REPORT
by the
PUBLIC SERVICES OMBUDSMAN FOR WALES
on an
INVESTIGATION INTO A COMPLAINT
against
Conwy County Borough Council
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THE SUMMARY

Mr and Mrs Smith are tenants of Clwyd Alyn Housing Association. Mr Smith is disabled with multiple health problems and Mrs Smith’s first language is neither English nor Welsh. They have a young son.

In 2003 the Smiths moved in to a Clwyd Alyn property that was next door to a family who were tenants of Conwy Council. They complained that they were subject to noise and disturbance from various members of the family and that they gradually became subject to direct intimidation, abuse and racial harassment which intensified after they gave evidence in court proceedings against the family. They said that this behaviour continued and that they made regular complaints about the behaviour of the family to Conwy County Borough Council.

They said that they had never been advised of the procedures that the Council had in place for dealing with anti social behaviour and that the Council had not communicated with them adequately over their complaints or properly investigated or acted upon the family’s behavioural problems and repeated breaches of their conditions of tenancy.

During the course of the investigation, information was obtained from the complainants, the Council, North Wales Police and Clwyd Alyn Housing Association regarding the Smith’s complaints and the responses of the relevant agencies.

The Ombudsman reviewed five previous public interest reports that had been issued on Conwy County Borough Council’s previous handling of complaints involving racist abuse, anti social behaviour and its failure to consider the position of victims of anti social behaviour in relation to the Human Rights Act 1988 and Homelessness Act 2002. The first of these reports was issued in September 2005 and the last in February 2008 under Section 21 of the Act which also upheld a complaint over Conwy County Borough Council’s failure to properly administer complaints of anti social behaviour, making a total of six reports.
Whilst acknowledging that some administrative changes had been made by the Council as a result of these reports, the Ombudsman was concerned to find in the Smith’s complaint evidence of replication of previous failings to deal with anti-social behaviour long after the compliance period for implementation of recommendations in the earlier reports, most notably after the establishment of an anti-social behaviour unit and after the Council said it had provided additional training for staff.

The Ombudsman found a continuing lack of knowledge on the part of Council staff in dealing with enforcement action, particularly in relation to demoted tenancies, also failure to administer procedures which the Council had put in place or to communicate with Mr and Mrs Smith in an appropriate manner. He also commented on the continuing over reliance of the Council on the input and expertise of North Wales Police officers, who were the main catalysts for moving the case forward. Evidence the police provided to the Council of the criminality of the family was not acted upon in a timely or adequate manner. In marked contrast, the joint working between North Wales Police and Clwyd Alyn Housing Association was exemplary. Legal action taken by Clwyd Alyn in the absence of any meaningful action by the Council was prompt and effective and based on the same body of evidence that was available to the Council.

The Ombudsman recommended that the Council pay the Smiths the sum of £2,500 for each of the four years during which he considered the main aspects of maladministration and injustice to have occurred and recommended that a fulsome and detailed apology should be provided to them from the corporate level of the Council.

He also recommended that the Council ensures that its staff and those exercising functions on its behalf conduct a further review of procedures for dealing with homelessness and anti-social behaviour and provide additional training and procedures to remedy the shortcomings identified in this report and for evidence of this to be provided to him within three months of the date of the report.

The Ombudsman considered that as the impact of events upon the Smiths had been so profound and that because there was a lengthy history of failing to administer
these areas of work adequately, despite numerous previous and agreed public interest reports on the topics, that it was in the public interest to issue another report under Section 16 of the Act with a request that it be placed before full cabinet by the Council in order to maintain the profile of these issues within the Council at a time of administrative change.
Report under Section 16 of the Public Services Ombudsman (Wales) Act 2005, of an investigation into a complaint made against Conwy County Borough Council

THE COMPLAINT

1. The complainants are tenants of a housing association. They complained that after moving in to a property they began to experience anti social behaviour (ASB) including racist abuse from a family who were Council tenants. They complained that the Council had not acted promptly or comprehensively to bring the nuisance to an end either by enforcing the conditions of tenancy of their neighbour or by other means. They also complained that the Council had breached their confidentiality, had not responded adequately to their complaints or acted in accordance with its procedures and that an appeal panel had not been even handed in its decision making. For legal reasons they are referred to in the report as Mr and Mrs Smith.

MY INVESTIGATION

2. I have examined the evidence provided by the complainants together with the formal response of the Council to the complaint. I have interviewed the complainants and relevant officers of the Council and Clwyd Alyn Housing Association and received information and observations on the case from North Wales Police (NWP). All of the contributors have had the opportunity to comment on the draft report and appropriate amendments have been made before finalisation of the report. Whilst I have not referred to every item examined during the investigation, I am satisfied that nothing of significance has been overlooked.
RELEVANT PREVIOUS OMBUDSMAN REPORTS ON CONWY COUNTY BOROUGH COUNCIL

September 2005 - Public Interest Report B2004/0903
3. The Ombudsman upheld a complaint that Conwy Council had failed to administer an application for assistance by a homeless person in line with legislative requirements. The complainants said that they had not been assisted by the Council when they were fleeing violence in another area and applied for assistance with the Council. The investigation showed that the Council had not conducted investigations correctly into the family’s circumstances in that their homelessness enquiries were not thorough and they had failed to take violence to family members into account. The report made a number of recommendations for action by the Council which it initially did not agree to implement. This resulted in my predecessor issuing a special report in February 2006 following which Conwy Council agreed to implement the recommendations for improved procedures and training and to make a payment to the complainants.

August 2006 - Public Interest Report 2004/0537
4. The Ombudsman upheld a complaint that Conwy Council had not dealt with repeated complaints of racial abuse, harassment and ASB affecting a lone woman and her son who lived next door to the perpetrators who were Council tenants. The investigation found that, for the majority of the duration of the complaints, the Council had no proper procedures in place for dealing with ASB and even when these procedures had been introduced in November 2005 they contained no provision or guidance for dealing with racial abuse and harassment and that the Council had no experience of the use of injunctive powers in relation to ASB prior to August 2005.

5. The Ombudsman recommended that the Council revise its procedures to include advice and training for staff in dealing with racial harassment and should ensure proper monitoring and regular reviews of ongoing cases, together with better joint working with the police. The Council agreed to implement these recommendations and a payment was made to the complainant for difficulties she had experienced over a four year period.
6. The Council agreed to implement these recommendations, which were in place by early 2007 and conducted its own internal investigation into the case leading to a commitment by the Council to adopt a “victim centred” approach. However, the complainant was subjected to further harassment and abuse from the perpetrator and to further administrative failings on the part of the Council. Consequently my predecessor reached an agreement with the Council to make another apology and a further payment to the complainant.

**March 2007- Public Interest Report 2006/00636**

7. The complaint was that Conwy Council had not dealt adequately or in a timely manner to resolve complaints of noise nuisance. The complainants lived next door to Council tenants and the son of that family had disabilities and behavioural problems which resulted in severe noise disturbance. The Ombudsman concluded in his report that the Council had failed to address the complainant’s right to respect for home and family life under Article 8 of the Human Rights Act 1998, had delayed unreasonably in implementing measures to alleviate the nuisance and that the complainants had suffered for three years longer than they need have done. Recommendations were made to implement additional sound proofing measures to reduce the noise problems and a compensatory payment to the complainants was agreed with the Council.

**June 2007- Public Interest Report 2005/02285**

8. The Ombudsman upheld a complaint, brought on behalf of a Miss F, by Shelter Cymru, who complained that Conwy Council had failed to administer correctly her requests for assistance as a homeless person, being in fear of violence at her home address. She was a lone woman with a young child and had agreed to give witness evidence in support of police action against the son of a council tenant who had caused damage to the property she was renting and was responsible for ASB in the locality. As a result she had been targeted by the family and an associate who subjected her to threats of violence, verbal abuse and made physical attacks on her home. The perpetrators were the same individuals named as the perpetrators in the Smiths’ complaint, being Mrs Thomas, her son David and one of his associates.
9. Miss F was harassed over an eleven month period according to police records and this had included direct threats from Mrs Thomas and David to kill her if she gave evidence against David in court. An associate of his also threatened her with violence if she gave evidence and her young son was assaulted. She was called a “grass” by people when she was out on the estate.

10. Her landlord became unwilling to allow her to remain in the property due to the damage it was sustaining, with bricks being thrown through the front window on two occasions, a brick wall garden wall was demolished by David, the front door was kicked in and raw eggs were thrown at her and the property. Miss F attended court under police escort and gave evidence, resulting in the convictions of Mrs Thomas and David for witness intimidation, threatening behaviour and additionally of David for criminal damage and other offences.

11. The Ombudsman upheld Miss F’s complaint and found that Conwy Council had failed to administer its responsibilities under homelessness legislation towards a person who was at risk of violence in their home. He recommended that the Council introduce more comprehensive procedures for administrating such cases and additional training of staff in their duties under sections 184 and 188 of the Housing Act 1996 as amended by the Homelessness Act 2002; also that more information should be given to staff as to the tests to be applied when considering their duties under homelessness legislation. The Council agreed to implement these recommendations and payment was made to the complainant.

**November 2007- Public Interest Report 2006/01392**

12. The Ombudsman upheld complaints from two residents that Conwy Council had taken four years longer than necessary to deal with nuisance, harassment and verbal abuse centering on the home of one of its tenants. The Ombudsman found that the Council had failed to consider the complainant’s rights to respect for home and family life under Article 8 of the Human Rights Act 1998; that there was a lack of multi agency working and failure to abide by its own procedures for dealing with complaints of ASB. The Ombudsman recommended a review of arrangements in relation to multi agency working and that procedures should be revised so as to prompt staff to consider the implications of the Human Rights Act upon individuals
affected in such circumstances. Conwy Council agreed to implement these recommendations and made payments to the complainants.

**February 2008 - S21 Report**

13. The Ombudsman upheld a complaint regarding unreasonable delay of over three years on the part of Conwy Council in dealing with a tenant’s complaints of harassment and threats of violence from outside the home which ultimately led to her being rehoused. A payment was made to the complainant.

**THE RELEVANT LAW, GUIDANCE AND PROCEDURE**

*Human Rights*

14. 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.

*Responding to Anti Social Behaviour- Conwy CBC.*

15. The Conditions of Tenancy of Conwy CBC require that tenants must not:

- harass the occupiers of neighbouring properties, including by the use of racist behaviour or language, intimidation or use of abusive language,

- allow anything to be done in the dwelling which causes nuisance, annoyance or disturbance to any other persons, including loud music, dog barking, loud arguing or shouting, offensive or threatening behaviour, dumping of rubbish,

16. The Conditions of Tenancy also state that the Council is not prepared to tolerate anti social behaviour and where necessary the Council will use legal remedies including court action for repossession.
17. In January 2003 the Housing Department of Conwy County Borough Council established an Anti Social Behaviour Review Group (ASBRG) to review cases of ASB within the community. It was chaired by the then Operational Manager for Landlord Services until January 2007 when the Head of Housing took over. Meetings were attended by local registered social landlords, representatives from NWP and various Council officers. During 2007, it established an anti social behaviour unit (ASBU) to coordinate the Housing Department’s response to ASB.

Legislation concerning Anti Social Behaviour

18. 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

19. 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 (ASBO).

20. The Anti Social Behaviour Act 2003 extended the powers available to local authorities to tackle anti social behaviour, 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. 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.

21. Also, additional powers were introduced under the 2003 Act to attach power of arrest to an injunction obtained previously where there was threat of violence and powers to seek anti social behaviour injunctions for those causing a nuisance.

Grounds for Possession
22. Grounds 2 and 14 of the 1985 and 1988 Act (as amended by the Housing Act 1996) provide the basis for seeking possession in anti social behaviour cases where,

“The tenant or a person residing in or visiting the dwelling house-
(a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing , visiting or otherwise engaging in a lawful activity in the locality, or
(b) has been convicted of –
   (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
   (ii) an indictable offence committed in, or in the locality of the dwelling house.”

23. Persons evicted on these grounds may be subsequently deemed to have made themselves intentionally homeless and there would be no automatic right to further housing provision.

Guidance
24. Guidance on dealing with ASB is widely available through a large number of 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

25. 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.

26. It was established during a previous investigation upon which the Ombudsman reported in August 2006 (2004/0537) that the Housing Department of Conwy C.B.C. had no proper procedures in place for dealing with ASB before November 2005 and had no experience of the use of injunctions within the context of ASB prior to August 2005.

27. When it was introduced, the ASB procedure of the Housing Department committed it to investigating within seven days any complaints of ASB and whenever practical to complete investigations within fourteen days. Also where possible, every effort would be made to keep the identity of the complainant confidential and to keep complainants advised at every stage of the process. There were three categories of complaint depending on the seriousness of the matter and in relation to the most serious categories of behaviour, including abuse and harassment, legal action should commence on the second complaint.

28. In compliance with my predecessors report referenced 2004/0537, Conwy Council introduced a procedure specific to cases of racial harassment in the latter part of 2006. This includes the commitment to interview the victim within 24 hours of a complaint involving damage or violence and all other cases within 3 days, with appropriate follow up action and support to the victim. The procedure refers to the findings of the 1999 Macpherson Report into the death of Stephen Lawrence that,

“A racist incident is any incident that is perceived to be racist by the victim or any other person”

Responsibilities to the Homeless

30. S183 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.

31. Importantly, it is not necessary for a person to specifically request the Council to commence these enquiries or ask to be housed as being homeless, but the authority should be triggered to make enquiries on the basis of the circumstances of the individual and this is a statutory duty.

32. Where there is a priority need, for example, if there are children or disabilities, the authority will be under a duty to house the person pending enquiries. The enquiries which the authority must make under s184 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”.

33. General guidance is that decisions should be made in 30 days of the commencement of enquiries and must be notified promptly to the applicant with information as to the decision made, together with reasons for the decision and advising the person of their right to appeal against the decision.

34. Section 188 of the Act provides that if a council believes that an applicant may be eligible for assistance, homeless and in priority need, it has an immediate duty to make accommodation available pending the completion of its enquiries. If, having completed its inquiries, the Council is satisfied that the applicant is unintentionally homeless and in priority need, it has a duty to make accommodation available to that person.
EVENTS LEADING TO THE COMPLAINT

35. **November 1998 to April 1999.** Following complaints from residents, Conwy CBC wrote three warning letters on separate dates to Mrs Thomas regarding various instances of ASB on the part of her son including that he was in trouble with the police, had been intruding into others’ property, was seen climbing onto the roofs of properties that were under refurbishment and had been throwing raw eggs at houses and stones at people and cars.

36. **July 2000 to October 2002.** Between these dates, Conwy CBC wrote two warning letters to Mrs Thomas regarding ASB on the part of herself and her family, including a noisy drinking party that took place in the garden of her home and went on for three nights and about her son throwing stones at houses again. In October the Council’s estate officer gave evidence at court regarding David’s behaviour on the estate in support of North Wales Police’s application for an ASBO.

37. **January 2003 to December 2003.** The former Head of Landlord Services (HLS) dealt with a complaint from a Mrs P that David and his associates were using her garden as a short cut and were causing damage to cars and fences and were giving abuse to passers by. He referred her to the police. More complaints came in about the family, one from an elderly resident, Mr O, enclosing a doctor’s letter expressing concern about the effect that harassment was having on his patient’s physical and mental health. Mr O was dissatisfied with the response he received and complained to the Chief Executive about the lack of action and later complained to the ward member. The HLS called Mrs Thomas in for a meeting but she did not attend.

38. NWP advised the HLS that they have given Mrs Thomas a warning over conduct relating to the Smiths’ including verbal abuse and vehicles associated with her home blocking the Smiths’ drive. The Smiths also emailed the HLS to complain of further vandalism to their cars, of being racially abused and that David and the gang had been causing disturbances around the house at midnight and that there were regular police raids on the property. They also told him that, “Our lives are a misery and our child is traumatised”. 
39. NWP advised the HLS of Mrs Thomas abusing a Miss S, following which she was subsequently also threatened by David and his associates; stones and raw eggs were thrown at her window. He also received information that Mrs Thomas had struck a neighbour, Miss M, in the face with a mobile phone damaging her eye and eye socket. A notice of seeking possession was served on Mrs Thomas but not pursued to court.

40. **February 2004 to December 2005.** Mrs Thomas made a transfer request at this time but did not obtain one. Conwy CBC sent her a warning letter about allowing her son and his friends to drink alcohol at the property and cause a disturbance; it warned her of possession proceedings for breach of tenancy conditions. At the end of the year NWP obtained an ASBO on David following his convictions for actual bodily harm, grievous bodily harm and assault.

41. Conwy CBC sent Mrs Thomas another warning letter about breaches of her tenancy and that her son had threatened and harassed another resident and warned her of possession proceedings for breach of tenancy conditions.

42. Conwy CBC sent Mrs Thomas another warning letter regarding her ASB and warned of possible service of a notice of seeking possession. She denied any wrong doing through her solicitor.

43. **February 2006 to December 2006.** Mrs Thomas, David and an associate made threats to kill Miss F, a neighbour, if she proceeded to give evidence against David over criminal damage to her house and ASB on the estate. She did so under police protection and they were both convicted of threatening behaviour and David was also convicted of criminal damage. Mrs Thomas was given probation, community service and a fine.

44. In May 2006, the Council opened a legal file on Mrs Thomas for the first time.

45. The HLS received an enquiry from ward councillor asking what was being done about the situation on the estate and in turn he emailed an inspector in NWP asking what action the police were taking. He received a response to this to the effect that
he had previously advised NWP that he was seeking to evict Mrs Thomas and action along those lines had therefore been anticipated. The inspector invited the HLS to send some of his housing staff out at the weekend to work alongside police officers and deal with events from a breach of tenancy perspective.

46. A fresh notice of seeking possession was served on Mrs Thomas on 31st August 2006 with a view to seeking possession, with a fallback position of tenancy demotion and the Council's solicitors were instructed to make a court application. The Smiths reported to the HLS that a brick was thrown through their bay window on 3rd September and their Motability vehicle was damaged and had its tyres slashed. They reminded him that Mr Smith is disabled and the family are “at breaking point after a summer of parties” and that Mrs Smith “is still being racially harassed”. The HLS replied by email asking them for more information and the Smiths responded to him giving once more the information on all of their previous complaints going back four years, that Mrs Smith is now on anti depressants following a miscarriage and that the son is in great distress, often wetting himself when events occur or even in anticipation of contact with the neighbours.

47. NWP provided a witness statement to support legal proceedings by the Council, stating that it has had complaints about Mrs Thomas and her family ever since they moved in and outlining the impact of David and his friends on the community in that they created a climate of fear and intimidation in the community such that many were now reluctant to speak out and give evidence against them. They said that the evidence they have provided to the Council shows many breaches of her conditions of tenancy and that problems emanate from Mrs Thomas herself when David is in custody.

48. Based on police evidence and impact statements from the Smiths, Clwyd Alyn obtained an ASBi on David within two weeks of initiating action. The order excluded him from the locality and required him not to harass the Smiths in particular and others in general.

49. NWP advised Conwy CBC of further breaches of Mrs Thomas’s tenancy due to drugs being found on the premises in the possession of Mrs Thomas’s partner
together with other unlawful acts. The Smiths reported further instances of abuse and that more damage had been caused to their car. The Council’s solicitors sent the particulars of claim to court in November. Mr Smith complained to the HLS and the Legal Department that he had not being told what was happening and was told in an email response that legal action was underway.

50. At the end of year, Clwyd Alyn obtained a variation on the ASBi on David to prevent him from associating with two named associates, with a curfew and a power of arrest.

51. Also at this time David was sentenced with two associates for grievous bodily harm during an unprovoked attack on member of public in which they fractured his skull with a baseball bat. The press article said that further implements were found in their homes during subsequent raids by NWP. David was placed under a criminal anti social behaviour order (CrASBO) and given a two year suspended prison sentence.

52. February 2007 to December 2007. The Court did not grant a possession order to the Council but demoted Mrs Thomas’s tenancy resulting in the loss of her security of tenure. A few days later an email with Mrs Thomas’s email address was sent to the ward member saying “We won. We get away with everything. We rule [the estate]”. The Smiths continued to complain to the Council, NWP and Clwyd Alyn of racist abuse of Mrs Smith, plus being shouted at and “glared” at by members of Thomas family; also nuisance at night from their dog. Mrs Thomas made counter accusations against Mrs Smith and her solicitor sent her a letter warning her not to make vexatious complaints to the Council.

53. The Smiths complained to the Council again about disturbances from the Thomas house, with rowdy youths going in and out repeatedly; also one of the daughters had been throwing stones and sticks at their house whilst standing on the Smiths’ drive. A metal object was thrown at their house which they thought was a car part. They said that because of its position in their rear garden it could only have come from Mrs Thomas’s house as they have a bolted gate preventing access to the rear of the house.
54. At midyear, the Council’s ASB officer briefed the Head of Housing on the case, saying there was a lack of tangible evidence and that he felt the Smiths’ complaints were now motivated by desire to obtain a transfer. The Head of Housing asked for the case to be referred to ASBRG and the Smith’s complaints were discussed by ASBRG in August 2007 for the first time.

55. A NWP officer working with the Conwy ASB unit reviewed the case and advised the Council that although the harassment currently being reported was not as severe as in the past, nevertheless it was a demoted tenancy and recommended pursuing eviction proceedings due to the long standing nature of the problems and the racist content. The NWP officer asked for the case to be escalated to the “Red Group” (comprising the Chief Officer, heads of department and senior police officers) for attention in line with agreed procedures and they subsequently agreed a referral back to court to obtain an eviction order.

56. Records from the bodies show that David continued to regularly breach the ASBi exclusion zone, returning to the estate and going to stay at Mrs Thomas’s house when released from custody instead of going to the accommodation arranged for him by the prison service, which was in another county.

57. Mrs Smith reported an incident of youths gathering around her car in the street which she found intimidating. A seventeen minute video and audio recording was made of Mrs Thomas’s daughters standing on Smiths’ driveway making offensive hand gestures and calling her a “slag”; the content was verified by the NWP CBM and the ASB team for Clwyd Alyn and recorded in their witness statements for that period and were later provided to the appeal panel. A further notice of seeking possession was served on Mrs Thomas detailing fourteen instances of complaint against her and her family; the Council granted additional points to the Smiths transfer application as did Clwyd Alyn.

58. Mrs Thomas indicated that she wished to appeal against the decision to seek her eviction and Council officers prepared the papers for the appeal panel which included an impact statement for the Smiths, prepared by the ASB co-ordinator for
Clwyd Alyn, witness statements from NWP, copies of the notices served upon Mrs Thomas and the last three months of emails from the Smiths to the Council, which bore their email address.

59. In December the Council upheld Mrs Thomas’s appeal against the Council seeking eviction under the demoted tenancy because the Smiths’ were the only people complaining, which was not considered sufficient to justify eviction. A Councillor living on the estate had written to say that he had not personally experienced any problems with Mrs Thomas since David was away and there were letters in support of her.

60. January 2008 to present. Clwyd Alyn acted in response to the Council’s decision not to evict Mrs Thomas by seeking confirmation that it could allocate money from a particular fund to the purpose of purchasing a suitable house for the Smiths, as there was still nothing suitable within its existing stock and the Council confirmed that this was appropriate use of the funds. The Smiths continued to report instances of verbal abuse from Mrs Thomas and her daughters and of them encroaching onto their property. In late March, the Council advised Mrs Thomas that her tenancy demotion was over, that she was once more a secure tenant and the Council closed its legal file on the case.

61. The Smiths reported further instances of verbal abuse and damage to their car, which had its tyres slashed and Clwyd Alyn’s ASB coordinator expressed concern to the Council that things would deteriorate even further because the tenancy demotion had ended. She queried why the Council’s estate officer had never visited the Smiths in connection with their complaints and asked why Mrs Thomas’s denials of involvement were being accepted over the Smiths’ account of events. In early April, a brick was thrown through the Smiths’ front bay window.

62. In July 2008, the Smiths took up occupation of a property purchased for them by Clwyd Alyn on the open market.
WHAT THE COMPLAINANTS HAD TO SAY

63. Mr and Mrs Smith described the impact that living next door to Mrs Thomas had had on their lives. They said that they had been pleased to be offered the property with Clwyd Alyn Housing Association in September 2002 as it was a two bedroom house when they had previously been living with their young son in a one bedroom flat. Mr Smith is disabled, has multiple health problems and for some periods of time is confined to a wheelchair. They said that they had accepted the house as it had a downstairs bathroom which was of great assistance due to his mobility problems; also because the property was near to his elderly parents who had no other family support. Mr Smith said that he had lived in or around the locality for the major part of his life and regarded it as his home.

64. They said that the problems had started very early on in their occupation of the property when they experienced noise and disturbances from the house next door which was occupied by Mrs Thomas, her teenaged son, David, and two daughters. They first became aware of David when they heard a sound of breaking glass and saw him smashing through his bedroom window in an attempt to evade arrest by the police.

65. Some time later a partner moved in with Mrs Thomas and there were often noisy parties at the Thomas house when youths were apparently drinking alcohol although they appeared to be under age. There would be nuisance when these youths came and left the address, sometimes with stones or other objects being thrown at houses, windows being smashed and damage being done to cars. They said that police were in regular attendance at the property when having been called there either by themselves or by other neighbours or attending at their own instigation.

66. Generally, they found that there was a lot of noise and shouting both from the property and often out in the street and they began to become alarmed when police cars, often in large numbers, would arrive at the property on occasions and sometimes accompanied by a police helicopter overhead. Through newspaper reports and comment in the locality they came to know that the son was involved in anti social and criminal activity in the vicinity and was believed to be the leader of a
gang, members of which frequented the Thomas house and lived in neighbouring streets.

67. The Smiths said that they began to notice that their young son was being affected by the regular interruptions to their peace and quiet. By May 2003 they had applied to Clwyd Alyn Housing Association, the Council and North Wales Housing Association to be rehoused due to the behaviour of their neighbours. Clwyd Alyn had told them that there was nothing that they could do in relation to the nuisance from Mrs Thomas as she was a Council tenant and advised her to complain directly to the Council. It also said that it would register the Smiths for transfer as it had obtained confirmation from NWP that they were being harassed by the neighbour.

68. David was frequently reported upon in the local newspaper in connection with court appearances for a range of criminal activities and the Smiths were among a small group of residents who gave evidence at court regarding his activities and in relation to breaches of orders that had been made against him. This resulted in his receiving a criminal conviction. They said that from this time they became a target for abuse from the youth and his gang and also from the mother, her partner and later the daughters as they grew older. They met a neighbour, Mr O, who told them that he had also complained to the authorities about the family and was then subjected to intimidating behaviour from David and the gang and had battery acid thrown over his car.

69. Mr O also made a direct complaint to this office (200700126) and was interviewed in connection with these events. He too identified David as the main perpetrator of nuisance towards him and on the estate in general but said that Mrs Thomas and her daughters had also engaged in offensive behaviour towards him. He described trying to sit up at night to keep watch over his car and said he had attended a council meeting accompanied by the police to explain to members and officers the difficulties he had experienced. He was not reassured by the response he received from the Council but said that the orders obtained by Clwyd Alyn had brought him some respite by removing David from the locality. He said that he and other residents lived in fear of David returning to the estate, as was his mother’s stated intention. He did not understand why the Council allowed the Thomas family
to continue to live there. The insurers had written off his car and he could not afford to replace it as he was a pensioner.

70. Mrs Smith's first language is not Welsh or English and she said that this became a particular feature of abuse from the Thomases and their associates. She said that she was subjected to verbal abuse related to her ethnicity and letters connected with her country of origin were often scratched into the bodywork of her car. She said that she had reported to the Council from early on in her tenancy what she perceived to be racist abuse from her neighbour and the children on numerous occasions and had been particularly surprised and disappointed by the lack of action on these matters given the prominence such events are meant to be given. David and his associates would sometimes abuse her in her first language so that it was not readily apparent to passers-by what was being said.

71. Mr Smith is of large build due to his health problems and restricted mobility and he said that he had complained to the Council of being called a “fat bastard” and having raw eggs thrown at him on countless occasions over the years by the residents or associates of the next door property. Mrs Smith said that her son, although born in Wales, was also verbally abused by them in terms linked to his parent’s ethnicity and would often come in asking his parents to explain what certain obscene words meant as he had been called these names by the family next door or their friends and had never heard them before.

72. Mrs Smith said that as the intimidation grew worse over time, her son’s behaviour and well being was adversely affected and although happy in other environments he would become withdrawn and agitated when being driven home. Mrs Smith said that his sleep was frequently disturbed either by noise from the property next door during drinking parties or by police raids and he was often very tired at school and was once allowed by the teachers to sleep through the whole day at school because he was too tired to attend classes. The impact of these events on her son had been of great concern to her particularly when he began to express a lack of respect for authority figures. She said she had been distressed to be called upon once by Social Services staff who appeared to be questioning her abilities as a mother when the only problems she experienced were being generated by the family.
next door. She said that they offered her no practical assistance in dealing with these matters.

73. She recalled events such as that of September 2007 when police were trying to arrest David and he fled to a rooftop nearby and this resulted in a siege lasting several hours with armed police officers and a large number of cars in the street and said that this had caused considerable disturbance to the family, along with the rest of the estate.

74. Mrs Smith said that they had planned to have a larger family but that she had been unable to carry a baby to term whilst living in the property and had suffered five miscarriages.

75. Mrs Smith said she believed that general stress of the situation had caused the miscarriages and she was distraught that these events had had such an impact on her life and her family. Mrs Smith said that they had lived their lives with curtains drawn and with the lights switched off to avoid attracting attention as they would be abused from the street if the neighbours or their visitors noticed them near a window. She said that the family had no social life centred on their home and could not invite their friends or those of their son to come to their house because of the neighbours’ behaviour. Objects would be thrown at their house and on one occasion a piece of metal was thrown against the back of their house which they said could only have come from Mrs Thomas’s property, as they had a six foot bolted gate to prevent anyone getting into their back garden.

76. Initially they had hoped that the Council would resolve the nuisance quickly and they contacted the estate officer, the HLS and the Area Manager. They said that they had not been made aware at any time of the Council’s procedures for dealing with ASB, had never been given log sheets on which to detail the nuisance and had not been advised of the existence of the Council’s out of hours telephone hotline for reporting such events.

77. They said that they were never given a focal point officer for their complaints but in the early days they sent letters to individuals they heard about in the Council who
they thought may be responsible for dealing with the situation. They sent emails of complaint outlining events to the Council, generally copying in NWP and Clwyd Alyn Housing Association in the hope that someone would respond. They have kept full records of these emails.

78. They said that they were never visited or interviewed by the Council’s estate officer and their emails to that officer only elicited the reply “noted”. They found this confusing and unsatisfactory as they had been lead to believe that the estate officer would be responsible for investigating their complaints and taking action regarding the neighbour’s tenancy. When someone told them his name, they emailed the HLS with instances of abuse and on occasions they received return emails from him asking for yet more detail which they found frustrating as the events were distressing and personal; they did not feel that communication via email was a satisfactory means of relaying such sensitive information or should have been the only avenue of communication open to them. Towards the latter stages, when they received a reply from the Council’s estate officer, it was to the effect that their neighbour had denied the allegation made and therefore no further action would be taken.

79. They said that on occasions, the youths would try to provoke an incident by lying down behind Mrs Smith’s car when she was reversing out of the drive or walking into the road when she was driving and she would have to sound her horn to make them move. Sometimes people visiting her neighbour’s house would park so as to block her drive which caused her concern should her husband require urgent medical attention. They noticed an increase in incidents and of intimidating behaviour around the time of any of David’s court appearances or releases from prison and said that Mrs Thomas would speak supportively of her son in public after his convictions; also of organising a petition for her son to return to the estate even though there were orders in place to prevent this. They said that even when he was in custody, other members of the Thomas family or David’s associates would maintain some form of nuisance against the family and they believed this was in retaliation for their having given evidence against the son over some of his activities.

80. Mr and Mrs Smith said that an opportunity to transfer within the stock of Clwyd Alyn came up in the middle of August 2007 and they accepted this but were later
advised that after further structural investigation, the property could not be adapted for Mr Smith' needs.

81. Events that had caused them particular concern included that of September 2006 when a brick was thrown with some force through their front bay window and damage was done to their car bodywork and tyres were slashed, all in a single night. The workmen who called to repair the window had to leave site when they were threatened by Mrs Thomas’s partner and it took some time for them to return with appropriate back up enable them to complete the work.

82. Following their reporting this, they were contacted by the ASB officer from Clwyd Alyn and the neighbourhood policing sergeant, who came to their home to interview them and advised them what action they would be taking to protect them through injunctive action against their neighbour. They said that this was a turning point in the response of the authorities in dealing with them and was the first time they felt that they were being taking seriously with regard to their complaints. They were also again advised by the Council that possession proceedings were being taken against their neighbour, but as this had been said to them before, without any outcome, they were sceptical about what would happen.

83. They said that at no time did they doubt that the problems they experienced emanated from their neighbour’s family or associates, because of the timing of the events and because there were never any sounds of a person or vehicle departing the area after an incident of damage to their cars or property. They heard the next door neighbour’s door slam after some of the events and would go out into the street to look or anyone running away but saw no-one; instances of direct verbal abuse were usually witnessed by both of them and sometimes occurred in front of their son.

84. They said that their first face to face contact with a Council officer was when the ASB manager for the Council contacted them in late 2007 regarding legal action against the Thomas family. They said that by this time Mr Smith’s health was extremely poor and Mrs Smith was distressed and on anti depressants following a miscarriage. They said that they were told they would need to attend court in order to give first hand evidence against the neighbour in the court proceedings but they said
that they could not do this as they were in fear of reprisals given the violent nature of the family and were too ill to deal with a court appearance in the presence of their neighbour.

85. They said that later the officer put further pressure on Mrs Smith over the phone to go to court which caused her great distress. She said that he told her that proceedings would not work without them being present as orders would not be granted and the Council’s money would be wasted. Mr Smith said that he witnessed this conversation as it was on speakerphone.

86. They telephoned the ASB coordinator of Clwyd Alyn to say that they were concerned at still being pressed to go to court given the information that was already in the public domain as to the criminal and violent nature of their neighbours and their associates and the fact that they, as the intended principal witnesses for legal action would be remaining in their home.

87. After further discussions between the Council and Clwyd Alyn Housing Association, they were told that there was to be a panel hearing to discuss the future of Mrs Thomas’s tenancy. They did not fully understand what was involved but gave consent for their emails of complaint about their neighbours to be passed to the panel. They said that they thought that the panel was taking place instead of court action and were pleased to have an opportunity to put forward to the Council their account of events and to describe the impact the occupants next door had had on their lives and well being.

88. They said that they thought that the emails would be used as prompts for their verbal submission and as the basis of points of clarification by the panel. They said that they were not looking forward to the experience as Mrs Smith lacked confidence in her use of English when under stress and Mr Smith was very unwell, but they were prepared to co-operate if it meant that the nuisance would be brought to an end and they asked Victim Support to attend with them.

89. They were surprised and disappointed to be told later by Clwyd Alyn’s ASB co-ordinator that the hearing had taken place without either she or they being notified or
asked to attend and that the panel had decided not to seek eviction of the Thomas family. The coordinator also advised the Smiths that she had been made aware that the Council had passed on their emails, which included their email address, to Mrs Thomas and her solicitor. They Smiths were alarmed by the breach of confidentiality and felt that they had been misled as to their intended use. They thought that at the very least the Council should have blanked out their email address and should have made clear it clear to them that Mrs Thomas would see the emails in their entirety, so that they could have made an informed decision on the matter beforehand.

90. Having been repeatedly abused by her neighbours and seen the family’s record of violence displayed in the local press, they were extremely concerned as to what use their email address would be put and whether there would be reprisals. They particularly would not have wanted their neighbours to know the level of personal distress and the medical problems that they were experiencing as a result of the situation and these matters were described in the emails.

91. They complained to the Council and received what they regarded as an inadequate response from the Council’s ASB manager which they took up with the officer concerned and with the Clwyd Alyn ASB coordinator. Following this, a second letter more closely approximating an apology was received for the misunderstanding regarding the use of the emails.

92. They were told of the panel’s decision to uphold Mrs Thomas’s appeal, that the Council would not be taking any further action against Mrs Thomas’s tenancy and that their complaint was now closed. This concerned them as they were offered no appeal against the decision to close their case and as far as they were concerned, the problems were ongoing. They said following this the number and severity of the incidents gradually increased, with further abuse and damage to their cars. In April 2008 a second brick was thrown through their bay window and one of their cars was again damaged with slashed tyres and damage to bodywork.

93. They also said that during this period, when Mr Smith was trying to get out of his car, Mrs Thomas had walked past and pushed the car door against him, injuring his back. They linked these events to Mrs Thomas feeling more secure as a result of the
lifting of the threat against her tenancy. They said that she was again speaking of getting agreement for her son to return to the community and, having been let down so many times by the Council, they feared this might actually happen.

94. They said that Clwyd Alyn’s efforts to move them received more impetus and a property was purchased for them to move into. Their need to get away from Mrs Thomas was such that they moved to the new property within days of it becoming available to them and prior to adaptation work being fully completed. They said that the police were in attendance when they moved to offer protection and avoid any chance of them being followed and had advised them to stay away from the locality if possible.

95. They remained disappointed, even after the move, that the review panel had decided not to pursue possession proceedings against their neighbour as they were the only people complaining at that time. They said that given the past conduct of the Thomases as widely reported in the press, most people they knew in the locality were in fear of the Thomas family and of reprisals if they spoke out against them. They were aware that letters of support had been submitted to the panel by associates of their neighbour but said that they too could have produced letters of support they had if they been given the opportunity to do so. They were particularly aggrieved that they had not had the chance to speak to the panel and put their experiences to them at first hand. They felt that the Council had not been even-handed in its consideration of the matter and that Mrs Thomas’s word had somehow been allowed to carry more weight than theirs. They were aggrieved that the Council had raised their expectations many times over the years by saying that they would be trying to evict Mrs Thomas but it had not happened and ultimately it was they who had been forced out of their home, despite having done nothing wrong.

96. The Smiths said that their experience had adversely affected their health, family intentions and that they had probably lost thousands of pounds over the years as a result of damaged cars being written off, lost insurance excesses, enhanced premiums, tyre replacements, bodywork repairs and other damage to a total of six cars which they had owned while they lived on the estate. The main issue however was the distress that had been caused to their son who is now eight and had
therefore been exposed to these problems for most of his life. They said they still lived in fear of the Thomas family discovering their new address and were unlikely for this reason to want NWP to press charges against them for the events that had occurred in the latter stages of their occupancy of their previous home. They were distraught that they were unable to visit Mr Smith’s elderly parents who lived near the estate for fear of being followed to their new address. However they spoke of being able to sleep properly for the first time in years and of beginning to see improvements in their son’s well being.

WHAT THE COUNCIL HAD TO SAY

97. The formal response of the Council said that it had made considerable efforts to address ASB in the locality particularly with regard to the behaviour of David. It said that he was the recipient of the first ASBO in Conwy and was named and shamed in a high profile case. It said that the Council had worked closely with local residents, local councillors, NWP and Clwyd Alyn Housing Association in relation to “these real and alleged problems”. It also said that the Council had sympathy for the residents and were grateful to Mr and Mrs Smith, who were one of several witnesses who stood up against his behaviour.

98. It said that in October 2002 an ASBO was granted against David but it was subsequently breached and that following a range of criminal activity he was detained away from the area for several periods of time.

99. It said that in February 2003, it received complaints from two residents on the estate regarding the behaviour of Mrs Thomas and David and their visitors of various ages. Following this a warning letter was sent to her on 27 February 2003 and on 28 February 2003 the HSL wrote to her to invite her to a meeting to try to reach a solution regarding the unacceptable behaviour of herself and her son. A second letter was sent trying to arrange a meeting but ultimately she did not attend.

100. On 23 May 2003 the Council was advised by NWP that Mrs Smith had been verbally abused by Mrs Thomas and that they had given her a warning but that Mrs Smith did not want to make a complaint through NWP at that time due to fear of reprisals. In June 2003 there was a meeting with the police that suggested that there
had been some improvement in recent weeks with regard to the family’s conduct due to some engagement with the Youth Offenders Team. However in July 2003 there was a complaint from Mr Smith to the HSL that he and his wife had been subject to verbal abuse from the family in recent weeks, including racist comment and acts of vandalism; following this a notice of seeking possession was served on Mrs Thomas. The Council said that it was subsequently felt to be unfair to take further action against Mrs Thomas since her son David was no longer resident and “as such there were no problems”.

101. In February 2004 the HSL responded to a further letter of complaint from the Smiths, in which he confirmed that David was currently in custody and subject to an ASBO. He said that he had spoken to the police and that the situation in the estate had improved and referring the Smiths to contact the police should there be any further incidents of abuse directed at them, and to record information regarding ASB in writing to pass on the housing department.

102. In August 2004 the estate officer wrote to Mrs Thomas saying that she had received a number of complaints regarding the behaviour of David since his return to the area and she was asked to speak to her son about this and if there was no improvement, possession proceedings would commence.

103. In September 2005 the estate officer wrote again to Mrs Thomas regarding her own ASB which was under investigation by NWP and she was informed that should the allegations prove to be true she would be served with a notice of seeking possession.

104. In April 2006 Mrs Thomas was found guilty of witness intimidation placed on probation for two years, with 150 hours of community service and a fine. Following this the Council said that it liaised with NWP and Clwyd Alyn Housing Association to gather up to date evidence of breaches of tenancy by Mrs Thomas and her son.

105. In September, 2006 Clwyd Alyn Housing Association obtained an ASBi which excluded David from the estate and required that he should not threaten or intimidate the Smiths or any other person. This injunction was subsequently breached. The
Smiths had given hearsay evidence against David in relation to an ASBO given against him in 2004.

106. It said that a demotion order was gained against the tenancy of Mrs Thomas on 21 February 2007 which was based on complaints about the behaviour of her son.

107. In April 2007 the Smiths reported an incident of a racist nature which they believed was connected with their neighbour’s daughters as they saw them leaving the vicinity and re-entering their home just afterwards; however this was not pursued as Mrs Thomas denied any involvement by her family.

108. In August 2007 the case was discussed by the ASBRG and again in September, November and December. In September the case had been escalated to the decision making panel and escalated to the Red Group in October 2007. The case had also been monitored at fortnightly operational managers’ meetings.

109. In August 2007 the police received a report from the Smiths regarding rowdy youths going in and out of Mrs Thomas’ house repeatedly and that a brake disc had been thrown at the back wall of their house, which they believed could only have come from Mrs Thomas’ house. Also in October complaints were made through Clwyd Alyn’s ASB coordinator that there was gesturing and shouting by the daughters of Mrs Thomas towards Mrs Smith and a DVD recording of this was provided but failed to produce evidence of any verbal insults.

110. The Council said that many other reports were made directly to the police, and a witness statement was provided by the Community Beat Manager (CBM) in May 2007. It said that any complaints made to the estate officer were raised in writing with Mrs Thomas and she also came into the housing office to discuss matters with the estate officer. Mrs Thomas had always denied the allegations and employed a solicitor to represent her. She also made counter allegations against Mrs Smith over what she perceived as unacceptable behaviour.

111. In August 2007 a multi agency meeting was convened to discuss the way forward and a number of actions were assigned as a result of this meeting including
a personal visit to see Mr and Mrs Smith and a door knocking exercise with other residents to see if there were any other complaints additional to those received from the Smiths. This resulted in no other complaints regarding Mrs Thomas and a councillor who lived opposite Mrs Thomas said that he had not had any problems with her.

112. In October the Council’s ASB unit manager visited Mr and Mrs Smith with Clwyd Alyn’s ASB coordinator to discuss the situation. Following this meeting it was agreed that a hearsay statement should be provided by the Smiths via Clwyd Alyn’s ASB coordinator and that the Council would proceed to seek possession under the demoted tenancy. Transfer options were also considered by both organisations and the Smiths’ priority to be rehoused by the Council was enhanced. A referral was also made to Victim Support on their behalf.

113. In November 2007 a notice of seeking possession was issued, following which Mrs Thomas submitted an application for a review of the decision and a members panel was convened. The papers compiled for the panel included statements from the police, the ASB coordinator for Clwyd Alyn and correspondence between both Mrs Thomas and the Smiths with the Council along with a selection of emails. The Council understood that it had the Smiths’ agreement to use these emails and they were copied onto Mrs Thomas and her solicitor. The Council subsequently apologised for the emails not having been used as the Smiths intended they should be; it has said that has revised its procedures to ensure this would not happen again.

114. The panel of members sat on the 12 December 2007 and decided unanimously to uphold Mrs Thomas’s appeal, deciding that the Council would not seek possession of the property. On the basis of the evidence provided, they did not believe that it was reasonable to pursue eviction at that time but that Mrs Thomas should be reminded that her tenancy remained the subject of a demotion order until February 2008. The Council was concerned at this time that Mrs Thomas could complain that the Council was behaving disproportionally and unreasonably towards her if it took further action. The Council advised the Smiths of the decision of the panel and made a further apology for the upset and inconvenience caused by revealing details of their email address. It received a further letter from the Smiths
asking that they be removed from the Council’s housing list. In December Mrs Thomas made a witness statement alleging intimidating behaviour by Mrs Smith during the previous week.

115. The Council went on to say that in December the Smiths reported an incident via Clwyd Alyn whereby their doorbell was rung and the daughters of Mrs Thomas were seen walking away from the door. In March there was a further complaint of criminal damage to a car belonging to the Smiths which was marked “for your information”.

116. In March 2008 the estate officer received a letter of complaint from Mrs Thomas alleging harassment and intimidation from the Smiths and that she was in touch with her solicitor. Also in March, Clwyd Alyn Housing Association provided a witness statement prepared by Mr Smith giving further details of damage to his car and harassment and intimidation by Mrs Thomas and that this statement was for information only and they did not want action to be taken in connection with it.

117. The Council said that it had worked with Clwyd Alyn Housing Association to try to re-house the Smiths and that it had approved use of funds for this purpose. Also it said that it understood that, at that time, that the Smiths were due to be moving in approximately three months.

118. The Council acknowledged that there had been some communication failings by releasing their email address as part of the appeal panel procedure and that this had been apologised for and lessons had been learnt together with procedural change to ensure that it did not happen again. It also acknowledged that there had been some difficulty in the Smiths understanding what the ASB officer had been trying to explain to them about the processes to be followed. It went on to say that since the ASB co-ordinator for Clwyd Alyn was possibly not familiar with the arrangements for dealing with a demoted tenancy it thought that she had given incorrect information to Mr and Mrs Smith believing the Council to have made a mistake regarding whether or not further witness evidence was needed for court. They said that they were aware that she had contacted the Council to ask about
these procedures and had been referred to a website which explained the processes to be followed.

119. It said that ASB and nuisance problems had now substantially reduced between the two properties and in the estate generally, as David was currently in custody and that such complaints that had been received were mainly due to parties looking at each other in a manner that each perceived to be inappropriate, and that there was no substantial evidence against either party nor independent witnesses for the alleged incidents, and that the current situation was one of a clash of personalities.

120. The Council appended to this response copies of its notices of seeking possession and minutes of the ASBRG where the case was discussed together with a selection of emails.

**INFORMATION FROM COUNCIL RECORDS**

121. **Minutes of ASBRG of 16th August 2007** - These record the first discussion of the Smiths’ complaints and referred to it as an ongoing case with complaints of racial harassment; also that the Smiths were being transferred by Clwyd Alyn and Mrs Thomas was counter claiming that she was being harassed by the Smiths. It was referred for a multi agency meeting to enable further discussion.

122. **Minutes of ASBRG multi agency meeting of 22nd August 2007** - The meeting considered recent events as set out in a statement from the CBM, including reports of racist abuse. It was stated that everything that had been reported by the Smiths had been acted upon. It noted that a councillor who lives in the locality had said that he has personally had no problems with Mrs Thomas since her son had been out of the area.

123. The meeting agreed various actions including Clwyd Alyn’s ASB coordinator advising the Smiths that if they wished to pursue their complaint after moving they would have to give statements and would be likely to be required to appear at court. The estate officer for the Council was to be tasked with visiting the Smiths to request that they give statements of evidence, identifying if possible, the people who they claim are harassing them. Also to check what records the police have on the Smiths’
complaints, to conduct a local survey to see if there are any other complaints about Mrs Thomas and to see if the local councillor supports Mrs Thomas’s claim of being harassed by the Smiths.

124. The minutes also identified two youths, known associates of David, as being connected with harassment of the Smiths; also naming another family, the M’s, as perhaps having been harassed and intimidated by Mrs Thomas for giving evidence in the ASBO against David.

125. **Minutes of ASBRG 26th September 2007** - The minutes record the view that there was a lack of tangible evidence in the case and that the transfer planned for the Smiths has fallen through. It said that a brake pad has been thrown through the bathroom window of the Smiths’ house, which they believed had come from Mrs Thomas’s property. It said that Mrs Thomas had also made complaints about harassment from the Smiths and that a councillor had offered support for this claim. Actions agreed include instructing the ASB officer for the Council and the ASB coordinator for Clwyd Alyn to make a joint visit to the Smiths to ask if they will provide statements and for Mrs Thomas to be targeted for possession of the property; also for the case to be escalated to the “Red” group comprising senior officers of the Council and NWP.

126. **Minutes of ASBRG of 7th November 2007** - The minutes said that the joint visit had taken place and a proposal for restorative justice has been declined by the Smiths. It said that possession proceedings were underway but there was a lack of evidence.

127. **Minutes of ASBRG of 17th December 2007** - The minutes showed that the appeal against possession by Mrs Thomas was upheld on the 12th December 2007 and ASBRG decided to remove the case from its list.

**WHAT THE OFFICERS SAID AT INTERVIEW**

**Estate Officer**

128. This officer advised that she had worked in housing for many years and had around twelve years experience as an estate officer. She said that she had first been involved in this case in 2003 in relation to complaints about Mrs Thomas. She said
that she had always followed up on the complaints and sent warnings when appropriate.

129. She said she did not know why the case did not go before ASBRG until mid 2007 but that she had taken the action that she had been asked to take in relation to the case and that when matters escalated towards legal proceedings, it became the responsibility of her area manager.

130. She said that her role involved the early handling of cases and that she worked on them with the ASBU manager. She said that she spoke to the ASBU manager about cases she had concerns about where early intervention was not working and it was his role to refer it to ASBRG for monitoring and further action.

131. She said that there was no specialised software to monitor ASB cases as yet but that estate staff used the existing complaints register to record cases. Each estate officer monitored their own cases and progress on these was discussed with her new area manager at supervision meetings every six weeks.

132. She said she could not recall any case conferences on the Thomases prior to mid 2007 and was not personally aware of any specific considerations on the case under Article 8 of the Human Rights Act or under homelessness provisions and had not been advised of any such requirement by her department. She said that she understood that the Smiths had been offered transfers by Clwyd Alyn and had refused them.

133. She said she understood the current position to be that David had been living in a bail hostel but was now back in prison following further breaches of his ASBO. She said that there had been no complaints made against Mrs Thomas since the Smiths left and that she believed that Mrs Thomas may be starting a petition to allow David back to the estate because a family member living locally was very ill.

134. With regard to the Council’s decision to pursue possession of Mrs Thomas’s property under the demoted tenancy, she said that she had not been totally comfortable with the proposal as there had been many letters in support of Mrs
Thomas at this time. Also, that she had been involved in a door knocking exercise with NWP to gather a view of what was happening on the estate and nothing adverse about Mrs Thomas had been highlighted. She said that she was sceptical about the Smiths’ belief that they were suffering retaliation as a consequence of having given evidence against David as she said that others had done the same and had not suffered any retaliation.

135. Asked whether she had considered transferring Mrs Thomas, she said that she thought that Mrs Thomas had considered this, but as she has a terminally ill relative living close by she decided not to move, particularly when it became known that Clwyd Alyn were moving the Smiths.

136. Asked whether she had ever visited the Smiths, she said that she had not and had never been asked to visit by her department nor had the Smiths asked her to visit. She said she thought that had she gone there once, they would have kept her going there. She said that there was liaison through the CBM and Clwyd Alyn. She said she thought it was Clwyd Alyn’s responsibility to maintain contact with the Smiths as they were their tenants.

137. Her view in the later stages of the case was that there was a lack of evidence as both sides were complaining of “strange looks” and Mrs Thomas was making counter allegations against Mrs Smith over what she saw as inappropriate behaviour. She expressed sympathy for Mrs Thomas’s position and re-iterated that many letters of support for her had come in towards the end of the case.

138. The officer said that she felt that the Council’s response to complaints of anti social behaviour had improved dramatically since various staff changes had been made and particularly with the addition of a solicitor to work specifically on ASB cases. She said that he gives advice on appropriate action and assists with the preparation of cases going to court.

139. She added that she had received feedback both from the CBM and Clwyd Alyn on a regular basis and Clwyd Alyn and therefore felt it unnecessary to visit even though she was not requested or asked to do so. She also felt that by her visiting it
could have an effect on Clwyd Alyn’s management of the case. She said that as she was not employed by Clwyd Alyn she was not party to all letters and calls made to Mr and Mrs Smith; should she have called uninvited to offer advice or assistance this may have crossed any support Clwyd Alyn were giving. She said that she was never invited to call on Mr and Mrs Smith and if she had she would have gladly done so.

140. She said that there had been a great deal of training on ASB within the department within the last two years. She recalled that she had attended training on taking witness statements, a one day in house course, run by the Council’s designated solicitor for ASB and that there had been another course run by a firm of barristers, which had taken the form of a seminar on the legal remedies for ASB.

**Manager of the Anti Social Behaviour Unit**

141. This officer advised that he had worked for Conwy as an Area Manager since 1993 and had been appointed as the manager of the new ASBU in January 2007 although the unit was not fully operational until April 2007.

142. He outlined some of the improvements that had been made in terms of dealing with ASB in Conwy since that time and said that there are now regular reviews of cases between the area managers and the operational managers when the minutes of the ASBRG and case notes are reviewed. Cases were also reviewed at operational level by managers and by the ASBRG on a six week cycle.

143. He said that the Council had agreed in principle some time ago to introduce some specialist software for monitoring cases but this had been delayed due to the vote on stock transfer that took place in 2007. He said that this software was now being introduced and records of cases were currently being loaded into the new system. As an interim measure he said that there was a database showing all cases and giving the tenure, status of the case and actions being taken.

144. He said that there had been a number of “Making a Difference” days where a multi agency team of council officers, NWP and other landlords goes out to estates which have come up on the database as presenting problems in relation to ASB. He
said that from the information gained on these days, strategies are devised for dealing with the issues highlighted.

145. He said that there is close working with NWP with two officers working within the ASBU and information is provided by the police analyst on specific cases. He said that he believed that the future of the ASBU was under consideration following the decision on stock transfer. As far as he was aware the police would be continuing their engagement within the ASBU, which currently consisted of a community safety sergeant and PC. He said that the District Inspectors often attend multi agency meetings and there is high level representation of NWP on the ASBRG.

146. With regard to the trigger points for escalation of cases he advised that initially the estate officers acknowledge complaints of ASB and are involved in giving initial warnings and interviewing alleged perpetrators. If this approach did not resolve the problem the case was referred to the ASBU who would consider serving acceptable behaviour contracts and final tenancy warnings. Where necessary, these would be served by him, the CBM, the estate officer and any relevant professional involved with the recipient, such as a social worker.

147. He said that the Council now focussed on early intervention and preventing cases from escalating. If the case was not resolved at an early stage then a multi agency meeting would be called to deal with the situation and this would also involve all relevant agencies such as the probation service, Youth Offenders Team and a social worker etc. The case would be set out at this meeting and a course of action agreed, with timescales if required. At this stage the ASBRG would be made aware of the case. He said that the ASBRG meets every six weeks to review the most serious cases that have not been resolved at the previous stages. They are currently monitoring about forty cases. If a case cannot be resolved by the ASBRG it is referred to the Red Group which includes senior police officers, the senior legal officer of the Council and the Chief Executive. They would be briefed on cases that could potentially have high impact on the authority.

148. He said that there are currently nine cases referred to the Red Group these would be the most serious cases of ASB and those involving large numbers of
children within the family. He said that he had maintained an awareness of the Council’s handling of ASB in the past and had seen the previous Ombudsman’s reports on ASB in Conwy. He said that he felt that there was a more proactive approach now and that the Council worked considerably harder to keep people informed of what it was doing in relation to their complaints. He said that in total, the housing service was currently monitoring 136 cases of ASB at different levels and that he would provide evidence of this to the investigation and this was duly received.

149. The officer said that there had been training in the last couple of years in dealing with ASB and the complaints policy. There had also been training for estate officers on legal issues, on statement taking and legal remedies including collation of evidence and court practice. He said that many of the estate officers had found this to be rather intensive and there had been follow up sessions for the estate officers to ensure full understanding. These had been run by the Council’s recently appointed dedicated solicitor for ASB who works with estate officers on preparing cases to speed up the process, ensure better decision making and getting applications to court “right first time”.

150. The officer said that he felt that there was better recording of actions taken on cases and that these would be easier to audit via the new software when that was fully implemented. However, he said he found that files were already more comprehensive and records were much easier to use.

151. The officer said that he felt that the service had improved and that the department had taken on board the points made in past Ombudsman’s reports and taken notice of the criticism and suggestions made. He said that he now felt that the solicitors were “on board” in relation to legal action and that the additional resource of a dedicated solicitor had improved the service and proved invaluable to estate officers. He said that there was now evidence of early intervention on cases particularly through greater use of acceptable behaviour contracts.

152. He said that the authority was now acting more quickly to seek injunctions and that these were proving to be more effective as a remedy. He felt that there had
been an over emphasis in the past on seeking possession orders when these are possibly the most difficult remedy to obtain particularly when there are children involved. He said that they had changed the way the estate officers think about cases and that the new software would move things forward exponentially and would prompt officers to take actions within certain time scales and this would enhance the quality of action and improve case preparation should matters escalate to the next level. He said he expected the evidence on a case to be collated by estate officers, not the police, and that estate officers should have a full understanding of the need to record the impact of incidents of ASB on the victims. He said that the estate officers would need more training when the software is fully operational and they assume a more prominent role in the process.

153. With regard to his personal involvement with the case he recalled that he had in his previous capacity served a notice of seeking possession on Mrs Thomas for nuisance in February 2003 and had sent her a warning letter. As far as he could recall there had been no considerations of injunctive action at this time. As the housing department was restructured in June 2004, he had no personal involvement with the estate until he was appointed to the ASBU and was made aware of the case by NWP in July 2007. When he had gathered information about the case, he briefed the Head of Housing and took action as requested by him to refer the case to ASBRG. He also had been responsible for calling the multi-agency meeting that followed.

154. Asked whether he was aware of any considerations for the Smiths under Article 8 of the Human Rights Act, he said that although he was mindful that the Council’s actions had to be proportionate and said that such considerations would normally be taken at ASBRG, who would record the reasons for a particular decision being made, how the decision had been arrived at and what consideration had been taken into account. He also said that since the start of 2008, there would be specific reference to such considerations on the case files. He said that if a decision was made there must be consideration of the impact on the victims.

155. Asked whether he was aware of any considerations under section 183 (duty to consider homelessness status) to whether it was reasonable for the Smiths to
remain in their home; he said that he was not aware of any specific considerations. He said that the Housing Department would tend to ask police if someone was safe in their home and that he had not been briefed by his department of the requirement for considerations under s183. He thought that such considerations would take place within the homelessness service of the Council. He said that if the question of the Smiths requiring rehousing had been flagged up, this would have been referred to the homeless section as it had the responsibility to providing temporary accommodation. He also pointed that two offers of transfer had been made to the Smiths and he recalled discussions with Clwyd Alyn on those transfers.

156. In discussion as to whether the severity of some of the incidents suffered by the Smiths might have prompted homelessness considerations such as the instances of bricks being thrown through the window, the officer said that he had not been made aware of these occurrences.

157. The officer confirmed that he had seen the Smiths on one occasion, when he had gone to see them to discuss their complaints, the transfer possibilities or what may be achievable at court. He recalled that their view was that they wanted to have their say and he explained to them that that would only happen if they went to court to give evidence. He recalled that Mrs Smith was very upset at the meeting and he did his best to explain to her that there was currently no evidence to link Mrs Thomas directly to the events they were complaining about and therefore it would be more effective if she went to court to demonstrate her feelings and explain her situation.

158. He said that Mrs Smith had made it clear that she did not want to go to court and a possibility of her making a statement for court was discussed but ultimately she did not want to do that or to attend. He tried to explain that her giving evidence would be more powerful and they agreed at the end of the meeting that a hearsay statement would be used together with a statement from NWP and he believed that he made her aware that Mrs Thomas would have a right of appeal against any action the Council was taking in respect of her then demoted tenancy.

159. The officer said that he wasn't entirely comfortable with taking Mrs Thomas back to court for eviction under the demoted tenancy on the level of evidence that
was then available, but felt sufficiently sympathetic to the Smiths’ situation to try to find a solution.

160. He said that he was now aware that under a tenancy demotion, the judge has no discretion over the matter and that the case would have been automatically referred for eviction subject to the administrative procedures having being conducted correctly. However he was concerned about whether the decision was proportionate and he did not want the authority to be seen to be abusing the power it had. He said that he was not surprised when the member’s panel decided to uphold Mrs Thomas’s appeal due to the lack of evidence at that time.

161. The officer was asked for his response to the assertion of the Smiths that he put pressure on them to go to court, causing them distress. The officer was adamant that he was trying to respond to their request for the Council to take action and explain to them in a realistic way that the weight of evidence at court would be much stronger if they were present to demonstrate the impact of events upon them. He acknowledged however, that subsequent events had shown that the Smiths had not understood what he was trying to put across or the processes to be followed and said that he had already apologised to them for the misunderstanding.

162. Asked why the Smiths appeared to have the impression that they would be attending the appeal panel, the officer said that he did not know how they had come by this impression and that ultimately it was a decision for the panel as to who would and would not attend and he felt he had made this clear to the Smiths.

163. He said that as far as he was aware the position with Mrs Thomas was now resolved since the departure of the Smiths.

164. He said that he was mindful that possession proceedings were only one possibility to resolving such problems and that a pragmatic approach was often necessary and that some of the Council’s ASB cases had been satisfactorily resolved by relocating victims due to difficulties encountered in adopting other approaches.
WHAT NORTH WALES POLICE (NWP) HAD TO SAY

Chronology

165. NWP advised that David had a police record dating back to 1998 when he was aged 10 and was apprehended for assaulting a young girl with a stick. His record showed a gradually deteriorating pattern with convictions for assault, the use of knives, grievous bodily harm, affray, offences involving alcohol abuse and drug possession. In subsequent years there were fairly regular problems, gradually escalating in severity until in October 2002, NWP sought and obtained the first ASBO against him.

166. In December 2004, NWP obtained a CrASBO following acts of criminal assault and grievous bodily harm; this order placed him under curfew and this was to be in place for five years and preclude him from entering the area of his home.

167. NWP advised that David had been involved in sieges at the Mrs Thomas’s home when seeking to evade arrest having breached his injunction either by returning to the estate or by committing other offences in the locality. These events had sometimes resulted in the attendance of armed response units at Mrs Thomas’s address as David was by then deemed to represent a significant risk to the safety of police officers.

168. During 2005, Mrs Thomas was convicted with her son for threatening behaviour and witness intimidation against a Miss F, who had agreed to give evidence at court in relation to charges of criminal damage. Miss F was a lone woman with a young child and was living in privately rented accommodation on the estate.

169. Miss F had received direct threats to her life from Mrs Thomas, David and an associate if she gave evidence against him at court for criminal damage. She suffered attacks of various kinds on her home, with her front door being repeatedly kicked and had a brick thrown through her window and raw eggs thrown at the house. Mrs Thomas and her son were subsequently convicted for threatening behaviour, witness intimidation and David was also convicted of criminal damage.
170. On another date Mrs Thomas was involved in an assault upon a woman’s face with a mobile phone which damaged her eye and broke her eye socket. The victim did not press charges due to fear of reprisals but the event was recorded.

171. In the ASBRG meeting of January 2006, the NWP representative recommended that the Council should consider evicting Mrs Thomas as such was the impact upon the community of the criminal and anti social events centred on her home and due the frequency and severity of her breaches of the tenancy conditions. At this meeting, local RSL’s reported on their ASB cases and the fact that they were evicting the most severe perpetrators and NWP commented that it did not understand why the Council was not taking similar action. NWP offered to provide the Council with its evidence files to support any civil action it chose to take.

172. Becoming increasingly frustrated with the lack of effective action on the part of the Council and the continuing and severe impact of the family upon the community in general, and the Smith family in particular, NWP approached the ASB co-ordinator for Clwyd Alyn to see if they would be prepared to take action to protect Mr and Mrs Smith.

173. Clwyd Alyn responded positively to this approach and NWP provided its files to them and gave witness statements which included the criminal history of the family and the impact upon the Smiths of the events they had reported. Based upon this and statements from the Smiths, Clwyd Alyn sought and obtained variation of the existing NWP ASBO to an ASBi which excluded David from the locality of his home. This required David not to threaten or intimidate Mr and Mrs Smith or any other individual and he was also required to stay away from two named associates. A power of arrest was attached to the injunction.

174. NWP asked for a meeting with the Council’s legal representative and it advised the Council as to the civil remedies at its disposal. The ASB co-ordinator for Clwyd Alyn also attended this meeting in order to offer assistance to the Council as he had considerable experience of legal action in such cases and explained that the Council could take action under its tenancy conditions using as evidence the orders that he and NWP had obtained. As well as suggesting a range of civil remedies, NWP had
queried with the Council why it had not sought an exclusion order on David to remove him from the parental home. It had been unfortunate that many of the instances reported by the Smiths did not satisfy the criminal burden of proof but the police felt that the Council should have been able to act in many of the instances on the basis of “balance of probability” this being the appropriate test for a civil judgement.

175. In October 2006, NWP arrested Mrs Thomas’s partner at her home as he was in breach of bail conditions for a previous offence through living there rather than at the address to which he had previously been bailed. He was charged in connection with this offence and, due the circumstances in which he was found, was also charged with possession of drugs and failing to surrender to custody. NWP passed on this information to the Council as it constituted further breaches of Mrs Thomas’s tenancy conditions. It did not appear to NWP that there was any action as a result.

176. The CBM commented that he had been disappointed with the conduct of the possession proceedings against Mrs Thomas where, despite having the benefit of his attendance as a witness, together with an officer from Clwyd Alyn, the services of a barrister and substantial evidence at its disposal, the Council’s actions became confused on the day and it appeared to him that they nearly failed to obtain a remedy of any sort.

177. In February 2007, David and his associates were found guilty of an unprovoked attack with a baseball bat on a member of the public in which he sustained a fractured skull. They were sentenced for grievous bodily harm and other weapons were subsequently found in their properties during a police raid. David was sentenced to twelve months imprisonment, which was suspended for two years and his CrASBO was extended to December 2009.

178. In February 2007, the police provided the Council with further records and statements to assist it taking civil action in relation to Mrs Thomas and also worked with Clwyd Alyn to secure the committal of David to prison for breaches of the CrASBO. NWP’s records showed David’s history of arrests for repeated breaches of orders, often within hours of release from custody and he is currently in custody,
following further breaches of his orders and for assaulting police officers in July 2008.

179. The police also said that the daughters of Mrs Thomas have been given warnings regarding their behaviour on the estate but currently have no convictions.

180. NWP said that they had noticed some diminution of complaints to them during the period that Mrs Thomas’s tenancy demotion was in effect but otherwise complaints and incidents were regular occurrences, with records showing David sometimes involved in as many as four offences in a day. NWP said that their records showed that incidents reported by the Smiths increased when the tenancy demotion ended and that the Smiths were currently considering the implications of pressing charges for events that occurred towards the end of their occupancy; a major concern for them being the possibility of their new address becoming known. NWP’s level of concern for the safety of the Smiths was such that it provided a police escort when they moved out of the house and to limit the likelihood of their being followed.

Police Witness Statements
181. NWP’s witness statements for various court actions said that for many years, David had been identified as a catalyst for problems of ASB and intimidation in the locality and was regarded as a ring leader for local youths. His presence on the estate made collective behaviour more threatening and incidents would increase when he was due to be released from prison. They spoke of the threat he posed within the community where he was often described as a “one man crime wave”.

182. One of the witness statements submitted by the police reads as follows,

“This gang, led by the defendant [David] are systematically creating a climate of sustained fear, threats, violence and harassment in this community by maliciously targeting vulnerable residents of this mixed tenure estate.”

183. Other statements from the police express concerns about the role of Mrs Thomas, the Council’s tenant, in providing shelter for her son in her home even
when he was prohibited by injunction from entering the estate and that she had actively supported some of his criminal endeavours, including intimidating a potential witness against him.

184. Information was also passed to NWP that David and the gang had a website promoting their activities. It featured a photograph of David extending his middle finger towards the viewer, with the caption,

“F*** your ASBO”.

184. Shortly after the Council failed at court to get a possession order for Mrs Thomas’s property, NWP was also contacted by a councillor who was disturbed to receive an email bearing Mrs Thomas’s email address which said,

“We won. We get away with everything. We rule [the estate]”.

185. After investigating this matter, the police were unable to take any action as the email had been sent from an internet café and authorship could not be proven.

186. A police sergeant who had been seconded to improve multi-agency working on cases of ASB said that during her involvement from January 2007 to February 2008, there was a structure put in place to ensure that cases were escalated when particular concerns were highlighted and that she had been instrumental in recommending that more priority be given to the Smiths’ complaints due to the racist undertones and recommended that a possession be sought due to the long term nature of the case.

187. The sergeant said that in her initial dealings with him, the ASB manager of the Council had been hesitant to act and that she put this down to a lack of knowing what to do rather than being indifferent to the situation. She made him aware that inactivity was not an option and following this, legal advice was sought and an agreement was reached to seek an order for eviction of Mrs Thomas under the demoted tenancy.
188. Having reviewed the lengthy case history and even though the events being reported at that time were not as severe as had been the case previously, she said that she felt it was appropriate to advise the Council to put the evidence before a judge for a decision. She needed to advise the Council that under a demoted tenancy, an eviction order was automatic provided the judge was satisfied that the Council had administered the application and review process correctly.

**WHAT CLWYD ALYN HAD TO SAY**

**Former ASB Co-Coordinator for Clwyd Alyn Housing Association**

189. This officer advised that he had joined Clwyd Alyn as its first ASB officer in October 2004 and was later promoted to ASB coordinator when the team was strengthened and that he had left in February 2007. Prior to that he said that he had worked in housing for a local authority and that he had dealt with ASB cases since 1996. He said that he had found in his experience that simply to serve a notice of seeking possession in such cases would not work and placed witnesses at risk as the grounds for the order are revealed to the perpetrator through the content of the notice. He said that the first priority of a landlord should be to protect the victims and witnesses by obtaining an *ex parte* injunction on the perpetrator and then consider what the most appropriate next step should be.

190. He said that his first involvement with the Smith case was when the community policing sergeant telephoned him saying that he was very concerned about the impact upon the Smiths, particularly their son, of ongoing ASB from a Conwy Council tenant. He said that he had not been made aware of the case previously but said that it was being dealt with at estate level and that he was later told that the housing officers had been under the impression that Conwy CBC was seeking possession of the perpetrator’s property.

191. He said that the NWP sergeant had outlined the problems that faced the Smiths and said that although the Council had said it would take possession proceedings, the situation appeared to be taking a long time to resolve and there was still no court date. The sergeant asked whether there was any action that Clwyd Alyn could take because the main victims were their tenants, particularly as there were racial aspects to the case and that the Smiths had reported feeling under threat.
192. The officer said that he had asked NWP for a statement from the CBM so that a full picture could be gathered. He also spoke to the HLS about the case but found that the Council had no strategy in place for resolving the problems. He said that the HLS was still considering at that time whether to apply for possession but he was concerned about the impact upon the Smiths of any further delay in resolving the case. He also had misgivings about the efficacy and appropriateness of the Council serving NOSP in the case for the reasons previously outlined.

193. He went to see the Smiths the next day and was extremely concerned at the impact that the situation appeared to have had on them to the extent that it caused him personal distress even though he had dealt with many serious ASB cases over the years. He said that he was concerned at Mrs Smith’s extremely emotional state and that he found Mr Smith to be in an extremely poor state of health and vulnerable due to a range of disabilities. He discussed with them what action Clwyd Alyn could take in order to protect them and that he would be seeking an injunction as a matter of urgency. He advised them not to engage with the media, which they had started to do at that time in their desperation, as it would risk making any action taken by Clwyd Alyn less effective and they agreed to co-operate with this.

194. He considered all aspects of the case and said he was aware that in such cases some people may exaggerate but did not find this to be the case with the Smiths. He found that their main wish was to live in peace and without further disruption to their lives and even though events had been severe, they did not wish to move at that time if appropriate protection was put in place.

195. He said that in line with the recommendations in the 1999 Macpherson report on the death of Stephen Lawrence, he always adopted the principle that if an act was perceived as racist by the victim, then it was to be treated as such. He gave due weight to this aspect of the Smiths’ complaint, together with the perceived threat and the fact that their problems were emanating from a family that was known within the locality to be capable of criminal and threatening behaviour.
196. These factors heightened the level of the injunction that he sought and he advised the HLS that any injunction obtained would be publicised. He had hoped that this would push the Council into taking action in relation to Mrs Thomas. He said that NWP was very concerned about the lack of action by the Council even after their numerous interventions in relation to criminal activity by various family members and that he resolved to work as closely with NWP and with the Council as possible in order to resolve the situation. He said that he went to meet the legal officer for the Council together with the community policing sergeant from NWP and the CBM to discuss the case and they suggested various civil remedies that appeared to be available to the Council in relation to Mrs Thomas and David. He recalled that the Council appeared to be resistant to taking this advice and appeared to expect NWP to deal with the situation.

197. Asked if he knew why the Council appeared to believe that he had intended to take out ASBi’s against both David and Mrs Thomas, he said that he had never said that he intended to do this. He had told the Council that he would be seeking injunctive action against David and he believed that it was up to the Council, as her landlord, to pursue appropriate civil action against Mrs Thomas for the conduct of her tenancy and the consequences of her own behaviour and that he had given them as much advice on the legal remedies available as he could.

198. He said that he could not understand why, with NWP having given the Council appropriate advice and its evidential files, the Council only pursued possession proceedings, given the range of options available and were doing nothing to protect the Smiths, given the considerable risk involved.

199. He said that it had been obvious to him from the start of his involvement that the Smiths were living in fear and could not envisage being able to attend court. He said he took all necessary injunctive action without needing the Smiths to give evidence at court; their statements and the evidence from NWP were sufficient to obtain court orders upon David. He said that the Council could have taken a similar course of action in relation to Mrs Thomas’s behaviour. However, having elected to go for possession, he thought that the Council’s legal team should have been asking the court to provide an early court date, instead of accepting a routine date set by the
court which was some months away. He also thought it had sufficient grounds to have applied for an injunction to control her behaviour and protect the Smiths in the interim.

200. Asked what he thought the Council’s prospects had been of getting a possession order, he said that he thought it was a foregone conclusion on the strength of the evidence that he had seen. NWP was “bending over backwards” to provide evidence to both the Council and Clwyd Alyn to support civil action and he thought that the strength of the case was such that the court would have no other option but to grant outright possession. He said that he attended the possession hearing as a witness for the Council and that it had instructed a barrister to represent its case at court.

201. He was extremely surprised that at the hearing, the Council did not put forward its case for outright possession but had entered immediately into discussion over suspended possession order and this was being opposed by Mrs Thomas’s barrister. He thought that a suspended possession order was not a proportionate response to the weight of evidence available or the scale of the problem and he stressed to the Council’s barrister that NWP and others regarded the family as a major threat to the community and had provided evidence and statements to this effect. He formed the impression that the Council’s barrister and legal representative did not appear to know their remedy options on the day and he gave them what advice he could. He was then asked to discuss the case with Mrs Thomas’s barrister, on behalf of the Council. He did so and obtained agreement, in the absence of the Council being prepared to throw its weight behind a claim for outright possession, that a tenancy demotion was the best outcome that could be achieved on the day.

202. He was surprised given what he knew about the weight of evidence in the case that the Council had no positive will to push for a full possession order and that it had taken months to get the case to court, resulting in the Council’s position being weakened by dated evidence. He was personally disappointed with the outcome but felt that at least it left Mrs Thomas’s tenancy in a vulnerable position as only one further incident would give the Council the ability to secure her eviction.
203. On the basis of the evidence he had seen he said that he would have pursued full possession had it been a Clwyd Alyn tenancy and also for an exclusion order on David if one had not had already been in place. At that time he said that David was breaching the order and that his mother was actively harbouring him and supporting him in his activities. He said that all the evidence available indicated that the unacceptable behaviour would recur on the balance of probabilities and this was enough to satisfy the burden of proof for civil proceedings. He said that he had never seen a more weighted case for possession.

204. With regard to the first injunction against David obtained by Clwyd Alyn he said that from the time that NWP officer had made him aware of the case, he had within 24 hours, seen the Smiths, assessed the situation and obtained management agreement to proceed to court. He obtained an ex parte injunction and then a final ASBi within two weeks of being made aware of the case. He said that due to the volume of evidence available both from NWP and the Smiths, no further investigation was required by him in order to take the case to court.

205. After obtaining the order, he said that he had visited the Smiths to advise them of the effect of the order and was surprised to find that even after recent and severe events, the Council had put no support package in place for the Smiths.

206. Asked what he thought about the quality of the joint working between the Council and other parties he said that at no stage when he was involved in the case was there anything he would regard as joint working from the Council towards other parties. NWP was supplying the same advice, files and information both to Conwy and to Clwyd Alyn but only Clwyd Alyn was responding decisively in relation to civil remedies to protect the Smiths and the wider community. He said that Conwy CBC was not in any sense an active or effective partner in seeking to resolve the situation.

207. He said that he did not think that Clwyd Alyn should have had to go to the expense it did to resolve matters for their tenant when it was ultimately the responsibility of the Council to ensure that its tenants complied with its conditions of tenancy and to exercise its extensive powers to tackle ASB within the community.
He said that during his involvement with the estate it was clear to him that Mrs Thomas’s property was a magnet for all of the problems on the estate, being the focal point for David and his gang. It was known that Mrs Thomas supplied alcohol to these youths and allowed them to congregate in her home.

The officer said that he had searched the internet to gain more information about problems on the estate and found a website for the gang. It featured a photograph of David extending a middle finger towards the viewer and saying, “F*** your ASBO”. The site glorified and promoted the activities of the gang and appeared to have a large number of followers.

He thought that the Council’s response to the situation lacked the recognition that current legislation empowered it to act on perceived as well as actual threat and this was what the Smiths were expressing about the situation, as demonstrated by their reluctance to attend court. He said that there was more than adequate evidence for civil proceedings throughout the case as all evidence pointed to that property, to David, his friends and his family being the source of the problems experienced by the Smiths in particular and the estate in general. No other source of any of the problems experienced by the Smiths was known to him and he had made enquiries to establish this.

He said that the Council had in his view many avenues that they could have taken in order to deal with the problems and enough evidence to satisfy the burden of proof for civil cases. They didn’t even have to investigate as evidence was “handed to them on a plate”, in the form of the Smiths’ statements, his own and the police files on the criminal behaviour of the family. He had managed to obtain orders without requiring the Smiths to attend court and the Council could have done this at any time before or since.

With regard to whether he had been aware of any considerations as to whether the Smiths should be treated as being homeless, he said that he could not see a more adequate case of priority need under homelessness legislation and could not understand why they had not been prioritised for a move much earlier by the Council.
213. The officer said that his strategy in dealing with such a serious case would be to assess it and come to a view very quickly about what needed to happen, initially to protect the victims, and subsequently to deal with the perpetrator. In line with this he had immediately sought and obtained the approval of his director to take legal action when he was made aware of the situation and its severity. He said that he had been very disappointed to discover that the tenancy of Mrs Thomas had subsequently been reinstated given the long term and recurring nature of the problems and was sorry that things had got as far as they had.

214. He said that the Council’s solicitor always seemed to think that the criminal standard of proof was required in order to act in such cases which was not correct. Also he said that in civil cases the courts pay high regard to the impact of events upon the individual and that this appeared not to have been assessed by the Council in any way as there was very little personal contact with the Smiths.

215. He said was also aware that the Council had been in the habit of blaming the courts for failing to support applications from the Council but he said this had not been his experience. He said that he had not failed in any of the ASB applications he had made to the courts in North Wales.

216. He said that Clwyd Alyn contracted legal work to an external firm of solicitors and that there had been occasions when solicitors had not been available at short notice and he had conducted the cases in court himself and obtained the orders successfully. His point was that if he was able to obtain orders without the benefit of a solicitor he did not understand why the Council should have claimed to have such difficulties when it had access to the same courts and to the resources to employ barristers. He said that he had never found the courts reluctant to give orders and did not understand why the Council repeatedly used this as an excuse. He said that he had once been summoned to attend a committee meeting when the Council’s solicitor had spoken to the members about this problem and when it was his turn to speak he then informed them of the numerous orders and injunctions with power of arrest that he had successfully obtained for Clwyd Alyn using the same courts as would have been used by the Council.
217. He said that the judge had made a number of comments in relation to the ASBi for David, which he regarded as the most draconian that had been issued in North Wales and that he was not aware of any more powerful order before or since. It allowed for David to be arrested and be put in front of a judge within 24 hours when a breach occurred and that this had been a repeated aspect of his behaviour when he returned to his mother’s home within hours or days of release from prison and committed other offences along the way.

218. He said that David is regarded as a very dangerous and threatening individual with complete contempt for authority. He said there were no reports to suggest any mental health problems that would give an understanding to some of the traits of his behaviour. He said that the judge at the possession hearing had commented that the Smiths had been suffering a horrendous situation living next door to such an individual and his family. He said that the order sent out a message to the community, secured the Smiths situation and formed a basis for the Council to seek possession or take other action in relation to Mrs Thomas. He thought that removing the Thomas household from that environment would have improved the quality of life of everyone on the estate overnight.

219. It had concerned him that although there was a great deal of focus on David for obvious reasons, Mrs Thomas’s role in sheltering him when he was evading arrest, covering for him and supporting him in his activities should not be overlooked.

220. In conclusion, he said he was surprised that the Council had not given the racial elements of the case more prominence and that it had restricted itself to only considering possession proceedings when this is a difficult remedy to obtain and there were more speedy and effective remedies available.

**Interview with ASB Co-ordinator- Clwyd Alyn Housing Association**

221. This officer said that her knowledge of the estate and locality in which the events took place dated back over twelve years as she had been a police constable based at the local station for nine years and then the NWP ASB coordinator for the Conwy area, during which time she had attended meetings of the ASBRG. She had
also worked in the past as a Safe Communities officer for a local authority, dealing primarily with ASB and had joined Clwyd Alyn as the ASB coordinator in June 2007.

222. She said that she had been involved in the case from the start of her post at Clwyd Alyn and was involved in the follow up work to the injunctions obtained by her predecessor. The case was handed to her because of her background and knowledge of criminal law in view of David’s repeated breaches of his ASBi.

223. She said that the support package in place for the Smiths by Clwyd Alyn included support from the ASB officer and herself and that they were available on the by telephone whenever they rang. She said that she had always visited after they reported an incident in order to obtain more detail from them and to give support.

224. She said that David seemed to be always seeking to enhance his reputation on the estate by ever more outrageous acts and his behaviour had become more extreme over the years culminating in September 2007 in a siege at the property when he was trying to evade arrest and which she understood to have required the intervention of armed police officers and negotiators. She said that he is currently back in prison, following a further assault on police officers and being in breach of his ASBi and that he is regarded as an individual who has no respect for others nor for any rules or guidelines. She had recently seen his current website which features a photograph of him holding a knife.

225. She said that when he was released from prison last September he should have reported to his probation officer and would have been accommodated in a hostel out of the county area but instead he went straight to his home locality in breach of his ASBi, even though he and the family knew he should not be there and would be arrested when located and returned to custody.

226. When asked to clarify what happened when she did a joint visit to the Smiths with the Council’s ASBU manager, she said that he had pursued with the Smiths the suggestion that they needed to go to court to give evidence if the Council was to succeed in evicting Mrs Thomas under the demoted tenancy. She said that she assumed that he knew the correct procedure to be followed and was correct in what
he was saying i.e. that a further court appearance by the Council and any witnesses would be needed to provide additional evidence.

227. When it became evident that the Smiths did not wish to go to court due to their fear, distress and ill health, she suggested that instead she should obtain a statement from them to be put before the court. It was also agreed by the ASBU manager and herself to do everything possible to look at relocating the family. Clwyd Alyn placed the family at the top of their housing list and it was some time later, when the Smiths had had no response from the Council on this, that she asked the ASBU manager about it. He told her that the Council had allocated the family more points but that this had not brought them to the top of the Council’s list.

228. Some weeks later she was approached by Mr Smith who was concerned that the ASBU manager had again approached his wife to go to court, even though it had been previously agreed that a statement would be prepared. She discussed this with her colleague, who had a local authority background and told her that under a demoted tenancy there was no need for the Council to prove the grounds again or provide additional evidence but that it would only need to give Mrs Thomas the opportunity to appeal and be able to demonstrate to the court that it had followed the correct administrative procedures. There was no need to prove the grounds again and therefore no need for the Smiths or anyone else to give further evidence of breaches to the court. She said that she and her colleague confirmed the position with Clwyd Alyn’s solicitors at the Association’s cost and she had passed this information on to the Council’s legal section with a request that the information be passed to the solicitor dealing with the case.

229. Asked how the Smiths gained the impression that they would attend the panel, she said that this had been discussed with them within the context of it being a theoretical alternative to going to court. The Smiths told her they thought they could cope with attending the panel as it was a controlled environment and they understood that they may not have to be in the presence of Mrs Thomas as they would in court. She informed the ASBU manager of the Smiths’ willingness to attend Mrs Thomas’s appeal panel but was told that the decision rested with the panel members. In her witness statement for the Council’s panel, she described past
events, including what she had seen and heard on the DVD of verbal abuse of Mrs Smith by Mrs Thomas’s daughters. In this statement she described the impact of events upon them and said that after years of abuse they were “traumatised” by their experiences.

230. With regard to her general views of the case, she said that when she had seen the statements of the CBM from May 2007 together with emails and reports of racial abuse, she was surprised that possession had not been sought earlier in the case. She thought that the DVD evidence alone was sufficient to have prompted eviction under the demoted tenancy, given that there also were many instances of abuse and damage reported in that period, with direct witness evidence by the Smiths themselves and the strong probability that Mrs Thomas and family were responsible for these events. This was in her experience sufficient to satisfy the burden of proof under a civil action.

231. She felt that the case had been allowed to drag on too long and found that the Smiths lost any confidence in the Council being able to take any effective action against their tenant and they gave up their expectations of effective action. Although the Smiths were witnesses to what happened to them, this did not appear to be sufficient evidence for the Council, while Mrs Thomas often only had her words of denial or support from relatives or known associates and yet this was consistently accepted by the Council. She did not see why Mrs Thomas’s denials were being allowed to outweigh the word of the Smiths.

232. She said that there was no one else in the locality to whom she could attribute the difficulties experienced by the Smiths other than Mrs Thomas, David or those connected to him. During her time on the case she said that the majority of the problems experienced by the Smiths had emanated from Mrs Thomas herself or by her failure to control family members and visitors.

233. She said that it was not surprising that towards the end, the Smiths through fear and disappointment and being in poor health did not want any action taken by the Council as they did not feel by this stage that anything they did would make any difference or be handled correctly. They came to this view because the Council had
failed to have any beneficial effect on the situation after so many years of complaint and had recently disclosed their email address to Mrs Thomas in the appeal proceedings. As before, they remained in fear of retaliation following their complaints to the Council and this was not an unreasonable view given the nature of the family concerned. She said she found that the Smiths were gradually “worn down” and intimidated by the network of contacts that the Thomas family had developed within the community.

234. She said that she did not regard the Council’s investigations as adequate and that she did not see how anyone could investigate complaints properly when they had never interviewed the people making the complaints. She would expect someone to visit and gain the information at first hand in order to get the full details of what had happened and to assess the impact of the events upon the victim, this being significant evidence in any civil proceedings.

235. When asked what had been the trigger for the Association’s decision to purchase a property for the Smiths, she said that it had been the panel decision not to pursue the eviction of Mrs Thomas. She said that at this time it was known that Mrs Thomas was trying to marshal support for David to be allowed to return home and it was considered that the Smiths’ evidence towards his conviction placed them at ongoing risk and Clwyd Alyn decided that it had to act to protect the Smiths. The Association regarded the Smiths’ wellbeing as paramount and considered that they should not suffer any longer, particularly in view of the health problems and presence of a young child. It did not think that the problems would simply disappear, given the history and long term nature of the harassment.

236. She said that Clwyd Alyn had taken into consideration the severity of the problems and what they saw as a strong probability of recurrence of the abuse and it was felt that the Smiths would not be safe in the property in the longer term. This view was unfortunately borne out when they began to experience an increase in incidents of damage and abuse after the appeal was upheld and again after Mrs Thomas’s tenancy was restored.
237. She said that Clwyd Alyn had considered two alternative properties for the Smiths, but ultimately had found nothing available within their stock that could be adapted to their needs. After the panel decision, Clwyd Alyn enhanced the Smiths’ priority for a move to the top of their list and looked at all alternate means of finding a suitable property for the family. It found two or three properties in the open market and bought the one that was assessed as being the most suitable for adaptation.

238. Asked whether she had been aware of any considerations by the Council in relation to the Smiths being technically homeless, she said that she was aware that the Smiths could have approached the homelessness team of the Council for assistance but she was not sure that they could have coped with that process or would have wanted to follow that route. They had withdrawn from the Council’s housing list by that time because of their experiences as they did not wish the Council to be their landlord. They expressed a lack of faith in the Council due to the inaction and communication problems.

239. She said that during her time of dealing with the ASBRG it was commonly regarded as a forum that was not working. Usually only NWP criminal cases were looked at and the Council’s housing cases were never put forward for discussion.

240. Asked what she felt about the quality of the partnering arrangements with the Council over the case, she said that it could not be regarded in any sense as a full working partnership, given the Council’s reluctance to act.

241. She said that she was personally offended by the Council, having blamed her in its formal response to the Ombudsman for not knowing about the procedures for possession under a demoted tenancy and of having given incorrect information to the Smiths. She re-iterated that it was she who had guided the Council in the right direction as to the correct proceedings. She said that the level of her knowledge at the time was such that she was unaware at the time of the joint visit of the procedures relating to demoted tenancies in local authorities and assumed the ASBU manager was correct in what he was telling the Smiths, namely that the Council had to present more evidence at court and needed statements from them or their attendance to give personal evidence of further breaches. She said it was only
after Clwyd Alyn obtained legal opinion and passed this on to the Council that they
accepted that they did not need to go back to Court with further witnesses or
evidence. This legal opinion had been obtained at the expense of Clwyd Alyn.

242. Asked whether she felt that the Council had explored all the options open to it,
she said it had not and that without her predecessor's work she was not sure what
the Council would have achieved on the case as they were not skilled in this area of
activity. She said that she had, in her previous capacity, spoken to the former HLS
about making more use of injunctions, ASBO’s and seeking a wider range of options.
His response had been that “the solicitors just knock us back”. She had seen a
complete lack of pro-activity in the Council in relation to ASB.

243. In her final comments, she reiterated that she only appreciated the full extent of
what the Smiths had been suffering when she joined Clwyd Alyn. It was a high profile
case there and she reviewed all the information that had been collated. She was
surprised that although David had been mentioned within the context of the ASBRG
it had only been in relation to the ASBO obtained by NWP and the impact upon the
Smiths was never a point of discussion. However, when she obtained full access to
the records they showed that they had been complaining throughout. She said she
had considered all aspects of the case and had no doubt that the Smiths had been
through hell in past years and had not exaggerated their experiences.

244. She said that the main agencies involved in trying to bring some peace to the
locality were her predecessor in post at Clwyd Alyn and NWP. She said through her
enquiries she found that the perpetrators of ASB in the locality were David and his
immediate associates, there were no other key players; this was backed up by the
numerous statements from NWP describing their activities and impact upon the
community.

245. She also felt that in its initial response to the Ombudsman and in her previous
dealings, the Council repeatedly failed to acknowledge Mrs Thomas’s role as a
perpetrator of harassment and did not acknowledge her responsibility for controlling
her family and visitors as required by her tenancy conditions.
246. She said that the majority of issues that had impacted directly on the Smiths came from Mrs Thomas herself and from her daughters. She said that the abuse continued when David was in prison when Mrs Thomas and her daughters took on the mantle of causing distress to the Smiths. She said that most of the problems reported by the Smiths related to were caused by Mrs Thomas herself.

247. She noticed that within its response, the Council appeared to take credit for assisting with the rehousing of the Smiths but she believed that that they had paid a fairly minor role in this issue and had, after all, failed to find a remedy over many years to the problems presented by the Thomas family despite all the evidence and resources at its disposal.

**Interview with Director of Housing – Clwyd Alyn Housing Association**

248. This officer said that in common with many housing organisations, Clwyd Alyn had perceived a need for ASB to be supplemented in the generic housing officer role and for a dedicated ASB officer to be appointed. He said that the Association had initially appointed an ASB officer and that he had later been promoted to coordinator when the team was increased in size. He said that housing officers would have been dealing with the case before the ASB officer was appointed and that only after this time did the Association have more confidence in tackling issues of ASB and had begun to take a more proactive stance. He said that he would not wish to challenge the Smiths’ position that when they complained to Clwyd Alyn in the earlier stages of the problems they were advised to direct their complaints about the council tenant’s behaviour to the Council.

249. He said that when the ASB officer became involved in the case, Clwyd Alyn was very surprised at the large volume of evidence that was available and ready to be acted upon immediately with little further investigation. He said that the strategy of the Association was to try and tackle the source of ASB rather than move victims, but that it would obviously listen to the victim’s preferences. He said that the Smiths had been more willing to move in the latter stages of the case and this was given higher priority after the Council panel decision not to evict Mrs Thomas. The Association renewed its efforts at that time in order to bring a quick and lasting
solution and used existing grant funding for the purpose of purchasing a property when it could find nothing suitable for adaptation within its own stock.

250. He said that under prevailing financial arrangements, Clwyd Alyn had to approach the Council to confirm that the grant could be used for that purpose and it agreed. He said that this was existing funding that Clwyd held and could have spent on other housing purposes; it was not an additional allocation of funds. He said that it was not the case that the Smiths had refused previous transfers but that properties previously identified for them to move into were ultimately found not to be suitable due to Mr Smith’s need for ground floor facilities, also their first preference had been to remain.

251. Asked about the quality of the partnering arrangements with the Council in this matter, he said that in general the Association has a very good working relationship with the Council but that with regard in relation to this particular matter he had been surprised at the weight of evidence that had been available to them on the case and said that Clwyd Alyn would have taken legal action much earlier had it been in the Council’s position as landlord of the perpetrators. He said that he felt that his officers had coped with the issues very well and that they had done as much as possible in the circumstances and probably over and above that normally required. They had acted quickly and obtained an ASBi within two weeks. He said that he thought that the Council could have taken this action and the case could have been progressed more quickly; although he did not wish to underplay the difficulties in dealing with such situations, Clwyd Alyn had found it possible to take action.

252. He said that the Association’s priority had been to protect their tenant and they felt that ultimately they had produced good results for the tenant. They were frustrated that all of this had to be done at the cost of Clwyd Alyn rather than perhaps being shared with the Council, particularly as the Association had only a few houses in that locality. He said that his ASB team comprised only two staff and had the case been resolved more speedily by the Council, they could have been dealing with other cases. He said that ultimately Clwyd Alyn found it possible to take swift and effective action on the available evidence and that his staff had been proactive, for example,
looking at websites to establish and understand the nature of the characters they were dealing with.

253. With regards to the ASBRG, he said that as far as he was aware things were working satisfactorily at the present time and said that Clwyd Alyn was represented at the meetings by operational staff. He said that he was confident that his own staff keep up to date with best practice and said that the Association had recently funded and hosted a conference for RSLs in North Wales to raise the profile of ASB within the community, with discussion groups to share best practice. He said that this had been attended by NWP, Environmental Health officers, staff from other partner agencies and there were national speakers in attendance.

254. In his closing comments, he said that having reviewed the case, he felt that Clwyd Alyn had been as proactive as possible in the circumstances and although he did not wish to under estimate the scale of challenge that some individuals present, he felt that landlords could not “duck the challenges” presented. He said that such cases needed to be dealt with promptly from the very start as things can go wrong and cases tend to become more difficult to deal with. He said that Clwyd Alyn had found that the best strategy was to be decisive and act quickly, and to identify at the outset who was the perpetrator and who was the victim. He said that he had noticed a tendency, if this failed to happen, for the perpetrator to present themselves as the victim to “muddy the waters” and for action then to become ineffective and confused.

255. He said that there are currently many options available to address ASB and that pursuing NOSP as the only solution is a blunt instrument and less likely to be effective in isolation. He said that the courts will tend to be unsympathetic if this approach is adopted in the face of so many appropriate alternatives.

CONCLUSIONS

Past Events

256. There is evidence that various residents had complained about the Thomas family prior to the Smiths moving in to the locality and that the Smiths complained to the Council from early in 2003, shortly after moving in until their departure. The events complained of were severe and affected not only the Smiths and various
other individuals referred to in the report but also the general locality. The engagement of North Wales Police with the criminal activities of the family was regular throughout the period in question.

257. Given the timeframe covered by this complaint, it is perhaps not surprising that the complainants' concerns, the responses of the Council and my conclusions reflect those of previous investigations reported upon by the previous Ombudsman. However, I wish to record my personal concern in that the Smiths were particularly vulnerable by virtue of disability, ill health and language and that their young son was also a target for abuse. These factors should have led to priority being given to their complaints from the outset. In reaching my conclusions, I have taken into account the revised structures and procedures that the Council has put in place since past reports but must note that there were failings in the execution of those procedures that still led to an unsatisfactory service to the Smiths. Without wishing to revisit the critical comment made in past reports, I have taken my own view of the position and now list my finding that there was maladministration, leading to injustice, in the Council’s handling of the Smiths’ complaints in the following respects:-

(i) The Council had no proper procedures in place for dealing with anti social behaviour until November 2005 and no procedure in place for dealing with racial harassment until late 2006 and the Smiths were complaining during these periods and beyond.

(ii) Even when such procedures were in place, the Smiths were not informed of them and they were effectively excluded from the processes which the Council should have followed and there were significant failings in the implementation of those procedures. The evidence shows a lack of personal contact with the Smiths by the Council staff responsible for investigating the complaints and for managing Mrs Thomas’s tenancy and those dealing with anti social behaviour, representing a failure to communicate with the Smiths in the manner required by the procedures or to adopt the “victim centred” approach to which the Council committed itself some time ago.
(iii) The Council did not at any stage consider all of the legal remedies at its disposal and did not act in a timely or effective manner. It should have sought a solution from the outset of the complaints but it did not work well or supportively with the partner agencies engaged in the situation. I see that most of the effective actions on the case have been initiated by and conducted at the considerable expense of other bodies, despite the Council having primary responsibility for enforcing Mrs Thomas’s tenancy conditions and having powers and duties to the wider community under prevailing legislation. In marked contrast, the joint working between Clwyd Alyn Housing Association and North Wales Police was exemplary and the ensuing court applications were successful. I note that Clwyd Alyn was a minority landlord in the locality.

(iv) Whilst the Council repeatedly referred to a lack of evidence in the case, it is evident that Clwyd Alyn was able to act on the evidence that was also available to the Council and that it successfully obtained civil remedies. The Council has been criticised for misdirecting itself on this matter in a report by the previous Ombudsman (2004/0537). Further, I am persuaded by the evidence of the complainants, NWP and Clwyd Alyn’s current ASB coordinator that the Council did not fully understand the procedures for enforcement under a demoted tenancy.

(v) No evidence was seen of appropriate considerations by the Council under Article 8 of the Human Rights Act with regard to the proportionality of decisions taken on the case and clearly the Smiths’ human rights were engaged throughout, given the direct impact of events upon their home and private life. Indeed, the Council appears to have gone to extraordinary lengths to preserve Mrs Thomas’s tenancy despite the negative and severe impact of her continued occupation upon the Smiths and the wider community.

(vi) Similarly there were no considerations of the Council’s duties under s183 of the Housing Act despite the quite extreme circumstances that the Smiths were living in, being in fear. Specific events occurred which should have led any local authority to invoke its duties in this regard, particularly given the vulnerabilities of the Smith family and the reported impact of events upon their
young child. This meant that the Smiths were denied the appropriate statutory considerations, the opportunity of temporary shelter and their right of appeal against any decision made under these provisions. These failings are of particular concern given that the previous Ombudsman reported upon them in relation to Conwy (2006/00636 and 2006/013920) and subsequently received assurances that these would be addressed through improved procedures and training for staff.

(vii) When the Council did take legal action it was tardy and ineffective and despite having procedures in place there was no monitoring by the Council of the Smiths' complaints of racial abuse and nuisance until August 2007 and no effective multi agency working prior to this point. From this time the case received scrutiny and the Smiths were under active consideration by Clwyd Alyn to be relocated; it is unfortunate that this proved to be a lengthy process given the lack of availability of suitable housing. The Smiths were in the latter stages reporting events, which although extremely distressing to them, were less intense than previously and latterly they indicated to the agencies that they did not wish further action to be taken. Communication failings occurred within this timeframe, including the disclosure of confidential information but the Council has already apologised for this and has taken steps to prevent a recurrence.

(viii) The Smiths complained that they were not given an opportunity to speak to the panel to give personal evidence of their experiences and this has left them with a particularly strong sense of injustice. I agree with them to the extent that it would have been appropriate for them to have been allowed to speak to the member panel. It would seem to me to be essential that officers should be able to submit their best evidence in such situations and the best evidence would have come from the victims themselves rather than from statements prepared by third parties. I believe that the Council needs to reconsider its approach to this situation should it arise again.

258. I find therefore that there have been repeated instances of maladministration in this case between mid 2003 and mid 2007 and that these matters led to injustice to the Smith family.
**Current Position**

259. The Council has provided evidence to me of its existing arrangements for the recording and monitoring of its anti social behaviour cases and has advised me that it intends to make further improvements by way of specialist software to prompt staff to take targeted action. There is evidence of a revised structure being in place for monitoring cases at all levels within the housing department and at strategic levels, with its partner agencies; however it has advised me this these arrangements are subject to change following stock transfer.

260. The Council now has the benefit of the services of a solicitor dedicated to dealing with anti social behaviour cases and it has outlined the benefits that this additional resource has brought to them.

261. I am grateful to the Council’s ASBU manager for providing additional information to the investigation and for acknowledging the need to reinforce the “victim centred” approach within the service and to provide for further training of estate officers in order to enhance their role and create greater ownership of cases. However I am concerned to note that the newly formed ASB team failed to deal adequately with these complainants, given their primary responsibility and role in dealing with such complaints.

262. I am also extremely concerned and disappointed to find, as demonstrated in this case, that failings are continuing to occur in relation to the absence of appropriate considerations under the Human Rights Act and Homelessness Act where severe anti social behaviour is evident and failing to pay due heed to complaints of racist abuse. The previous Ombudsman reported publicly on Conwy’s Council’s handling of these matters several times in the past, from 2005 onwards, but these same failings are still evident some considerable time after these reports were issued and after the Council’s assurances to my predecessor that these matters would be addressed and remedied.

263. I am also concerned by the continuing over-reliance of the Council upon evidence, input and initiative from North Wales Police in dealing with anti social behaviour, this also being a matter which has also been referred to in reports by my
predecessor. It is evident from this investigation that the Council required promptings and information from the police to take any degree of action on the case.

264. The result of these matters were a multiplicity of failings on the part of the Council which occurred over a long period of time and in a situation of such severity, with its undeniable impact not only upon the Smiths’ health and wellbeing but also upon other people in the community.

265. I have therefore decided given the foregoing problems, the high number of public reports already issued on this subject, which were accepted by the Council, and the continuing failings, that it is in the public interest to issue another report under s16 of the Act, which I require to be brought to the attention of the Cabinet of the Council. I need to remind this and other bodies within jurisdiction of their duties and powers in relation to anti social behaviour and to make them aware of what can be achieved in this area of activity through purposeful and speedy legal action as evidenced by the Anti Social Behaviour Team of Clwyd Alyn Housing Association.

266. I trust and expect that a further public report will underline the need for the Council to maintain the profile of addressing anti social behaviour in the community and to consider improvements in the delivery of this service, particularly at a time of major administrative change within the housing service in Conwy.

**Recommendations**

267. I **recommend** that within a month of the final report the Council, at corporate level, should make a fulsome and detailed apology to the Smiths for the failings in administering their complaints and should pay them the sum of £2,500 per annum for maladministration over a four year period.

268. I **recommend** that the Council or those exercising functions on its behalf provides additional training and improved procedures for staff to enable them to fully understand and implement their duties in relation to anti social behaviour under prevailing legislation, in particular the Human Rights Act, Article 8 and also their duties under s183 onwards of the Housing Act. I **require** the Council to provide me with evidence of these actions within three months of the date of this report.
269. I am pleased to advise that I have received agreement from the Council that it will implement the recommendations at paragraphs 267 and 268 of this report and I look forward to seeing the appropriate evidence of its actions in due course.

Peter Tyndall
Ombudsman
Date: 12 January 2009

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