged offender is not present outside their flat at that time”.

**Tenants Support Team Referral Information**

146. A pro-forma completed on 9 June 2003 by the Tenant Support team and in relation to Mr Williams says that this is his first tenancy and contains the information that he is on medication, has difficulties in socialising with people and is currently in rent arrears. It also records the fact that there are neighbour nuisance complaints about loud music.

**RESPONSES TO DRAFT REPORT**

**South Wales Police**

147. South Wales Police responded that it accepted the draft report and stood ready to work with the Council when the report was finalised.

**The Council’s Response**

148. The Council responded by saying that it did not accept that the level or duration of complaint from Miss Brown was as described in the report. It said that it did not feel the volume of the complaint in the introductory period of Mr Williams’ occupancy had been such as to warrant termination and that the failings were contemporaneous with failings highlighted in the report of the previous Ombudsman. It questioned my decision to issue a further public report on this case and said that for these reasons it would not accept my recommendations in full. It said that in relation to introductory tenancies, it does treat these the same as secure tenancies and believes this is in keeping with WAG guidance, quoting two lines from the guidance which it feels were pertinent.
The response also offered further information regarding Miss Brown’s transfer request of June 2008, saying that it had taken action on this in November 2008 but that her case had not so far attracted an offer. The response also disputed my criticism of a lack of consideration of legal action in the case saying that it had served a notice of seeking possession after the damage to the door and that it had opened a legal file in April 2007 which had been passed to the Legal Department in February 2008. It also said that service of a notice of seeking possession was often done as a form of warning letter.

**CONCLUSIONS**

150. Given that many of the events outlined in this report are contemporaneous with those covered by the previous Ombudsman’s report on Cardiff which highlighted severe systemic failings in the Council’s approach to dealing with anti-social behaviour, it is not surprising that similar failings would be found in this investigation. The two most striking similarities are the very late (February 2008) referral of the case for consideration of possession proceedings and the lack of active engagement or consideration of management or legal remedies by the Housing Department, who relied on the Pollution Control section to take the lead in bringing the nuisance under control although many of the issues being complained of were breaches of tenancy rather than noise pollution issues.

151. What is surprising, however, is the lack of adequate response to the problems during 2007 and up to October 2008, when Mr Williams was moved, this being after the implementation of the Council’s action plan following the previous Ombudsman’s report (para 23) which was completed in **March 2007**. The actions of its officers and interviews suggest that the lessons have not been fully learned from the last report and that further work to reinforce the action plan is still needed. I feel that in its response to the draft report the Council has not properly absorbed the chronology of complaints and has failed to take account of the evidence contained within its own files.
152. What is also of concern is the Council's failure to take advantage of the opportunity afforded by the fact that Mr Williams was on an introductory tenancy agreement when it received numerous complaints from Miss Brown from early in his tenancy and from another tenant complaining in very similar terms of eight months of nuisance from the time Mr Williams moved in. I remain of the view that it should have become apparent to a reasonably effective housing department that Mr Williams was an unsatisfactory tenant; and notwithstanding the response of the Council to my draft report, in my view there was more than sufficient level of complaint from Miss Brown and from another unrelated tenant for a reasonably effective housing department to have acted at this early stage to terminate the introductory tenancy and it therefore could have spared the complainants the considerable nuisance and threat to which they were subjected in this first period and in later years.

153. It concerns me that the Council says in its response to my draft report that it approaches introductory tenancies in the same way as secure ones, and I believe it needs to revisit the statutory provisions on this and be reminded of the purposes for which Parliament brought in introductory tenancies. Having examined the WAG guidance on which the Council relies in its response, I feel that it has quoted selectively from this document and that a more clear sense of what the document intends is obtained from reading beyond the lines quoted. I see nothing in this document to have precluded the Council from acting in this case or from acting promptly to terminate other unsatisfactory introductory tenancies where there are clear grounds for doing so.

154. Regardless of this point, the investigation found no evidence on the Council's files of any considerations or discussion about terminating Mr Williams' introductory tenancy due to the repeated breaches. From the officer interviews it is far from clear at the present time what level of breach of tenancy would prompt the Council to terminate an introductory tenancy as it approaches the termination
of introductory tenancies in the same way as that of secure tenancies, collating the same amount of evidence despite not needing to prove its case in court. The Council’s housing lawyer spoke (para 146) of similar amounts of evidence being presented to him in both scenarios. There seems to be little point the Council adopting the tool of the introductory tenancy if it is not to be used as intended.

155. With regards to the period of late 2003 to mid 2006, the Council says that it has no record of complaint from Mr Davies and Miss Brown during this period. For its part the Council has said that it has had computerised logging for all mail and all contact during this period of time and has checked this period and can find no complaint or contact from Mr Davies or Miss Brown between late 2003 and mid 2006 save for the email from Miss Brown in 2005 regarding the use of an air rifle in the flats and this email does not refer to any specific address as being the source of the problem.

156. For their part the complainants say that except for two eight months periods when Mr Williams was not living in his flat they were complaining continually. However, they have not been able to supply to the investigation any evidence or specifics of their complaints during the period late 2003 to mid 2006 and nothing on the Council files indicates any complaints from them during this period in relation to Mr Williams. I am therefore unable to uphold their complaint in relation to this period of time.

157. From the time complaints are evidenced again from mid 2006, I find a number of the Council’s actions to be unsatisfactory including its failure to pursue Mr Williams for damage to its property after he headbutted and damaged Miss Brown’s door or for the repeated threats he made. It was left to Miss Brown to take action herself and with the support of a solicitor, successfully obtain a conviction for criminal damage - a public order offence - and secure reimbursement to the Council for damage to its door. This was the Council’s
responsibility to pursue, as were the many other breaches of the conditions of tenancy and speedy action was required by its procedures.

158. Even though it served a notice of seeking possession after the criminal conviction was obtained the Council did not pursue this. The explanation given at interview was that complaints had tailed off but the records show that complaints were still being made at this time. In any event, the Council’s position seems to me to lack logic; if it was deemed appropriate to serve a notice of seeking possession for a criminal conviction, then it should have been pursued in its own right; further, the evidence from SWP is that Mr Williams had other criminal convictions. The Council has in its response to the draft report put forward its service of notice of seeking possession as evidence of consideration of legal action but somewhat undermines its case by also saying that such notices are served as a form of warning letter. I regard this as an unsatisfactory practice and representing a lack of transparency on the part of the Council rather than providing any evidence of proper legal consideration.

159. I am particularly concerned at the absence of any evidence of consideration by the Council of action such as an injunction to protect the safety of Miss Brown and Mr Davies whom it acknowledged in internal correspondence were under threat and were the main complainants. They were tenants who needed protection both as tenants under threat and as key witnesses to potential legal proceedings. There was no evidence of the Council offering them the opportunity to make hearsay statements to support any proceedings and the complainants say they were told they had to go to court. The Council recognised the potential threat to its own staff (para 144) in dealing with Mr Williams and took action but did nothing to secure Miss Brown’s and Mr Davies’ position, despite it recognising that the situation was too dangerous to allow its staff to attend at all for some months to repair the door or to allow its out of hours staff to attend.
160. This was evidence that the Council was aware of the seriousness of the situation and yet there is no evidence that it considered at any stage which sanctions could be employed to protect its tenants and to control Mr Williams’ behaviour. In my view, a reasonably efficient housing service would have considered obtaining an injunction to protect the complainants and control his behaviour and given that Mr Williams acquired criminal convictions during the period, consideration of seeking a CrASBO would also have been appropriate but again, there is no evidence of this option being considered. Furthermore, councils in Wales acquired the power to demote secure tenancies in April 2005, which greatly facilitates the process of obtaining possession but there is no evidence of this option being considered in relation to Mr Williams.

161. In its response to the draft report the Housing Department said it had started compiling a file for potential legal proceedings in April 2007 but that due to the work pressures this was not completed and passed to the Legal Department until February 2008. However this file was not provided in evidence to the investigation and if such a file was compiled and took 11 months to reach the Legal Department, this information only serves to underline the lack of urgency which the Housing Department attached to the case and is evidence of further maladministration due to delay and lack of adherence to procedures, even after my predecessor’s last public report and long after the compliance period for that reported had ended.

162. As in the previous case reported upon, the Housing Department kept referring the case to the Pollution Control section to take action although the type of nuisance being reported was often of a short term nature and inappropriate for action under the EPA. They were however repeated breaches of the conditions of tenancy, being general noise and nuisance coupled with short and loud bursts of music guaranteed to cause annoyance but without consequence to the perpetrator under Pollution Control measures.
It is understandable with all the delay and lack of co-ordination that Mr Davies and Miss Brown lost faith in the Council’s ability or will to act and ultimately withdrew their witness statements and asked for a transfer instead. Even on this matter the Council failed them. It advised me in its response to the draft report that it took from June 2008 to November 2008 to deal with their transfer request. This was an unacceptable delay and represents further maladministration. The Council did however transfer Mr Williams for reasons which it says are unconnected with the ASB complaints but it has placed him in a nearby flat in a nearby block where the parties can see each other and risk coming into contact. This is a situation which causes the complainants continuing distress and shows a lack of consideration on the part of the Housing Department for the experiences that the complainants have endured. It is disappointing that two sections within the Housing Department could not have liaised to bring about a more sensitive allocation, given the history.

I must also comment on the lack of effective multi agency working on this case. The Council employs an Anti Social Behaviour Officer with some thirty years previous experience as a police officer. In his evidence he said that part of his role is to engage with specific cases that are causing difficulty, giving advice and facilitating the flow of information between the Council and the police. However, he has said that this case was never referred to him formally and no evidence has been seen during the investigation to suggest that the housing officers had a clear plan for resolving the problems in making timely contact with the relevant police officer at community level and gaining coordinated engagement. Additionally officers have spoken of there being different arrangements in place for police liaison in different parts of Cardiff and of this causing problems in making contact with appropriate officers. I trust that it will engage the different liaison arrangements now in place (para 107) to bring an improvement in this situation.
165. I find maladministration in that the Housing Department has failed to follow its procedures in respect of the following matters:-

- Lack of regular updates to the complainants and failure to convey decisions
- Absence of an action plan
- Absence of speedy action at any stage in the handling of the case
- Absence of consideration of legal alternatives by the Housing Department
- Absence of legal action to protect witnesses
- Lack of effective working with other departments
- Late referral to legal department
- Late installation of security measures

166. I also find that there was maladministration in relation to the following matters.

167. I find no evidence of considerations of proportionality of action or right to home life under Article 8 the Human Rights Act 1998 in this case and these considerations are not directly referenced or embedded in the anti social behaviour procedures of the Council. I find that Miss Brown’s and Mr Davies’s human rights were engaged in this case but were never addressed by the Council.

168. Neither is there any evidence of considerations of Miss Brown and Mr Davies’s position under s.183 of the Homelessness Act 2002, specifically in relation to the appropriateness of their remaining in the flat given the actual violence and repeated threat that they experienced. This is a statutory duty. Additionally, the delay of five months in dealing with their transfer request was unacceptable.

169. I am also concerned that the Environmental Health Department are still reporting that they are not being advised whether any action is possible or being
taken under housing legislation when they are dealing with a case. This was also a feature of the Ombudsman’s last report and underlines the need for improved communication from Housing to Environmental Health staff.

170. I note that the Environmental Health Department has increased the resource available to deal with out of hours complaints and to speed up its processes and improve communications and I make no specific recommendations in respect of that department.

171. The Council says that it has undertaken training of its staff in relation to some of the relevant areas of its anti social behaviour policy. However in view of the information that has come forward during this investigation I can only comment that it needs to re-visit this issue and provide more training to ensure full implementation of its anti social behaviour policy, with particular reference to termination of introductory tenancies and when it should consider tenancy demotion.

172. I welcome the appointment of the specialist housing solicitor and note that he is available to advise staff on cases at an early stage. However, this is an informal arrangement and the Housing Department would in my view improve its response to cases of ASB if this action were to be formalised into its procedures at an early stage of handling.

**Recommendations**

173. I recommend that the Council transfers its tenant Miss Brown at its expense to comparable and suitable alternative accommodation within the next three months and to a location removed from this estate.

174. I recommend that the Council pays Miss Brown the sum of £7,500 for the nuisance that she has suffered, this being £2,500 for each of the three years
during which her complaints are evidenced. I recommend that from the corporate level of the Council, it sends her a detailed and fulsome apology for the failings.

175. I recommend that the Council revises its anti social behaviour policy to formalise early discussion with legal representatives and consideration of the alternative legal remedies that are available to tackle anti social behaviour. I also recommend that it includes in its procedures appropriate advice and considerations under the Human Rights Act 1998 and Homelessness Act 2002, so as to ensure that its decision making processes meet the statutory requirements.

176. I recommend that further training takes place on the revised anti social behaviour procedure to ensure its full implementation and understanding by staff and that training takes place with particular reference to terminating introductory tenancies and demoting secure tenancies. I further recommend that the Housing Department considers methods of improving joint working with the ASB team and the Environmental Health Department with regard to sharing information and engagement. The matter of whether or not the Housing Department should or should not establish a dedicated anti social behaviour team is a matter for its own discretion but it may wish to take heed of the views of the professional staff involved in this case that such a measure would improve service delivery.

177. I require the Council to provide evidence of action in relation to paragraphs 173 and 174 within three months of the date of the final report and of action in relation to paragraphs 175 and 176 within six months of that date.

Peter Tyndall  
Ombudsman  
Date: 14th August 2009  

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