

Item No.	Classification: Open	Date: 20/05/03	MEETING NAME: Executive
Report title:		REPORT OF THE LOCAL GOVERNMENT OMBUDSMAN (LGO) 02/B/00755	
Ward(s) or groups affected:			
From:		Chief Executive	

RECOMMENDATIONS

- 1 The Executive receives and notes the LGO report (02/B/00755 - Appendix A) finding maladministration and injustice against the Council.
- 2 The Executive notes the actions taken by the Director of Housing to implement the recommendations of the LGO.

BACKGROUND INFORMATION

The LGO concluded that:

- 3 the Council had misinformed Mr A about its policy on joint tenancies;
- 4 the Council's reasons for refusing Mr A's request for a joint tenancy with his mother bore no relation to the Council's policy;
- 5 the Council's refusal to grant a joint tenancy solely on the basis that it might give rise to a claim for Housing Benefit, covering part of the rent, relied on irrelevant considerations and that this was maladministration;
- 6 although the Council was aware from October 2001 of Mr A's mother's health problems, it failed to take these into account or to take up the offer of corroboration put forward by Mr A, despite the fact that his mother could no longer live independently and required care from Mr A and that ignoring such a material and relevant consideration such as this was maladministration.

KEY ISSUES FOR CONSIDERATION

List of LGO Recommendations in the case of Mr A

- 7 The Council pays Mr A the sum of £500 for compensation for his time and trouble and distress caused to Mr A and his mother.
- 8 The Council determines within its existing policy the application for Mr A and his mother to become direct tenants, ignoring all irrelevant considerations.
- 9 If the application is granted, makes Mrs A an ex-gratia payment equivalent to the amount of housing benefit she would have received had she applied for benefit as a joint tenant from 1 April 2000.
- 10 The Council review its policies and procedures in respect of joint tenancies to ensure that the maladministration identified by the Ombudsman does not, as far as possible, recur.

POLICY IMPLICATIONS

- 11 Review of policy and procedures relating to joint tenancies.

RESOURCE IMPLICATIONS

- 12 A compensation payment of £500.
- 13 The cost of reviewing its policy and procedures in respect of joint tenancies.

CONSULTATION

- 14 No consultation will take place in the future.

CONCURRENT REPORT OF BOROUGH SOLICITOR AND SECRETARY

- 15 Under the terms of the Trustees Act 1925 and section 34(1) of the Law of Property Act 1925, a tenancy can be granted to two or more persons holding an estate as joint tenants. Normally this occurs when the tenancy agreement is being entered into.

- 16 There is no obligation on the Council to vary the tenancy or agree to enter into a new tenancy with joint tenants, once the original tenancy has been entered into. The proposed joint tenant would have rights of succession and assignment provided they were a member of the tenants family, within the meaning of section 113 of the Housing act 1985, which includes Mrs A.
- 17 However the Council's policy recognises the hardship that such a rigid approach would lead to. Mrs A fell within the policy which states at 2(1) that request for joint tenancies should only be agreed where:
- the person to be added to the agreement was qualified to succeed on the death of a tenant and has been living with the tenant at their current address for at least 12 months and there are no arrears or other breaches of the tenancy.
- 18 Mrs A qualified to succeed and the LGO considered that she ought to have been granted a joint tenancy.
- 19 The Housing department may wish to consider their policy on the granting of joint tenancies and also consider creating guidelines as to when a request should be refused. The Housing department should, regardless of the Policy or any future guidelines, consider each case on its own merits and should have clear reasons for refusing such a request.

CONCURRENT REPORT OF THE DIRECTOR OF HOUSING

- 20 The Council accepts the finding of Maladministration in this case and recognises that there are a number of areas for improvement in terms of the application of its policy on and procedures for joint tenancies.
- 21 The Directorate of Housing has agreed to pay compensation to the complainant in the sum of £500 for the time and trouble and distress caused by its actions.
- 22 The complainant and his mother are to be granted a joint tenancy.
- 23 An ex-gratia payment is to be made to the complainant's mother, equivalent to the amount of Housing Benefit she would have received had she applied for benefit as a joint tenant, the period to run from 1 April 2000.

24 The Tenancy Agreement Working Party (TAWP) is to consider the Ombudsman's recommendations that the Council review its policies and procedures in respect of joint tenancies. Until full consideration can be given to this matter, details of the policy as it stands have been sent to service managers as a reminder. As well as reminding staff that the policy is available on HIC, guidelines are being drafted to outline the circumstances in which applications for joint tenancies may be refused. This is being done in tandem with any changes being considered by TAWP and will set down the acceptable reasons for occupancy, approved relationships between applicants, required length of residency and the impact on an application of a tenancy or property held elsewhere.

BACKGROUND DOCUMENTS

25 The Ombudsman Report 102/B/00755.

Lead Officer – Jeanie Martin – Customer Feedback Manager

Report Author – Jeanie Martin – Customer Feedback Manager

Draft Report

14 April 2003

Consultation with Other Officers/Directorates/Executive Members

Officer Title	Comments Sought	Comments Inc
Borough Solicitor & Secretary	Yes	Yes
Director of Housing	Yes	Yes
Executive Member	Yes	Attached

Contact: Jeanie Martin on 0207 525 3998

Background papers held at 19 Spa Road, Bermondsey, SE16 3QN