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The Implementation of Rights in Housing Law

By

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PhD Thesis Presented to the
University of Glasgow

December 2001

ACKNOWLEDGEMENTS

I would like to thank the following people who provided much help and support throughout the course of my thesis studies.

Many thanks to my supervisor, Mr Tom Mullen, for providing a constant source of advice and encouragement, helping me to explore new avenues and assisting in the clarification and direction of my thoughts. To all my colleagues in the housing field, particularly those staff who participated in the fieldwork whose names I cannot mention to preserve confidentiality. The University library staff have been extremely helpful and a special note of thanks to Heather Worlledge Andrew and her colleagues on Floor 7. But my gratitude also to the many other library staff including Glasgow Council Central Library Information Service for responding timeously to many research queries. Particular thanks are due to staff at the Chartered Institute of Housing, the Planning Exchange and Pat Tracey of the Scottish Executive for supplying a great deal of useful research data.

Personal thanks are due to the following people. To Alice Ann Jackson for trawling through the manuscript and offering useful insights. To Gavin Montgomery, my nephew and erstwhile Glasgow University student, for assisting in my computer studies. To Willie Black and Scott Meikle for many fruitful ideas. To Gavin Corbett at Shelter. And to Edith McDonald I owe thanks for having typed the many drafts as well as the final thesis.

Finally, my deepest thanks to my wife Jacqueline for her continuous support. And last I dedicate this volume to my deceased parents, Helen and John Montgomery for their love through the years. And a final acknowledgement with deepest affection to my best friend Malcolm Abernethy who regrettably passed away during the course of my studies.

ABSTRACT

This thesis examines a range of issues concerning legal rights implementation in the field of Scottish housing law. This examination comprises three principal themes: firstly, an evaluation of the broad range of factors that can affect the implementation of legal rights. These factors are gleaned from an extensive literature review. Secondly, a critical analysis of key factors that affect the implementation of rights in respect of two Scottish councils, including assessment of the implementation of a select cluster of legal rights. Thirdly, drawing conclusions that identify the key factors pertinent to rights implementation.

Legal developments in the field of housing have been diverse. But there has been little systematic study in the housing field of those factors that affect the implementation of legal rights. The thesis considers these factors in detail and reveals a complicated nexus of inter-relating elements that either contribute to or inhibit effective rights implementation. Political and ideological influences are shown to be significant, as is the influence of the legal process itself. But paramount in explaining rights implementation is the complex relationship that exists between council landlords and their tenants. Tenants, as key players in deciding to exercise their rights, often fail to do so; while landlords, charged by Central Government with the administrative task of implementing legal provisions, can be remiss in accomplishing their legal duties as a result of various organisational deficiencies.

Organisational systems theory is applied to identify key organisational elements that are critical to ensure effective rights implementation. These elements are analysed in detail in the fieldwork that evaluates the organisational practices of two Scottish councils; this fieldwork incorporates analysis of implementation of four specific legal housing rights. Findings suggest that rights implementation is often ineffective, this failing attributable to a number of specific organisational deficiencies that include dearth of strategic planning,

inadequacy of policy and procedural documentation, inappropriate work practices including lack of relevant performance indicators, ineffective communication systems and, crucially, under-developed training programmes for housing staff.

In conclusion, the thesis highlights that effective implementation of rights requires strategic organisational direction based on a systemic approach to implementation, a perspective that synthesises the various elements pertinent to rights implementation.

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Chapter 1: Aims and Methodology

Aims and Methodology

This section outlines a) the aims of the thesis and b) the research methodology used.

Aims of Thesis

The principal aim of this research was to carry out a socio-legal study into factors that affect the implementation of legal housing rights within the public housing sector. The focal point of this study was to identify key factors that determine the effectiveness of rights implementation in Scots law in respect of local authority tenants and housing and homeless applicants to local authorities. This topic of study was selected for two reasons. Firstly, there are general concerns arising from the literature review that current organisational practices may adversely affect the actual implementation of rights. Secondly, there is a limited range of studies that assess the effectiveness of legal rights implementation in the public housing sector. This study, therefore, represents innovative research into rights implementation issues that have been neglected in socio-legal studies.

Research Methodology

The research on which this thesis is based comprises three main elements, namely a) a literature review, b) fieldwork and c) a set of conclusions derived from the research. Each component is now clarified in turn.

(a) *Literature Review*

The literature review evaluates a range of issues to set the context for the detailed rights analysis that is carried out in the empirical research. This evaluation involves a review of the existing literature on the implementation of legal rights in general, and housing law in particular, in order to identify the range of factors that might affect the implementation of housing rights. In view of the limited number of specific housing studies that examine rights implementation issues, it was necessary to consider a broad range of research studies drawn

from a variety of fields, including law, political theory and social policy, management theory and housing management. Further details are given in Chapter 2. This review focuses on contemporary studies, although reference is made to older studies as required. This examination highlights that factors capable of affecting rights implementation are both complex and diverse, comprising a number of inter-relating themes. In order to evaluate these factors, they were categorised for ease of analysis under the following headings: political and ideological factors; legal process; legal form and structure; remedies; "rights-bearers'" capacity to enforce rights and organisations. Although this review confirmed the relevance of all factors to the question of rights implementation, consideration of organisational factors proved to be extremely fruitful in identifying elements most pertinent to effective implementation of legal housing rights. Based on this analysis, then, it was decided to concentrate on the assessment of organisational factors in the empirical research.

Application of the theoretical model of systems theory to organisational development enabled organisations to be perceived, not as comprising a number of *independent* functional activities, but as 'wholes' comprising *inter-relating* functional activities. This model enabled the identification of core elements critical to effective rights implementation. Consequently, key issues selected for examination in the fieldwork were as follows: organisational culture and structure; policies and documentation; implementation of rights; communications; workload and methods of work; performance management; and personnel.

(b) *Fieldwork*

In order to test the hypothesis that the group of factors isolated for inquiry affect the implementation of legal housing rights, fieldwork was undertaken throughout 1998/99 in two Scottish councils formed at Local Government re-organisation in 1996. These councils are referred to as Council A and Council B respectively to preserve anonymity. Further

details are provided in respect of both councils in Chapters 3 and 4. An important element of this fieldwork involved a critical analysis of legal rights implementation within both councils. Details of the specific rights examined, as well as the reasons for their examination, are provided below.

In carrying out the fieldwork, research involved the collation of both quantitative and qualitative data. This included statistical data, as required, to evaluate trends of interest. Data collected derived from four principal sources detailed as follows:

i) Documentation

Documentation assessed was primarily of a policy and procedural nature concerning housing management information, although it also included general council documentation. Examples of documentation assessed were as follows:

- corporate council policies
- allocation policy
- arrears policy
- estate management policy
- homelessness policy
- repairs policy
- tenancy agreement
- tenant information (leaflets etc)

ii) Internal Data

Internal organisational files and records were examined to collate information that might shed light on rights implementation; this involved the following documentation:

- tenancy files/records
- organisational memoranda

- organisational reports

iii) Individual Case Files

Individual case files from four area housing offices were assessed involving a total of one hundred and two files in respect of Council A and one hundred and twenty six files in the case of Council B. This enabled actual work practices to be evaluated in detail, in particular to assess whether administrative practices complied with legal requirements. File information materials assessed related primarily to information gleaned during 1999, although a minimal amount of earlier data was examined, particularly anti-social behaviour cases some of which had lengthy histories. Further details are given in Chapters 3 and 4.

iv) Interviews

In addition to analysis of documentation, fieldwork involved a total of fifty three interviews. This total represents c 4% of the housing management staff employed by Council A and Council B. Of this number forty six interviewees were housing service employees, the others being specialist legal personnel (three) and tenant representatives (four) who were interviewed to gauge alternative opinions and perspectives. With regard to the housing interviewees, both housing officers and more senior officers were included, thus affording the possibility of comparing policy maker views against those of frontline staff.

In respect of statistical information the twenty housing staff interviewed at area housing office level represent over 10% of staff in each of the four area offices under review, while senior staff interviewed constitute over 50% of senior officers in Council A and Council B respectively. Chapters 3 and 4 refer to officers and senior officers in the interests of confidentiality; this is extremely important given the sensitive nature of information provided. Senior officers comprise both managerial and policy officers. Appendix 1 provides further information on numbers of interviewees. As Robertson and McGloughlin

(1996) point out, ideally research would survey the whole population. Practical considerations, though, require research to focus on a sample that is representative of the issues under examination, a requirement satisfied by the above methodology. As indicated, four separate area housing office locations were used for the study, thereby providing a useful comparison of rights implementation throughout the council to ascertain whether consistency of approach has been achieved.

Rights Selected for Empirical Examination

The focus of this thesis was the evaluation of how effectively the housing law rights of individuals are implemented by local authorities; this was based on the literature review that revealed implementation of such rights as an area that had been the subject of limited research. This was shown to be of particular relevance in the context of Scottish housing management practice. In view of the wide range of individual rights available in law, however, it was possible to carry out a detailed investigation of only a limited number of rights. The particular rights chosen are described below. The major rationale in selecting these rights is that they are all major local authority responsibilities, as well as being areas that the literature review suggests require further inquiry. The four rights chosen for analysis were a) the right of access to personal files, b) the rights of the homeless, c) rights of repair and d) security of tenure.

a) *Right to Access Personal Files*

This right was selected for examination for three reasons. Firstly, this right represents an important safeguard for individuals concerned with a) what personal information is held by organisations about them and b) how such information might be used by these organisations. For instance, information held on local authority files may be used in eviction procedures and it is important for tenants to access this data in preparing a defence. Secondly, there

has been no published research in the Scottish context regarding its application into practice. Thirdly, this right has been in existence for several years and it was interesting to examine whether any correlation existed between effective implementation of rights and the date rights are introduced.

b) *Homelessness Rights*

Although an area that has been the focus of much research, two main reasons exist for selecting this issue for detailed assessment. The first reason is that research has often been general in nature as opposed to scrutinising in detail the actual working practices of employees in the light of the "four hurdles", the key legal homelessness principles. Indeed, the research undertaken in the case studies that addresses this question specifically represents research of an innovative nature within the Scottish housing context. The second reason concerns the current crisis of homelessness, the need to assess whether persons arguably in the greatest housing need are having their rights protected in practice.

c) *Rights of Repair*

This group of rights was chosen for assessment for two reasons. Firstly, and as is the case with access to files rights, rights of repair have been the subject of little research vis-à-vis rights implementation issues. Indeed, and with regard to the statutory right-to-repair scheme, there has been no detailed examination of what local authorities actually do in practice in terms of implementation. For this reason, then, the right-to-repair scheme is a focal element in the case studies when effectiveness of implementation regarding rights of repair are assessed. Secondly, repairs to housing are fundamental to questions of law such as the tenant's right to reside in housing that is "tenantable and habitable".

d) *Security of Tenure*

Security of tenure is a right that developed originally in the private sector housing

struggles to "remedy social evils by interfering with the rights of landowners" (Stewart (1996) p2). But it is also a right that was deemed to be extremely important by members of the tenants' movement and other groups throughout the nineteen seventies, their concerns assuaged eventually with the passing of the Tenants' Rights etc (Scotland) Act 1980 that created the secure tenancy and, for the first time historically, introduced security of tenure for public sector tenants. Ensuring that landlords apply legal principles to protect tenants interests is, therefore, an important area for evaluation.

c) *Conclusions*

Chapter 5 concludes the thesis with an evaluation of the principal issues concerning legal rights implementation that have been identified in previous Chapters, particularly those issues arising from the empirical study. Although findings must be conjectural to some extent given the limited range of the inquiry, principal issues identified are as follows: firstly, the literature review carried out in this thesis has confirmed that many previous housing studies, although highlighting issues of concern between good practice and actual practice, have tended not to focus on how effectively rights are actually implemented within organisational practice. The evaluation of actual organisational process concerning rights implementation carried out in this thesis represents, therefore, innovative research in the field of socio-legal study. Indeed, this is the first major study to analyse housing legal rights implementation from a theoretical perspective based on organisational systems theory.

Secondly, evaluation of actual organisational practice within the two councils assessed in the fieldwork reveals an apparent dichotomy between explicit strategic objectives in respect of commitment to rights and actual implementation of those rights. Analysis suggests that this derives from a variety of causes. The influence of key individuals is undoubtedly of importance in explaining this dichotomy between theory and practice. Yet more detailed

scrutiny suggests ineffective implementation of rights stems from dearth of strategic planning that, failing to develop organisational practice in accordance with systems theory principles, fails to synthesise the broad range of factors relevant to effective rights implementation.

Thirdly, the alleged discrepancy between 'paper commitment to rights' and effective implementation of those rights indicates issues that should be addressed as part of future research studies. Indeed, it is suggested that evaluation of the effectiveness of implementation of all legal housing rights should be a focal point of future socio-legal research in the field of housing.

Chapter 2: Factors Affecting Implementation of Legal Rights

"How the law is put into effect is clearly as important as its content. The nature of the enforcement agencies used, the degree of commitment of enforcement agents to implementation of law, their morale and – a closely related factor – the amount of resources available to ensure compliance, are all shown to be extremely significant factors."

(Cotterell (1992) p56)

" The 'rights' which the administrative system offers are so severely qualified that in practice people are reluctant to insist on obtaining what is due to them. Whatever their roots in social and economic forces, people's problems are always dealt with on an individual basis."

(CDP (1977) p23).

Implementation of Rights: An Introduction

Implementation of law is a perennial theme of socio-legal research.[1] The fundamental purpose of this Chapter is to identify and analyse the key factors that affect the implementation of legal rights, particularly legal rights in the housing context. A secondary purpose is to highlight issues that require further research. This is achieved through an extensive literature review, details of which are given below. In carrying out this review it is worth emphasising that law does not operate in a specific context but, as Loveland (1995) notes, "in a variety of interdependent contexts" (p3). Legal theory, accordingly, can only be understood as part of social theory in general. This Chapter, therefore, adopts an inter-disciplinary perspective in identifying the range of factors that affect rights implementation.

Prior to assessing – and subsequently categorising – those factors deemed to be most relevant to the debate, it is important to comment briefly on the relationship between law and social change. On a general note, for example, law can engender change in a variety of ways. The power of the judiciary in the interpretation and application of legal doctrine may set precedents that determine subsequent social actions, for instance, while the establishment of agencies or commissions such as the Commission for Racial Equality strive to put Central Government legislative policy objectives into practice. Again, social change may be pursued by imposing new legal duties on existing administrative authorities, or by using legislation directly to alter individual social or contractual relationships, as exemplified by the Housing Act 1988 in the context of the "deregulation of private rented housing arrangements" (Cotterell (1992) p58).

Yet, albeit that law can be instrumental in promoting social change, theorists have stressed that law by itself is not sufficient to bring about change. As Ehrlich (1936) argues,

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[1] The term "implementation" has numerous connotations, including accomplishment, completion, enforcement, fulfilment, performance, and realisation (Chambers (1994)). The sense used henceforth in this thesis is that connoted by the term "realisation", ie conversion into fact.

"We shall have to get used to the thought that certain things simply cannot be done by means of a statute" (p375), that state law is more effective when it deals with prohibiting action as opposed to compelling people to act. Again, in developing this point, it has been noted that law may fail to promote change for a number of reasons that are highlighted below.

Kay et al (1986) stress the importance of political support as being influential in effective implementation, for example, the role of Central Government in supporting the legal right-to-buy provisions in respect of public sector housing. Evan (1980), in describing law as an instrument of social change, cites several conditions that are necessary – albeit not sufficient – if law is to be implemented effectively.[2] Two conditions of particular relevance to this thesis involve a) the need to employ both positive and negative sanctions "to buttress the law" (Evan (1980) p561) and b) ensuring commitment by enforcement agencies to the legal provisions. As Evan (1980) notes:

> "... the enforcement agents must themselves be committed to the behaviour required by the law, even if not to the values implicit in it" (Evan (1980) p559).

Cotterrell (1992), in his major theoretical socio-legal study, offers additional insight, stressing key elements as follows: firstly, legal enforcement depends not simply on action by the state but, critically, on those actions taken by the rights-bearer. But the latter may not be willing to use the law for a variety of reasons, both technical and social in nature. Technical reasons, for example, might include absence of effective remedies or incentives for people to implement legal action. Social reasons, on the other hand, could encompass a coterie of factors such as unwillingness to use the law because of fear of reprisals, or lack of resources.

Secondly, in Britain the enforcement of law may be delegated to local authorities,

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[2] Evan (1980) cites seven conditions in total (See Evan (1980) pp560/561).

regulatory agencies whose concerns rest not merely with law but with other objectives. For example, in the development of allocation policies, objectives are framed to take account of not only legal requirements but the wishes and views of councillors.

Finally, and perhaps paramount, is the fact that discretion is a central feature of enforcement by local authorities. Yet, as Cotterrell (1992) stresses, "the use of discretion is determined largely by resources available and, for regulatory agencies such as local authorities, "'full' enforcement of law is realistically an impossibility given available resources" (p263). And lack of organisational resources might impact on rights implementation in various ways, for example, failure to establish adequate and accessible information systems for tenants and clients, or failure to train staff to carry out administrative duties in accordance with law. With respect to this latter point, for instance, Loveland (1995) cites how 'white collar' workers in public sector administrative posts have become proletarianised, that housing management is a sector in which "jobs frequently involve low pay, minimal training, and limited promotion opportunities" (p23). Needless to say, such factors imply that welfare bureaucracies are likely to produce legally inaccurate decisions that may adversely affect the rights of individuals.

Literature Review: Sources

As indicated, this thesis is a socio-legal inquiry into factors that affect the implementation of legal rights, of particular concern being the identification of key factors affecting the implementation of legal housing rights within the local authority housing sector. In order to identify these factors, it was necessary to undertake a literature review of an inter-disciplinary nature deriving insight from the following fields: political theory and social policy; law, in particular housing law; housing management; and organisational and

management theory.

The literature review identifies a wide range of factors as actually or potentially affecting the implementation of legal rights. In this Chapter they have been classified under the following headings: political and ideological factors; factors relating to the legal process; remedies; individuals' capacities to enforce their rights; avoidance and organisational factors.

However, it is important to note that the factors are overlapping and interlinked rather than discrete and separate. Although the empirical research described in Chapters 3 and 4 examines in detail the impact of only a limited range of factors in the implementation of legal rights in housing law, this Chapter discusses the full range of factors that might affect the implementation of rights. This is necessary for two reasons. Firstly, it is important to have some idea of the relative importance of different factors. Secondly, precisely because the factors interact and affect each other, each set of factors needs to be considered in the context of other sets of factors. To give an example, in what follows political and ideological factors are distinguished from factors that relate to organisations (eg local authorities responsible for implementing rights). However, what organisations do is inevitably affected by the political and ideological environment, financial constraints and so forth.

In order to ensure comprehensive coverage of the issues, the literature reviewed includes studies from different jurisdictions. However, given the aim of the thesis to identify key factors affecting the implementation of legal rights in housing law in the Scottish context, the review focused on the analysis of major Scottish studies wherever possible.

Political and Ideological Factors[3]

By political factors is meant the specific policies pursued by successive governments, the institutional structure of the state, and historical events and trends, all of which may have an impact on the implementation of particular rights. Ideological factors comprise those ideas and values enshrined in political theory and Party policy espoused by both government and agencies of the state. Political positions are frequently identified by reference to a spectrum that runs from 'left' to 'right'. This description was "drawn originally from where different parties sat in the French national assembly, with the conservative parties sitting on the right and the socialists on the left" (Spicker (1995) p73).

a) *Political and Ideological Factors and the Development of Rights*

The development of tenants' rights prior to the late 1970's had been largely restricted to the private rented sector. Indeed, the focal point of public sector legislative developments had been to eradicate either housing shortage or poor housing conditions, although economic recession experienced in the 1970's undoubtedly resulted in the retreat by both major political parties from their earlier high-output policy, a retreat that was also due, at least partially, to the 'easing' of housing shortage (Malpass & Murie (1994)).

As Loveland argues, the paucity of statutory legal rights enjoyed by council tenants until the legislative changes introduced in 1980 was mainly attributable to Central Government emphasis on the "importance of preserving local authorities' decision-making autonomy", autonomy that would, arguably, have been threatened by the introduction of individual rights (Loveland (1995) p89).[4]

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[3] This section of the thesis considers some of the major historical, political and economic issues that are pertinent to the development of secure tenants' rights. These factors are evaluated together rather than separately in view of their close inter-relationships.

[4] The Housing Act 1980 in England and the Tenants' Rights Etc (Scotland) Act 1980 in Scotland. Royal Assent for both Acts was received on 8/8/1980 with the public sector provisions being operative from 3/10/80 (Shelter (undated)). Circular 23/1980 provided detailed guidance for local authorities.

Further, rights had been considered unnecessary in Loveland's view since:

> "the cross-party commitment to social democratic politics ensured that government invariably pursued those policies which best served the 'public-interest', from which all individuals benefited" (Loveland (1995) p11).

Why, then, the legislative shift in Central Government strategy that led to the creation of a wide range of rights? In answering this question it is necessary to comment on i) historic concerns vis-à-vis the relationship between council landlords and their tenants and ii) economic and political matters relevant to rights implementation.

i) Historical Developments

Already by the late 1960's and early 1970's, the nature of the existing council landlord:tenant relationship had been strongly criticised by various pressure groups, as well as leading members of the tenants' movement. The Scottish Housing Advisory Committee (1967), for instance, pinpointed deficiencies in allocation policies as a central problem in Scottish housing management; while early tenant participation and community development initiatives focussed on broader political themes such as the need for tenants to challenge rent rises posed by the Government's legislation of 1972 that extended 'fair rents' to council tenants, or challenged the Government to ameliorate the shortage of quality housing for rent.[5] And by the second half of the 1970's, new Charters such as the National Tenants Organisation Charter of 1978 were demanding that council tenants should no longer be treated as second-class citizens; that *qua* citizens they were entitled to enjoy statutory rights entitlements as opposed to solely contractual tenancy rights granted at the landlord's whim. Indeed, this period also gave rise to trenchant criticism of the paternalistic and one-sided nature of many local authority tenancy agreements. (NCC (1976); HSAG(undated);

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[5] The Housing Financial Provisions (Scotland) Act 1972.

Atherton (1983).

And, according to Hague (1990), this movement towards tenant participation was itself an important element in influencing the development of public rented sector tenants' rights. Through its support for participation initiatives, for instance, in tandem with a legislative strategy that embraced the introduction of statutory housing rights, particularly the right-to-buy, the Conservative Party was able simultaneously a) to harness and contain potential community antipathy of a disunited tenants' movement dissatisfied with existing housing management practices, and b) to undermine electoral support for the Labour Party, now forced in opposition to re-assess its "traditional relationship", a re-assessment illustrated in Hague's view by Allan Roberts MP moving of a Bill in 1982 that proposed widespread policy consultation procedures to be introduced between landlords and their tenants, as well as providing tenants with options for carrying out estate management.[6]

ii) Economic and Political Developments

Yet to conceive of the introduction of tenants' rights solely in terms of garnering political support would simply be naïve. For major economic and political changes were stirring that were critical to rights development. Cuts to public expenditure capital building programmes had been slashed from the early nineteen seventies, for instance, such cuts occurring as the State attempted to restore market profitability in the face of a global economic crisis in capitalism (Forrest & Murie (1988); Bullock & Yaffe (1975)).[7] And the extent of these cuts was indeed massive. In 1974/75, for instance, expenditure on housing "made up 20% of all Scottish public expenditure, (while) in 1981/82 the figure was 14%" (Shelter (1981) p25);

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[6] The Tenants (Consultation) Bill 1982 which was moved unsuccessfully.

[7] An alternative view is offered by Kilroy & McIntosh (1982) who suggest that cutting subsidies to reduce public expenditure is argued for by politicians of all parties "to cynically manipulate the (public) ignorance of the issues" (p19). According to them subsidies are themselves inflationary and should be reduced in favour of investment. Yet, perhaps this is to miss the point, for the crux of the matter is that social services face all forms of expenditure reduction in times of crisis as they are essentially unproductive, ie non-surplus value or non-profit making.

indeed the House of Commons noted that housing cutbacks accounted for over 75% of public cuts (Malpass & Murie (1994)). And it is within the context of this fiscal crisis that the links between economic factors and tenants' rights becomes clear. The creation of the secure tenancy form, for example, with its right-to-buy provisions enabled Central Government to implement a strategy of privatisation to satisfy both a) policy objectives in respect of public expenditure and b) the broader interests of the market. With reference to public expenditure, for instance, reduction in Central Government subsidies was made possible because income in the form of capital receipts from sales to local authorities increased substantially as a result of the right-to-buy provisions. Yet, as Malpass and Murie (1994) emphasise:

> "... this enormous flow of capital receipts was not used to boost housing public expenditure, but rather enabled government to fund a major part of a declining programme from receipts" (p107).

The broader interests of the market were also served by promotion of privatisation, indeed Harloe (1985) argues that:

> "Home ownership is the modern form of private housing market and the form which is most effective from the point of view of capital" (pxxiii).

Two points will suffice to clarify this point. Firstly, despite initial reluctance by building societies "to commit themselves or earmark funds" (Forrest and Murie (1988) p99), private finance in the form of mortgage loans to tenants buying their homes has proven to be highly profitable for building societies and other finance institutions. As Ball (1993) has noted, and with prescience given contemporary developments in respect of local authority housing:

> "The whole economic rationale of building societies, exchange professionals and speculative housebuilders is owner-occupied housing... the only groupings within

the structure of council housing provision with a strong interest in supporting its continued existence (being) building workers and state housing employees"(p 351)

Secondly, building societies have strong links with a variety of exchange professionals with similar business interests, for instance, surveyors, solicitors and estate agencies. Referring to the effectiveness of these links in promoting financial benefits, Merrett (1982) notes:

"These complex webs of functional relationships appear to work well, particularly in business and financial terms, for all but home-owners themselves" (p212)

And as Hague (1990) notes in respect of, not just the right-to-buy, but the other rights that provide for council stock to be privatised that these:

"... mean new investment opportunities for the private sector of the economy, while re-emphasising the inadequacy of the provision and management of social need by the state"[8] (p 251).

From a rights perspective it is important to note at this stage that the rights in the tenant's charter and the new rights for homeless persons were being implemented in a context of expenditure constraint which limited the resources available for the realisation of housing rights. As Kay et al (1986) stress, however, most councils failed to implement rights effectively for reasons other than finance (minimum publicity, lack of training, little tenant involvement etc). To these issues the thesis will return.

Political Ideology

Political ideology is critical in gaining an understanding of both the development and

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[8] Owner occupation in Britain stands at around 70% of all households (Harriott & Matthews (1998); while in Scotland the figure remains lower at 61% (Scottish Executive 2000). See Daunton (1987), Cole & Furbey (1994) and Malpass (1996) for details on policy developments. SHA (1977) note that support for owner occupation "began to be used as a means of encouraging acceptance of the existing political and economic system and weakening people's wish for radical change" (p12). An unforeseen by-product of this privatisation process, of course, has been the massive increase in subsidies payable to owner occupiers unable financially to pay their mortgage costs.

implementation of rights. This is now examined by reference to these *ideological* perspectives that led to the development of statutory housing rights prior to assessing political *actions* taken to effect these legal principles into practice.

Political ideology does not exist in a vacuum. And a rights-focused philosophy too, must be understood by reference to a set of underpinning beliefs and values. Loveland (1995) highlights how the legal shortcomings of the council-tenant relationship were the butt of increasing criticism from the late nineteen sixties, in particular how the National Consumer Council 1976 report, Tenancy Agreements, "pushed the issue into the mainstream of political debate" (p127). Of particular interest from an ideological perspective, though, is that the philosophy that underpinned Labour's Housing Bill (1978) with its focus on security of tenure derived, not from "an idea of consumerism rooted in the free play of market forces"[9], but from the ideological vision of the earlier Wilson Labour Government, an ideological vision that "rejected market forces as the primary determinant of housing allocation" (Loveland (1995) p27).[10]

The ideological basis that underpinned the Labour Party's proposed 'Tenants' Charter' was, therefore, an attempt to "place substantive and procedural constraints on governmental discretion in managing a social service"(Loveland (1995) p28). The Tenants' Charter, eventually enacted by the Conservative Government, was – right-to-buy provisions excepted – scarcely different from the original Labour Charter.[11] Indeed, subsequent political and legislative developments confirm that both major parties have converged ideologically in

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[9] For details of consumerism as an ideology see Rhodes (1987) and Hambleton (1988). Cannadine (1998) notes how the consumerist vision of treating people as individual customers with choice seeking to become property owners is synonymous with the values bestowed upon Margaret Thatcher, Prime Minister, in her formative years in Grantham.

[10] As Harold Wilson asserted: "The plain fact is that rented housing is not a proper field for private profit" (Cullingworth (1979) p61).

[11] Other exceptions being the exclusion by the Conservative Party of tenants' consultative committees (Kay et al (1986)) and a right to consultation about rent levels.

respect of strategic housing policy objectives. As Malpass (1990) has argued:

> "The Labour Party initially opposed the introduction of a statutory right for council tenants to buy their houses, but by 1987 the principle of sales had lost its earlier controversial edge, and indeed council housing as a whole had lost much of the support that it had received from the Labour Party since the beginning of the century" (p53).

The legislation enacted in 1980, then, represents a fusion of distinct political ideologies. On the one hand the political commitment to enhancing tenants' legal housing rights in the public housing sector; on the other the consumerist philosophy espoused by the Conservative Party in respect of the right-to-buy to provide tenants with an opportunity for exiting the public sector (Loveland (1995)). Indeed, this philosophy is nowhere more clearly expressed than by Malcolm Rifkind in his striking response to fellow members during parliamentary debate when he confirmed:

> "... the whole purpose of the Tenants' Rights Etc (Scotland) Act is to allow those who wish to do so to buy their homes" (Hansard Debs, Sixth Series, Commons, Vol 8, 1980/81, July 6-July 17).

In short, legal rights developments reflect the contemporary political and ideological strategies of both major political parties, developments that Gamble (1994) suggests has resulted in a "mass of private-property interests willing to support market solutions for problems of public policy" (p219).[12]

b) *Political Support for the Implementation of Rights*

The thesis now turns to assess i) how the extent of political support from Central Government actions can affect the implementation of rights by local authorities and ii)

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[12] This focus on individualism according to Handy (1997) is extremely disruptive societally, leading the writer to claim that: "Untrammelled individualism corrupts a nation. It leads to an emphasis on rights, with no regard to duties or responsibilities" (p27).

reasons for political action, or inaction. And perhaps this point is best clarified by the most exercised right of all, namely the right-to-buy.[13]

The origin of public sector sales actually dates back to pioneering efforts of Tory Councils such as Birmingham in the 1960's. Policy motivations that led to this development included the desire to dismantle the public sector, creation of an enterprise culture, and electoral advantages stemming from the sales policy (Stoker (1991)). Yet sales remained relatively low. Indeed, the success of the right-to-buy legislative measures is at least partially due to a variety of Government interventions as follows. Firstly, Government intervention in terms of promoting the right-to-buy far exceeded previous promotional activities in respect of rights issues. By May 1985, for example, the sum of £2-3 million had been spent on promoting Council house sales (Stoker (1991)). In addition, the Government contacted a total of two hundred labour–controlled local authorities to evaluate progress concerning their right-to-buy practices. This can be contrasted markedly with lack of support by both the Thatcher and Major Governments for other rights. For example, there was little concern shown by the Government between 1979–1996 as to whether or not local authorities 'delivered' homelessness rights effectively. As Loveland (1995) points out, the DoE's 1989 *Review of the Homelessness Legislation*, paragraph 5, expresses:

> "... satisfaction with councils' varying application of the Act's discretionary elements, noting that the 'areas of uncertainty' had been filled by custom and practice; by more or less formal exercises in co-operation and co-ordination between local authorities; and by interpretation of the courts" (p324).

Secondly, unlike most tenants' rights where individual actions through the courts are

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[13] See Murie (1996) and Rowntree (1998) for detailed information on the impact of sales policy. Rowntree notes that over two million dwellings have now been sold under the right-to-buy and related policies. See Clapham et al (1990) and Pinto (1995) for details of housing policy developments in general.

required if rights are to be realised in the face of recalcitrant local authority practices, this is not the case in respect of the sale of social housing that represents a major element of Government housing policy. Indeed, the Secretary of State has extensive powers to intervene where "landlords attempt to resist or hinder sales policy" (Hughes & Lowe (1995) p82).[14] And this threat was invoked by Michael Heseltine in 1981 in response to local authority recalcitrance in both England and Scotland vis-à-vis sales policy implementation and delivered with such panache that all resistance was quashed by August of that year (Ascher (1983)). In the case of Norwich City Council, for instance, although the Council processed right-to-buy applications as per the equivalent English legislation, the Secretary of State, Rt Hon Michael Heseltine, deemed the timescale taken by the Council to process such applications to be unsatisfactory and intervened accordingly by serving a Notice of Intervention.[15] In the court process that followed, the intervention was accepted as reasonable in the circumstances and that the Council had not fulfilled their legal obligations of failing to effect right-to-buy applications timeously, that tenants wishing to buy had faced "intolerable" delay (Forrest & Murie (1985) p106). Defences lodged by Norwich Council to the effect that slow progress was the result of such factors as staff shortages and the need to meet a range of housing priorities were not accepted by the court.[16] In Scotland, too, there were many anti-sales campaigns (eg Glasgow, Stirling). Dundee, in particular, protested vehemently against the new right-to-buy provisions with the Secretary of State for Scotland calling:

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[14] Interestingly, despite the fundamental importance of sales of Council stock within government social policy, at Local Government re-organisation in 1996, the United Kingdom retains "the largest social housing stock of any West European country, with around 12 million people living in Council houses" (See Stewart Fleming's 'Will anyone talk about housing?' in the New Statesman, 12/12/97. This situation is now rapidly changing, though, as a result of the burgeoning number of stock transfers to other landlords.

[15] Under section 23 of the Housing Act 1980.

[16] *Norwich CC v Secretary of State for the Environment [1982] All ER 737.*

"... a public inquiry to determine the legality of refusals by both administrators and councillors to implement the Act." (Ascher (1983) p13).

Finally, Central Government has actively extended the legislation in respect of sales to promote its strategic privatisation policy objectives in respect of the public rented housing sector. This differs considerably from other tenant rights where developments have been rather more tardy. For example, despite concerns about the value of judicial review as an effective remedy (see pp 70-73 following), it was not until legislative changes in 1996 that appeal rights were conferred that entitled applicants aggrieved by the decisions taken by local authorities to appeal to the County Court. It is emphasised, though, that these changes applied only in England and Wales and not in Scotland.[17]

As Kay et al (1986) argue, in contrast to the right-to-buy where Government pledged much support, implementation of other legal rights was entrusted largely to local authority discretion without Central Government intervention, reflected for instance in lack of publicity and pressure on local authorities to ensure the realisation of rights into practice. This section concludes, then, with an attempt to explain the lack of Central Government support for the implementation of these and other rights.

The first reason is that, unlike right-to-buy provisions that lie at the heart of Central Government strategy, other tenancy rights are not integral to the core privatisation objectives of this strategy. Making tenants aware of their rights was, therefore, undoubtedly of low strategic priority.

The second reason concerns the historical relationship between Central Government and Local Government, clarified by reference to two points. Firstly, Central Government has always regulated local authority activities, although controls have increased considerably in

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[17] The Housing Act 1996, s202, gives an applicant a right to review local authority decisions within twenty one days of receiving the authority's decision.

recent years, particularly fiscal and legislative controls in the case of housing (Wade & Phillips (1977)). Thus, Letwin (1992) notes that local authority powers were already defined by legislation enacted in 1835.[18] Yet, as Loughlin (1992) clarifies, administrative adjudication has long been integral to the achievement of Central Government policy objectives, the delegation of law enforcement to local authorities being "necessary for the efficient conduct of business in the modern state" (p167).

The third reason, and most crucial for understanding why Central Government has intervened little in the implementation of tenants' rights, is that although local authority powers "derive either expressly or by implication from statute" (Wade and Phillips (1977) p357), local authorities themselves retain much discretion in the exercise of duties conferred on them by statute.[19] In the case of housing, for example, local authorities have always retained autonomy in terms of exercising their legal duties and obligations in respect of both their housing stock and their tenants such as in allocations where local authorities are free to devise whatever allocation system they deem appropriate provided that it takes account of the relevant legal provisions. Thus, although the creation of the panoply of statutory tenants' rights may represent a deviation from the traditional contractualised landlord:tenant approach to rights creation, Central Government regard the implementation of such rights as being a delegated function of local authorities with grievances to be addressed by remedies available. As Jones (1986) notes, local authorities are elected, statutory bodies legally independent of Central Government. And, though local authorities can exercise considerable local discretion and power within the confines of statute and the principle of 'ultra vires':

> "Statute does not envisage local authorities just as implementers of policy decided in central government. They are empowered by statute to be themselves policy-

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[18] The Municipal Corporations Act 1835.

[19] This does not apply, of course, to proposed council house building programmes that are subject to detailed scrutiny and are financially controlled by Central Government.

makers"(Jones (1986) p65).

The final reason suggested for lack of political involvement in the implementation process is largely conjectural in nature. It seems feasible to suggest that Central Government commitment to rights implementation – the rights associated with privatisation excepted – remained lukewarm. The implication of this, of course, is that rights talk is often mere rhetoric, used essentially to attract popular support and separated in both *thought* and *action* from questions of implementation, reminding one of Cotterrell's (1992) assertion to the effect that:

> "... there may be laws created solely or primarily to put certain symbols or ideals into the statue book. In the drafting and enactment of this legislation there may be no realistic consideration of the possibilities of effective enforcement of the law" (p54).

c) *Political Support for the Implementation of Rights: the Role of Councillors*

The previous section focussed on political and ideological influences on rights development and the role of Central Government in implementation. Yet it is also important to consider the role of councillors – the 'political' element in local government - in the implementation of rights.

Analytic studies of policy development within local authorities reveal three basic models, namely, a) the formal model, b) the technocratic model and c) the joint elite model (Wilson and Game (1994)). The formal model that represents the traditional perspective of power within the local authority sector considers councillors to be the makers of policy with officers given the delegated authority to implement that policy. The technocratic model, on the other hand, has focussed on the primary role of senior officers as the dominant force, their power stemming from specialist professional and technical knowledge (Laffin & Young

(1990)). Both models have been subject to detailed criticism in recent years, though, by adherents of the joint elite model. It has been argued, for example, that the rise of assertive councillors has "in some authorities effectively checked any independent policy aspiration of officers" (Wilson and Game (1994) p271). And Laffin and Young (1990) point out:

> "The relationship with the elected members has changed. The old stance of aloofness from the political process and from the politicians is less and less viable. Chief officers and other senior officers have to work more closely with their members than used to be the case during the high tide of professionalism. Any chief officers who hold themselves back from the political process may well be simply consigning themselves to irrelevance" (p92)

Yet the professional knowledge of senior officers remains an important resource, a resource tapped into by a limited group of senior councillors who join with the senior officers to control policy formulation. This corporate management model also entails that:

> "the backbencher, the ordinary ward councillor, is further from the sources of decision and power (such as they are in the town hall) than ever before. He is excluded by the high-level partnership between leadership and senior officers and takes little part in the policy planning process" (Cockburn (1978) p169).

As Loveland (1995) highlights, though, it is important when evaluating the role of councillors in the policy-making process to contextualise analysis. The role of elected members in policy development varies among councils. In two of Loveland's case study councils, for example, "elected members appeared to have little control over, or interest in" homelessness implementation (Loveland (1995) p126).

And, with specific reference to the Councils whose approach to the implementation of rights is examined in this research, councillor influence upon the specific policies under

review is extremely limited. Indeed, discussions with senior officers confirm that policy development in respect of the rights issues under review was delegated wholly to staff. The drafting of policy documentation, accordingly, was the responsibility of senior officers as was - by implication - the inclusion or omission of relevant rights implementation. For this reason, then, the role of councillors in policy determination does not feature in later Chapters.

d) *Ideology: The New Public Management*

The earlier discussion of political ideology emphasised ideas specific to housing policy. However, another set of ideas – that might equally be described as an ideology – the New Public Management (NPM) has had a profound impact on the performance of all local authority functions, and this included effects on the implementation of rights in housing law.

Rationalisation processes implemented by Central Government permeate all societal levels, including the local authority housing sector. These processes, determined by market-based priorities, have led to a situation in which the boundaries of housing management have blurred, and the traditional autonomy of local authority housing management has been transformed. Four aspects of Central Government strategy are now examined briefly (citizenship, compulsory competitive tendering, best value, and the NPM) and their effects on the implementation of housing rights considered.

i) <u>Citizenship</u>

Adherence to the principles of citizenship lies at the heart of Central Government political ideology as well as general strategy, for instance, promotion of policies to eradicate social exclusion. And citizenship has been defined as an approach that seeks to secure:

> "...the framework of rights and resources within which individuals can pursue their

own conception of the good in their own way" (Plant (1988) p1)[20].

Central to the concept of citizenship is the assumption that common values exist within a pluralist society that comprises different groups and classes. The role of Central Government, then, is to develop political strategies that harness social and economic resources in the interests of the community as a whole; in short, to take political action that secures "the rights and resources of citizenship within a mixed economy with some degree of private ownership" (Plant (1988) p 1).

In their role as agents of Central Government, most Labour Party controlled councils espouse commitment to citizenship values.[21] In so doing, local authorities align themselves to supporting a rights-based strategy that entails:

> "Residents, tenants and owner occupiers, need a clear sense of their rights and responsibilities, for and to each other and to the community they live in as a whole. These rights include the right to security, the right to a safe community and the right to participate in decisions being made about them" (CIOH (2000A) p18).

Analysis of recent studies suggests, however, that professed commitment to the principles of citizenship may be rhetorical in nature for a variety of reasons. Mullins and Niner (1998), for instance, in discussing the question of homelessness, stress the difficulty of:

> "implementing citizens' rights to housing and consumer choice in a context where supply is limited in relation to needs" (Mullins and Niner (1998) p195).

Mullins (1998), on the other hand, argues that a gap exists between policy rhetoric vis-à-vis commitment to rights and actual implementation of these rights for other reasons.

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[20] For details on the development and meaning of citizenship, see Barbalet (1988), Marshall (1950), MacPherson (1985), Partington (1993) and Twine (1994).

[21] See pp 112-113 following for a discussion as to how this impacts on organisational culture and, more explicitly, relates to issues of rights implementation.

Unequal power relations existing between council landlords and their tenants, for instance, entail that landlords are either unwilling to "respond to market signals from dissatisfied tenants"; while tenants' ignorance of specific services "can make it difficult for tenants to play their expected role as critical consumers" (Mullins (1998) p 255).

Further, Mullins (1998) suggests that the implementation deficit arises because of the symbolic nature of professed policy statements. Referring to the homelessness rights introduced by the legislation in 1977, for example, Mullins (1998) argues that an "implementation deficit" in respect of these rights arose because of:

> "Local factors such as political control, pressure of housing need, the pressure or absence of local advice centres and legal advice were important in producing these variations" (p 256).

The thesis will return to this theme in Chapters 3 and 4.

ii) Compulsory Competitive Tendering

Compulsory competitive tendering of housing management services was required by two local government Acts.[22] In accordance with this legislation the bulk of housing management was to be the subject of market tendering although certain exemptions applied, for instance, the application of the *de minimis* rule to the effect that "small value contracts should be exempt from the CCT process as the economic benefits of such a bureaucratic process cannot be justified below a certain point" (Hunter and Selman (1996) p28). As Wilson and Game (1994) highlight, CCT was supported ideologically by New Right 'think-tanks' such as the Adam Smith Institute that had pressed for legislation, lamenting "the dependency culture imbued by the Welfare State" (p325).

The ethos of CCT is clearly aligned, then, to the expansion of the market into public

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[22] The Local Government Act 1988 and the Local Government Act 1992, SI 1994/1671 added housing management to the list of defined activities to be subject to compulsory competitive tendering under section s (2) (h) of the Local Government Act 1988.

sector activities, a political development clearly in line with Conservative Party ideological support for the principles of consumerism.[23] Current Central Government strategy has, however, shifted and CCT has been all but removed in favour of Best Value, indeed the Local Government Act 1999, Part I, has abolished CCT in England and Wales. Section 3 (1) of this Act imposes on English local authorities a duty to make arrangements to:

> "secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness."

iii) Best Value

The Best Value approach to local authority service provision is now central to Government strategy, an approach considered in more detail shortly. Prima facie, though, Best Value principles might indicate commitment to the promotion of a rights culture through the concept of 'continuous improvement' to which local authorities must adhere. In England, for instance, Tenants Compacts are to be established that require local authorities to provide rights to information, training and enforcement rights vis-à-vis the Compact; while in Scotland, communications with tenants (as part of quality service provision) are to be improved by codes of practice being established under the National Strategy for Tenant Participation.[24]

Best Value principles advocated by Central Government can be summarised as follows[25]: challenging all elements of current service delivery; consulting with service users that involves the citizenship concept of empowerment through active participation; comparing service performance and costs with national and local indicators (as well as other providers); and competing by market-testing the service (or parts of it) (CIOH (2000)). Vincent-Jones

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[23] Pollitt (1988) highlights the fact that consumerism is not well-defined and that consumers vary, for example, those using the service, those waiting to use it, and those believed to need it.

[24] For further details see the Chartered Institute of Housing Good Practice Briefing (2000) No 19, 'Quality and Customer Focus'.

[25] First published by the Government in June 1997 (DETR (1998)).

(2000) points out that Best Value principles are extremely vague and, although received more warmly than CCT by most authorities, the underpinning philosophy of Best Value is to encourage authorities: "to adopt innovative solutions with competition at their heart" (p94). And, as the Industrial Society (1999) emphasises:

> "In-house provision should not be used where there are more efficient and effective means of service provision available" (p1).

In Vincent-Jones' view, the development of Best Value in no way reverses the long-term trend toward centralisation of Government power. And, with its emphasis on efficiency and competitive factors, it remains unclear to what extent it is conducive to the proper implementation of housing rights, no matter its apparent commitment to continuous improvement.

Best Value does not operate in isolation, of course, and it is important to consider the concomitant shift in public sector organisational culture and management that contemporary theorists refer to as the NPM, management changes that have swept aside the local authority traditions of "administration, hierarchy and professionalism" (Stewart and Walsh (1992) p508), as well as reducing the scale of the public sector in favour of an ingress by private sector employers into traditional public sector service delivery (Boyne (1998)).[26]

iv) <u>NPM Ideology</u>

In accordance with NPM ideology, local authorities are conceived as being quasi-market organisations that operate in a competitive environment, organisations capable of financial and performance scrutiny through performance management of essentially quantitative aspects (Dunleavy and Hood (1994)). With direct reference to housing management Walker (2000), in his study of housing associations, argues that the NPM has resulted in housing

[26] As Boyne (1998) describes the process; "downsizing, outsourcing and de-layering" (p48).

management becoming managerialised, a process reduced to competencies and skills that is no longer worthy of the title profession', the latter essentially the province of specialist knowledge.[27] In addition to managerialisation, Walker also stresses the changing – and diminishing – role of local authority housing management by reference to the *externalisation* of housing stock, that is, the continual reduction in housing through stock transfers to the housing association sector. Integral to managerialisation is the development of a performance management and business orientated culture that aspires to reduce costs, a culture that can effectively transmute into the reduction of service delivery.[28]

Turning now to the question as to how such political and ideological developments might impact upon rights implementation, various points are worthy of mention. On a positive note, for instance, the commitment by the Government to service audits is, prima facie, an important step in the evaluation of current deficiencies, an evaluation that may identify whether current housing management practices comply with legal requirements. Again, the proposal to develop comprehensive and detailed consultation processes augurs well for the development of a rights-focussed agenda.

Yet closer examination of the proposals, particularly when assessed against the realities imposed by the NPM, indicate that such strategies – far from being conducive to rights implementation- are potentially detrimental. At the heart of the Best Value approach, for instance, lies commitment to private sector dominance of housing service activities; and integral to this process is the overriding drive to impose fiscal controls and achieve efficiency as cheaply as possible. And Walker's (2000) comments in respect of the managerialisation

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[27] For a detailed debate on issues of professionalism refer to Laffin & Young (1990) and Stewart (1996). The latter suggests that the term "housing management" when discussing professions is an oxymoron, the very word "management" suggestive that it is not a profession in the traditional sense of architecture, law, accounting etc.

[28] Walker (2000), however, does indicate that 'housing plus' services might be achievable through savings of time achieved by new technology, for example, call centres to deal with routine enquiries.

process, too, are of great significance. Focus by staff on core performance business objectives, and the rationalisation of jobs themselves into a series of job competencies based on process, could result in staff having insufficient knowledge to advise tenants of their legal rights, thus adversely affecting take-up of rights by tenants. Indeed, and a point taken up later in this thesis, the imposition of priorities upon staff to fulfil work objectives is often likely to run counter to the promotion of a rights culture.

Promotion of the NPM ideology, too, is unlikely to bode well for the development of a rights culture. For NPM organisational activities focus increasingly on matters of finance, in particular methods that can be adopted to curtail expenditure, as will be exemplified shortly by the limited budgets allocated by housing authorities to the training function. And integral to these developments, it is increasingly the case that many senior staff appointments are people with a management or traditional recognised professional background (particularly accountancy), as opposed to personnel with a specific housing management background.[29] And the links to why such developments may not be compatible with promotion of a rights strategy can now be clarified by consideration of two factors. Firstly, and despite the speculative nature of this point, the appointment of such types of staff reflects an organisation committed to business ventures and dealings in the market. Given this focus, then, rights issues are liable to receive little support, particularly if such rights issues conflict with corporate financial planning.[30] Indeed, Gallagher (1982) emphasises that – even in the period preceding the development of NPM:

> "that too many managers today are opportunist managers who become entangled in corporate management structures and pursue 'professionalism' for its own sake"

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[29] The recent appointment of a housing director in a large Scottish local authority to the position of chief executive does not contradict this assertion given that the person is qualified in accountancy.

[30] Managers supporting such rights initiatives, consequently, would find their employment status extremely precarious.

(p146).[31]

Secondly, in view of the non housing professional background of key organisational employees, their knowledge of rights issues is likely to be extremely limited, as a result of which promotion of rights is scarcely to be expected, consciousness being a crucial determinant of action.

Summary

The development of legal rights in the public sector housing field can be attributed historically to a number of factors. At a political and ideological level, for example, both major political Parties and the Tenants' Movement were concerned at the lack of rights enjoyed by tenants in the public housing sector. Yet the development of rights reflect not simply commitment to the needs of individuals. For promotion of a rights based philosophy was also conducive to the aims of broader economic and political strategy. For instance, the right to buy was supported vigorously by the Conservative Party, sales policy clearly compatible with the broader privatisation strategy that was being developed by Central Government.

Local authorities have traditionally retained much discretion in the administration of public services, including the exercise of their legal duties and obligations in respect of housing stock and tenants of that stock. Such discretion has continued in the main for local authorities as far as the implementation of legal rights is concerned. General local authority autonomy has, however, been affected in recent years through the development of the NPM, an ideological shift that conceives of local authorities as being quasi-market organisations

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[31] Since the Gallagher study Walker (1998) notes - despite uncertainty about the nature of housing management vis-à-vis its professional status (specialist knowledge etc) - the housing management profession has diversified into an array of different areas that straddle all tenure forms, particularly the social rented sector ie housing associations, a diversification that lends support to the view espoused by Stewart (1996) that housing management is management with specialist skills and knowledge rather than a profession, covering areas such as care and support, community development, urban regeneration and economic development.

that a) operate in a competitive environment and b) are subject to rigorous performance management systems to ensure value for money. Such developments, the thesis contends, are unlikely to bode well for the development of a rights culture despite espoused adherence to principles of citizenship by supporters of the NPM.

Factors Relating to the Legal Process

As law is the concrete form in which rights are expressed, it is essential to examine the implications of the way in which laws are framed for the implementation of rights, the role of judges who adjudicate in disputes, and the remedies the law provides for infringement or denial of rights. Deficiencies in any of these areas may defeat or impede the legislative intention to secure rights to individuals.

The courts have long been regarded as central institutions of legal systems, legal doctrine historically stemming largely from "the accumulated wisdom of the judges" (Cotterrell (1992) p17). It is important, therefore, to offer a brief evaluation of jurisprudential matters that might be pertinent to understanding rights implementation. This evaluation is carried out by reference to a) determinacy, b) the role of the judiciary and c) remedies.

a) *Determinacy*

The enterprise of evaluating the implementation of legal rights presupposes that we can define the rights in question, yet this is often a difficult task. The possibility of interpretative dispute is ever present in law but varies from context to context, some rules appearing more determinate than others.

As Walker (1992) notes, many of the legal terms used in statute such as "reasonable" are vague thereby permitting judges "to differ in opinion as to the decision of a case even though the facts may be established and the law well settled" (p178). This problem is not unique to

housing law but indeterminacy has certainly revealed itself as a problem in a number of areas of housing law. The problem may be illustrated by an example from homelessness law. A person has a right to have accommodation secured if homeless and in priority need.[32] The legislation goes on to say that a person is homeless if she/he has no accommodation, a point that will be dealt with more fully in Chapter 3 when the legal rights under scrutiny are summarised. The legislation does not, however, define "accommodation" with the result that the actual meaning to be ascribed to the concept hinged on subsequent case law. Thus, in *Parr*, it was held that accommodation had to be "appropriate" and excluded accommodation situated 150 miles away from the defendant's home.[33] In the words of Lord Denning MR:

> "That means of course that the house – as a dwelling – must be appropriate for a family of this size. It must have enough rooms to house his wife and five children. If it is in an area with which he has a local connection, this is good enough. He cannot reasonably refuse suitable accommodation in his own area. But it is different when the offer is only accommodation in a far-off area with which he has no local connection. A near-by area of the same type might be appropriate. But not an area 150 miles away where... I know that beggars cannot be choosers, but they should be given some consideration – so that they are housed in a suitable environment" (p98).

Yet this decision was held to be wrong in the now infamous *Puhlhofer* case, in which the House of Lords took the view that "accommodation" meant any place that could reasonably be described as accommodation in the ordinary meaning of that word, without a qualifying adjective (Cross (1995)).[34] Thus, although Diogenes in his tub would not have had "accommodation", a family living in a guest house with bedroom but no cooking facilities

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[32] The Housing (Scotland) Act 1987, s24.
[33] *R v Wyre Borough Council, ex p Parr (1982)* 2 HLR 71.
[34] *Puhlhofer v Hillingdon London Borough Council,[1986]* AC 484.

would have accommodation. This decision was arguably inconsistent with the aims of the original legislation which was amended in 1986 (Robson & Poustie (1996)).[35]

Other statutory provisions are much more open-ended. Discussing the words used to describe those to whom preference should be given in the allocation of council housing,[36] for example, Shelter argue that the legal duty, despite being enshrined in statute, has little practical relevance.[37] Examples of the terms used in this section are "reasonable preference", "large families" and "unsatisfactory housing conditions". According to Shelter (1982), "such terms are vague and virtually impossible to enforce though the courts. Thus, from the point of view of enforcing an individual's rights, the section is useless" (p5).

This criticism appears to beg the question of whether the legislation is intended to confer enforceable rights to housing.[38] It is important to stress, for example, that legislative provisions enacted by Central Government are often so drafted to preserve - in addition to judicial discretion - substantial local authority discretion in their delivery of services, as opposed to the encouraging of rights take-up through the courts.[39] Thus, it is more plausible to suggest that legal principles by their very nature must be indeterminate. As Schneider (1992) writes:

> "In modern society the law regulates the complex behaviour of millions of people. To do this efficiently – to do this at all – broadly applicable rules must be used. Yet such rules are bound to be incomplete, to be ambiguous, to fail in some cases, to be unfair in others" (p47).

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[35] The Housing (Scotland) Act 1987, s 24 (3) (d).

[36] This is a technical housing management term and is synonymous with the term "lettings". See Hooton (1996) for full details of housing terminology.

[37] The Housing (Scotland) Act 1987, s 20 (1)

[38] The Shelter point also obscures the fact that failure to stipulate clear entitlement to rights is not synonymous with the denial of someone's rights.

[39] Other theorists offer different perspectives of course. Cross (1995) argues that indeterminancy stems from inadequate consideration by the Parliamentary drafter; while Loveland (1995) stresses that legal terminology is often indeterminate for political reasons. In short, there may be different explanations for different statutes.

However, it would be wrong to assume that talk of rights is irrelevant in the face of such open-ended statutory terms. There are well established legal principles governing the exercise of administrative discretion so that the citizen at least has the right to have the discretion exercised properly, ie according to those standards.

b) *The Role of the Judiciary*

We have already noted how judicial interpretation of statutory provisions can make a difference to their meaning. Contemporary housing law is increasingly based on statutory provisions, and the role of the judiciary in the development and implementation of such provisions remains significant, particularly as judges in effect continue to make law through statutory interpretation (Griffith (1997)). For example, judicial interpretation may make a difference to the content of rights as in the *Pullhofer* and *Awau* cases.[40] Judges also make law through the development of the common law which remains significant in the landlord/tenant context. A theoretical appraisal of the role of the judiciary is now offered to assess how this might affect the implementation of legal rights, although this is not a comprehensive review given the aims of this thesis. This review covers i) interpreting the law, ii) judicial discretion and iii) judicial expertise.

i) <u>Interpreting the Law</u>

In an early study, Jennings (1935) affirmed that the role of the judiciary is primarily concerned with "safeguarding individual rights in the accomplishment of modern social purposes" (p428), a description that symbolises both the independence and alleged impartiality of the judiciary, the individual judge aloof from egoistic concerns seeking to ensure that justice is meted out. According to Jennings, then, the role of the judiciary is to ensure that legislation is not interpreted "against public policy in the interests of private

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[40] *Puhlhofer v Hillingdon London Borough Council* [1986] AC 484; *R v Brent London Borough Council*, ex p Awua (1994) 26 HLR 539, CA.

property" (p454)". Jennings modifies this, though, by reference to defects in the judicial system that may result in decisions suggestive of judicial bias, decisions that result from ignorance of the issues under consideration, for example, ignorance of the complex areas of modern housing legislation.[41]

An ideological gap exists between the above perspective, however, and that offered by adherents of the view that the judiciary operates primarily in the interests of the state.[42] Laski (1925), for instance, claims that the *Poplar* judgement by the House of Lords shows the latter to be "the unconscious servant of a single class in the community" (p848). Yet perhaps the most vociferous exponent of this school of thought that considers the judiciary to operate in the interests of the ruling class is Griffith (1997). Although judges are, in Griffith's view, impartial insofar as judgements are not consciously prejudicial, Griffith's fundamental claim is that judges "are not and cannot be neutral in the sense of having no policy interest in the outcome of the cases they decide" (Cotterrell (1992) p233). Griffith argues this on the premise that judges must make political choices pertaining to the protection of the public interest, judicial interpretation of the public interest determined by:

> "... the kind of people they are and the position they hold in our society... this position is a part of established authority and so is necessarily conservative and illiberal"(Griffith (1997) p336).

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[41] Jennings (1935) cites four principal defects that affect decision-making in housing cases, namely a) common law rules of interpretation are confused, b) technical limitations of common law rules and their relevance to housing, c) flaws in the rules of interpretation that allow judicial bias against reform ie allowing judges ignorant of practical housing issues to adjudge these very issues, and d) incompatibility between lengthy legal timescales for resolving issues and the social issues that need to be addressed urgently.

[42] Fennell (1986) argues that the decision in *Roberts v Hopwood* [1925] AC 578 represents the beginning of the process of using legal means to suppress political opposition to the government, a case in which the Lords upheld the District Auditor's decision to surcharge councillors of the London Borough of Poplar who had agreed to pay both female and male workers a minimum wage, but at a level held to be unreasonable and contrary to the Metropolis Management Act 1885. This represents an important ingress by Central Government into local political affairs hitherto regarded as being the responsibility of local councils.

In Griffith's opinion, the public interest comprises three elements, namely a) the protection of state interests, b) the preservation of law and order, and c) the promotion of right-wing political and ideological interests. The principal function of the judiciary in Griffith's view, then, is to serve "the prevailing political and economic forces of contemporary capitalist society" (Griffith (1997) p342)), albeit judicial interpretations regarding the public interest can result in judgements incongruent with central government policy. Indeed, judges are individuals, too, capable of being swayed both intellectually and emotionally by the cases before them.

With specific reference to housing matters Griffith cites the *Awua* case as "in effect implementing government future policy" vis-à-vis homelessness legislation.[43] In this case involving intentional homelessness Lord Hoffmann stated that nothing in law "caused a person to be homeless simply because their accommodation was temporary, short term or precarious until they were within 28 days of losing it" (Madge (1998) p618).[44] Indeed, as Griffiths argues, the judicial decision to regard accommodation as not being synonymous with settled accommodation altered hitherto interpretations of homelessness law so that:

> "Overnight thousands of tenants who believed they had secure accommodation for as long as they fulfilled their contractual obligations found that the period of their occupancy was for the local council to decide" (Griffith (1997) p145).

Loughlin (1992) notes a major benefit of the Griffiths' approach as being its tendency to analyse critically court processes and highlight their underlying value assumptions, in short an approach that is "an exercise in continuous de-mystification" (p199). But Griffith's position can be criticised for failing to take account adequately of both the nature and the diversity of judicial decision-taking (Loveland (1995)). Cotterrell (1992), for instance,

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[43] *R v Brent London Borough Council*, ex p Awua (1994) 26 HLR 539, CA.
[44] The Housing Act 1996, s175.

challenges Griffith's position because of its theoretical ineptitude in accounting for the dichotomy that exists between a) the judiciary as an arm of the Government and b) the judiciary "as legitimators of the legal and social order necessarily operating 'at arm's length' from Government" (Cotterrell (1992) p236)). In short, the judiciary must balance state interests against the need to ensure the integrity of legal doctrine and principles, failure to maintain such integrity entailing a possible "diminution of their status in the eyes of professional lawyers as well as citizens" (Cotterrell (1992) p235).

Again, and with reference to housing issues, the Griffith position can be challenged on grounds of theoretical inadequacy. In the case of homelessness referred to above, for instance, it is unclear how the *Awua* judgement could serve the interests of any particular class. Nor does the Griffith perspective address adequately the fact that state agencies may themselves have conflicting interests. Although reduction of homelessness legal re-housing obligations may benefit the interests of certain local authority landlords with limited resources, for instance, failure to deal with homelessness may conflict with another Central Government policy objective of eradicating 'social exclusion'. In short, society comprises many groups with potentially competing interests and there is simply no single 'ruling class' group whose interests the judiciary serve. Heterogeneous interests are reflected in the housing market, too, where both public and private sector tenures exist, the latter based essentially on the profit motive, while public sector landlords are agencies whose motives for action have historically been rooted in welfare concerns (see pp following). Given the plethora of interests, both individual and collective, inherent in these different tenure systems, it is simply not plausible to regard judicial decision-making as serving the interests of one particular class.

Such criticism is also supported by other theorists who espouse the view that insufficient

data abounds to validate the occurrence of class-orientated judicial prejudices, that current theories are consequently "epistemologically flawed" (Robson (1979); Partington & Hill (1991)). And a particularly interesting theory is expounded by Robson (1979) in his seminal research work concerning the role of the judiciary. Robson (1979) concurs with the Griffith perspective insofar as the judiciary is concerned to defend property rights within extant political economy. However, Robson (1979) also asserts that the judiciary are not merely "functional epiphenomena of their class interests", that they remain capable of "operating against dominant state interests" given the autonomous nature of the judiciary within British society (p508).

And consideration of broad number of different judicial decisions suggests that the Robson position approximates more closely to the truth. Although judicial decisions vary considerably, for example, judicial decisions to support individual tenants against landlord eviction actions are well documented, such as the decision not to evict tenants in rent arrears in *Woodspring District Council v Taylor* on the basis that the reasonableness criteria had not been established;[45] while in *R v Hammersmith and Fulham LBC* it was deemed that failure to pay the rent was not conclusive evidence of intentionality.[46] Again, other case law suggestive of judicial interpretation that promotes tenant' interests is revealed in *Glasgow District Council v Erhaiganoma* in which it was held that clear and proper summons should include standard averments covering service of notice, statement concerning rent arrears and a statement that it is reasonable to grant an eviction decree.[47] It should also be noted, with regard to the specific rights under review, that no judicial cases have occurred in respect of disputes concerning the right-to-repair scheme, whereas disputes concerning access to files

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[45] *Woodspring District Council v Taylor* (1984) 4 HLR 95

[46] *R v Hammersmith and Fulham LBC* ex parte Lusi (1991) 23 HLR 260; *R v Tower Hamlets* ex parte Rouf (1991) 23 HLR, 460.

[47] *Glasgow District Council v Erhaiganoma,* 1993 SCLR 592

issues are dealt with by local authorities as part of internal appeal systems.

What, then, can be said about the relevance of Griffith to judicial decision-taking? Such an approach, it seems, fails to explain the variety and breadth of decisions taken by the judiciary, decisions which are largely unpredictable given the nature of the work performed by the latter. And, as Loveland (1995) adds:

> "... one could hardly expect uniform judicial interpretation of the Act's discretionary terms. Substantive inconsistency is built into the legislation" (p322).

In short, there is no evidence to suggest that judicial interpretation is systematically biased against tenants and homeless people. This is not to belie, of course, the pivotal nature of law in regulating class conflicts inherent in contemporary capitalist society. As Hutchinson (1985) writes:

> "The law is like a dog on a long leash. Although it will ultimately follow the lead of its political master, it has considerable range of movement. It can wander from the chosen path and cause considerable damage and frustration" (p297).

And, while law in general operates in favour of the leading capitalist class, many laws are also beneficial to other classes to ensure both a healthy workforce capable of productive work and the loyalty of that workforce (Pearce (1976)).

It should be emphasised at this point, of course, that while analysis of such cases reveals the powers of the judiciary regarding the determination of individuals' rights, the literature review is largely silent on the question as to how case law might influence or modify existing administrative practice. From a rights perspective this question is highly significant since failure to take account of judicial decisions may lead to unlawful decisions recurring in practice. Yet, as Loveland in one case study has concluded, consideration of case law was not integral to routine decision-making within local authority housing administrative

practices that:

> "... law remained a curative rather than a preventive element of the decision-making process" (p305).

To this issue the thesis will return in the fieldwork.

ii) Judicial Discretion

Analysis of discretionary power has not been a primary focus of traditional legal theory (Galligan (1986)). Yet, as Galligan emphasises:

> "a noticeable feature of modern legal systems is the extent to which officials, whether they be judicial or administrative, make decisions in the absence of previously fixed, relatively clear, and binding legal standards" (p1).

Indeed, it has been stated that, contrary to jurisprudential adherence to formal legal rationality inherent in traditional Rule of Law theory, modern law illustrates a "major qualitative change towards substantive rationality in preference to formal rationality", that is, the development of general legal policy guidelines and parameters within which discretion is all pervasive (Cotterell (1992) p162). And, as Allott (1980) affirms: "Discretion is not a rare or exceptional feature of a legal system. It is intrinsic to every law" (p252).

Crucial to understanding the concept of "discretion" is the fact that judicial discretion has different uses (Galligan (1986)). In its first sense discretion occurs in the law-making function itself when the judiciary interprets, settles and/or changes the law. In the context of the court process, for example, judicial discretion arises when, after listening to and considering the views presented by both parties to the dispute, the judge (or sheriff) then announces a reasoned decision in open court. This decision must have regard to statutory principles and relevant case law that may itself contain binding principles decided by a superior court. It is also important to note that the courts can take account of Parliamentary

debates in determining parliamentary intent and interpreting statutory provisions where meaning is not clear (*Pepper v Hart [1992] 3 WLR (1032)*).

In its second sense – and the sense now examined – judicial discretion is often legislatively sanctioned, that is, the decision-maker is not bound by precise rules but has considerable scope for choice in making the decision. An example would be judicial discretion in determining reasonableness in respect of eviction actions. This type of discretion is of particular relevance in this thesis as failure to exercise such powers properly can have serious implications for tenants' rights. Discretion also occurs, of course, within local authority administration. An interesting view on discretion is provided by a housing practitioner. According to Evaskitas (1984), discretion is necessary if allocations policies are to operate effectively. As Evaskitas notes: "...the fundamental point so often missed is that no amount of rules and regulations *can* or *should* describe or prescribe everything that happens" (p2). For Eviskitas discretion can operate at the individual case level or at the policy level. Let us first consider two theorists who believe that the exercise of judicial discretion may be deleterious to tenants' rights. It is emphasised that exercise of discretion is a rights issue. For, although the tenant has no "right" to a specific outcome since the decision-maker has discretion, she/he does have a right to a proper exercise of discretion. It would be disturbing if there was systematic bias in the exercise of judicial discretion, for example, a bias towards the interests of landlords.

With specific reference to housing cases involving repossession actions, Cowan (1999) argues that judicial discretion may be detrimental to rights implementation because it is "heavily influenced by the particular judge's perception of the morality of the actions of both creditor and debtor in possession proceedings"(p483). In the case of the public rented housing sector, Cowan draws on research to suggest that court orders for repossession tend

to be "rubber stamped" because the judiciary places general trust in the actions taken by local authority landlords. Cowan then extrapolates on the extent of discretion by reference to dissonance in judicial practice throughout the country in respect of decisions taken by both individual judges and by different courts.

Mason et al (1995), in another critical study, suggest that sheriffs often appear to ignore their legal obligation to utilise discretion in considering the reasonableness of eviction actions by landlords, a practice reputedly borne out by their failing to mention or consider reasonableness as part of the court proceedings coupled with failure to consider matters pertinent to the decision concerning whether it is reasonable to evict.[48]

Scrutiny of existing practice, however, sheds doubt on the applicability of these perspectives to judicial practice. With reference to the Mason et al (1995) position, for example, sheriffs may well have considered reasonableness issues prior to granting an eviction order even though this was not observable publicly, particularly when faced with a landlord whom (as the relevant administrative enforcement agency of housing law) they believed would have acted in a lawful and proper fashion *and* tenants were not present to defend repossession actions.[49]

What, then, can be said in respect of discretion and rights implementation? Assessment of the varying theoretical perspectives concerning judicial discretion confirms that discretion is an integral element of the judicial process. Indeed, as Schneider (1992) has noted:

> "... however much we acknowledge the primacy of rules in a system of law, we cannot deny the large and essential service discretion performs" (p68).

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[48] (See Collins and O'Carroll (1997) for a detailed consideration of the reasonableness criteria.) In discussion with the former court officer of one of the predecessor councils now part of Council B, this officer emphasised the trust element by reference to the sheriff's retort to the (court officer's) question as to whether he had taken reasonableness into order: "You shouldn't have brought the case to court if it wasn't reasonable". Implicit in this remark is a possible reason why sheriffs fail to mention reasonableness publicly.

[49] The Mason et al (1995) study revealed that tenants were present only in 15% of decree craves.

With reference to questions concerning rights implementation, contemporary judicial practice suggests that discretion may either inhibit or promote the interests of tenants, the outcomes of the decision process dependent on individual sheriffs whose decisions will themselves be moulded by a range of factors, including personal values, knowledge of the legal and case matters under review and time available for consideration of such matters.

iii) Judicial Expertise

A legal system constitutes a distinct system of communication (Allott (1980)). And, as with any other 'language', indeterminacy of meaning can result in ineffective implementation of principles. This is of particular relevance from a rights perspective since the effective implementation of rights presupposes that judges know the law. Indeed, with reference to how effectively law is transmitted into society, Allott (1980) notes that a grave condition of *anomia* exists, that is, a lack of knowledge concerning the law, because of its complexity and indeterminate nature leading Allott to affirm that "Unknown law is ineffective law" (p73). It is emphasised in passing that legal form may have a wider relevance, for instance, indeterminacy of legal meaning might affect rights implementation at the administrative level if staff cannot understand legal provisions. [50] This issue has not been covered by current research, however, and has been flagged as a topic suitable for future research. This section now addresses the question of judicial expertise and how this might impact upon rights' implementation.

In an early study Jennings (1935) noted that a principal defect affecting decision-making in housing cases related to the fact that judges were often ignorant of the very issues that were the subject to adjudication, this ignorance stemming from lack of awareness of legal provisions as opposed to ignorance due to legal complexity. Given that many lawyers have

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[50] At an abstract theoretical level legal form can be distinguished from legal content (Freeman (1994)). The former comprises the structure and principles of law, the latter the details of legal provisions as contained within statutory format.

traditionally focussed on certain areas while ignoring others, difficulties for the judiciary in keeping abreast of legislative developments might be anticipated. Indeed, in view of both the complexity and growth in housing related cases, it has been proposed to establish a specialist Housing Tribunal or Housing Court, although this proposal is not linked to the theoretical question of judicial knowledge and rights implementation (Mason et al (1995)); O'Carroll and McFadden (1999)).

But what evidence exists to indicate that ignorance of the law may result in inadequate decision-making by the judiciary? This point is now assessed by reference to the tenants' right of security of tenure and the legal provision that secure tenants can only be evicted if the landlord not only satisfies a relevant ground for eviction, but also satisfies the court that it is reasonable to grant an eviction order.

An early Scottish-based study of this principle, for instance, suggested that there was little concern in most courts with the issue of reasonableness (Adler et al (1985)).[51] This situation applied even in the Glasgow and Edinburgh Sheriff courts where, owing to greater tenant representation, more adjournments were granted. And, in a later study by Mason et al (1995), it was noted that little progress had been made in respect of judicial assessment of reasonableness; indeed – from a survey involving five sheriff courts throughout Scotland - "in only a small proportion of cases, however, was there a public indication of reasonableness being considered" (p11). Major reasons cited by the authors for this included lack of information being provided to sheriffs, but – and more critical:

> "there appeared to be a general lack of knowledge amongst sheriffs about many of the issues that are pertinent to rent arrears cases such as rent direct, housing benefit

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[51] Adler et al (1985) conclude by noting that where rights issues were being addressed by the courts ie the sheriff taking reasonableness into account in considering eviction actions, this was largely attributable to tenant pressure supported by social workers and others. The relevance of tenant involvement in rights implementation is discussed in the following section.

overpayments and what would happen to a tenant if a decree was granted" (p15).

Yet two points should be noted in respect of both studies, one from a historical perspective, the other methodological in nature Although the Adler study may have been pertinent in the early 1980's, judicial ignorance of recently introduced legislative changes is arguably to be expected.[52] Indeed, later case law indicates that many sheriffs now take reasonableness into account in decision-making. In *Clackmannan District Council v Morgan,* for instance, the sheriff held that eviction would have draconian consequences for the adults and their young children (Collins & O'Carroll (1997)).[53] While in *Glasgow District Council v Brown*, it was held not to be reasonable to evict an innocent joint tenant (Watchman (1991)).[54]

The methodological point concerns the study carried out by Mason et al (1995). In this study the authors suggest that reasonableness was raised publicly by sheriffs in only a minority of cases in which an eviction decree was being sought, that is, in thirteen cases (or 3%) from a total sample of four hundred and sixty four cases.[55] In addition, Mason et al (1995) highlight that personal circumstances of the tenants were both raised and discussed in only 24% of the total sample, indicating that the requirement to consider reasonableness was not being met by certain sheriffs since adjudication on matters of reasonableness requires possession by the latter of case facts and tenant details. Despite the undoubted strength of this argument, however, caution should be observed for two reasons. First, and as Mason et al (1995) acknowledge, the fact that reasonableness does not appear to be aired publicly is not synonymous with non-consideration of reasonableness by sheriffs. As the authors themselves note: "Sheriffs could indeed maintain that they consider reasonableness without

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[52] The Tenants' Rights Etc (Scotland) Act 1980.
[53] Unreported 22 October 1991, Alloa Sheriff Court; Sheriff Younger
[54] *Glasgow District Council v Brown*, 1988 SCLR, 433.
[55] Reasonableness was raised in thirty one cases (or 7%), though, because of input by tenants and/or their advisers.

actually discussing it" (p6). Indeed, it is also conceivable that they could mull over case facts and personal tenant details without public discussion.

Second, although the study embraces five separate sheriff courts, that is 10% of the forty nine sheriff courts in existence at the date of the study, the number of sheriffs observed participating in the judicial process (twenty in total) may not be representative of the judiciary as a whole.[56]

c) *Remedies*

From the perspective of rights implementation remedies are important since they may affect the ability of persons to enforce their rights in substantive law. It is axiomatic to add, though, that the existence of remedies per se does not guarantee rights. Legal remedies may be too costly for rights-bearers to use, or be largely ineffective in practice as in the case of seeking an order of specific implement to enforce a landlord's repairing obligations (O'Carroll (2000A)). As O'Carroll (2000A) notes:

> "This is because of the requirement to specify with sufficient precision in the writ the work that requires to be done. In some cases, especially in relation to condensation dampness, this may be practically impossible. It is believed that in the 20th century there was no reported case of a successful application of specific implement involving disrepair in housing" (p41).

Similarly, remedies of a non-judicial nature may not be used for various reasons, for example, tenants declining to use local authority complaints systems because they are regarded by them as being "costly in time, trouble and effort" (Cotterrell (1992) p251).

It is the purpose of this section to evaluate briefly what remedies are available to local authority tenants or other persons seeking redress where there is dissatisfaction with

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[56] As advised by the Scottish Courts Administrative services in October 2000, this figure represents only c 20% of the total number of sheriffs in Scotland in 1995 ie one hundred and one sheriffs and six sheriff principals. The figure in 2000 is one hundred and twenty nine sheriffs and six sheriff principals.

decisions taken by local authorities in the field of housing law. Legal remedies will be assessed followed by the evaluation of non-judicial remedies. For ease of clarification legal remedies are examined under i) ordinary civil remedies, ii) judicial review and iii) statutory housing remedies.

a) *Legal Remedies*[57]

i) Ordinary Civil Remedies

By ordinary civil remedies is meant those available across the field of civil law. This section summarises the ordinary civil remedies available to tenants seeking to have their rights protected through legal action.[58] Comments on their relevance to rights implementation are also noted.

Damages

Tenants can seek damages where the landlord is in breach of contract and the tenant has suffered a legally recognised loss, for example, what the landlord has failed to carry out necessary repairs and the tenant's possessions have been damaged. However, damages will not necessarily be available for all breaches of statutory duty by housing authorities. Thus, there is no right to claim damages for breach of the duties under the homelessness legislation.[59]

Interdict

Interdict is a civil remedy that is used to prevent someone from doing something. It cannot be used, however, to force someone to carry out a positive act (Collins & O'Carroll

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[57] A plethora of other remedies, many of which are issue-specific, are not discussed here. Examples of issue specific legislation would be the Mental Health (Scotland) Act 1984 that deals with legal rights of people with mental health problems and the Telecommunications Act 1984, s43, that makes it unlawful to use the public telephone system to send offensive messages. A person guilty of such an offence can be imprisoned for up to six months and/or fined to a maximum of £5,000 (the Criminal Justice and Public Order Act 1994, s92).

[58] The Civil Evidence (Scotland) Act 1988, s1, abolished the requirement for corroboration in civil cases. Corroboration is evidence which confirms other evidence of fact.

[59] *O'Rourke v Camden LBC* [1997] 3 ALL ER 23, overruling *Thornton v Kirklees Metropolitan Borough Council* [1979] QB626, CA

(1997)). It has limited uses in respect of the specific rights under consideration but may be useful in stopping eviction decrees being used. As Mitchell (1995) notes, for instance, tenants have a right to seek reduction of decree, and interdict against its use in the Court of Session where the pursuer attempts to put an out-of-date decree into effect. In English law applicants may ask the court to grant interlocutory relief, by way of an "interim mandatory injunction requiring the council to secure accommodation pending the final disposal of the action"[60] (Hoath (1989) p154). Interlocutory relief is also available in judicial review proceedings. Before the plaintiff can claim a mandatory interlocutory injunction, though, the courts have decided that she/he must establish a "strong prima facie case" for the action.[61]

Specific Implement

Specific implement is a civil remedy applied by a court to order a party who is in breach of a contractual obligation to undertake and perform that obligation.[62] In contemporary practice this could be used to require the performance of some physical as opposed to pecuniary obligation, for example, the clearing of garden areas. With respect to tenants' rights, this action might be used to make landlords carry out repair obligations (Dailly (1993) p102). Yet the potential value of such a remedy to tenants has been largely undercut by the "almost insurmountable evidential burden that a pursuer must overcome before the court will exercise its discretion and grant specific implement" (Dailly (1993) p102). Difficulties involved in preparing a detailed and unambiguous repair specification are manifold and, therefore, all too often the pursuer's crave is an easy target for a technically well-qualified defender. Indeed, and to re-iterate an earlier point made by O'Carroll (2000A)), there is no example of a successful court case including specific implement in

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[60] The Housing Act 1996, Part VII, s 188. In English law an injunction is a court order requiring someone either to carry out certain acts or refrain from doing certain acts (Hunter (1995)).

[61] *De Falco v Crawley Borough Council* [1980] QB 460.

[62] Specific implement is enforced by decree *ad factum praestandum*

respect of repairs for the whole of the twentieth century, thus making it impossible to obtain in practice.

ii) Judicial Review

Judicial review tends to be used when other remedies are not available. It is used in the field of housing law, predominantly in homelessness cases (Mullen et al (1996A)). Judicial Review is a remedy in the Court of Session which allows actions or decisions of "inferior courts, tribunals and other public offices and authorities" to be reviewed (The Law Society (1992) p43).[63]

The primary function of judicial review is to ensure that administrative bodies, including local authorities, act within their statutory powers, do not abuse their discretion and act in a procedurally fair manner. It is emphasised that the role of the Court of Session in judicial review is not appellate in nature but supervisory. In short, the Court will not query the merits of a specific local authority decision; instead, it will consider whether that decision satisfies accepted principles of administrative law. In accordance with such principles, local authorities must ensure that decisions fulfil the following criteria: firstly, they must act within their statutory powers and where the power/duty is discretionary, there must be real exercise of discretion. Secondly, all relevant statutory matters must be considered by local authorities and irrelevant matters correspondingly ignored. Thirdly, no decisions should be so unreasonable that a reasonable authority would have taken it. Fourthly, local authorities should follow fair procedures. Finally, under the Human Rights Act 1998, the victim of any public authority act that is incompatible with the Convention can challenge the authority in court.[64] Only victims "will have standing to bring proceedings by way of judicial review"

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[63] The focus in this section will be on the Scottish context. The English judicial review system has specific differences, for instance, the requirement to apply for leave before an action can proceed, or the refusal of leave because of delays ie actions must normally be raised within three months from when grounds for the application first arise.

[64] The Human Rights Act 1998, s7.

(Wadham and Mountfield (1999) p2).

Judicial review can, on occasion, be an important remedy for tenants, although two points should be emphasised at this stage. Firstly, as a matter of law, the court may refuse to hear an application for judicial review where other remedies are available, but have not been exercised, for example, where an applicant is entitled to raise an action to have rights enforced through the sheriff court. It, therefore, tends to be used when no statutory right of appeal or other established legal remedy is available. Secondly, another type of remedy might in practice be more effective, for example, using internal complaints systems. Examples of where judicial review would be appropriate would include both homelessness decisions and house allocations decisions (Himsworth (1994)).[65] It is also meritorious insofar as it remains a fairly quick procedure in Scotland and retains much flexibility, for example, by providing for interim relief (securing of housing in homelessness cases). Finally, judicial review provides for a range of remedies to be made available, including a) interim interdicts, b) declarator, d) reduction, d) s45 Petitions (Court of Session Act 1988) to enforce statutory duties and e) the right to damages (Robson & Poustie (1996)).

Judicial Review: Limitations

A number of concerns can be raised in respect of judicial review as a remedy. The first concern is that remedies available under judicial review are limited in scope. An order of declarator, for instance, does no more than declare the petitioner's rights. It does not require the local authority to substitute any particular decision for the decision declared

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[65] An alternative remedy in homelessness situations is covered by the Local Government (Scotland) Act 1973, s211, where the Secretary of State can initiate default proceedings against those local authorities where there is flagrant breach of statutory homelessness duties (Himsworth (1994)).

unlawful. It is thus often combined with other remedies (eg a S45 Petition).[66]

Secondly, damages tend to be low and are only available if there is a claim for damages in terms of substantive law (Robson & Poustie (1996)).

Thirdly, judicial review can be obtained only in the Court of Session which, in view of the costs involved, can be prohibitive. For example, most petitions involve private individuals with few 'class' actions having been raised (Mullen et al (1996A)). Given that the minimum costs of lodging the required Petition, prior to any substantive hearing, are likely to be substantial it is crucial that applicants can access legal aid funds to cover the costs of the action. With reference to this latter point, though, recent research indicates a number of difficulties. To qualify for legal aid, for example, the Legal Aid Board must be satisfied that a) there is a 'probabilis causa litigandi'[67], and b) it is reasonable given the particular circumstances of the case that legal aid should be granted. In addition, legal aid is refused if an applicant's disposable income and capital exceed prescribed limits. And it would appear that many legal aid applications are indeed refused. As Mullen et al (1996A) note:

> "...less than one third of applications (29.7%) are granted initially, and less than two-fifths (38.7%) are granted once successful reviews are added in" (Mullen et al (1996A) p76).

The fourth concern relating to the judicial review remedy involves accessibility for reasons other than costs. Research has highlighted, for example, that solicitors often lack relevant knowledge of the judicial review procedures and, indeed, many solicitors never use these procedures. As one English study notes: "...it would appear that less than 6% of

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[66] An example of where this remedy might be used would be to seek a court ruling as to whether a person is a legally "qualifying person" with entitlement to succeed to the secure tenancy on the death of the tenant, and for the resolution of which (unlike other rights) no formal legal appeal system exists, for instance, both landlord and/or the putative tenant might seek an order for declarator to seek the court's opinion as to whether or not a legal succession has actually occcurred.

[67] "A probable cause for being a party to legal action". Legal Aid (Scotland) Act 1986, s14 (1).

private practitioners are involved in judicial review litigation in any one year" (Bridges et al (1995) p53).

The fifth concern is that judicial review applications are normally raised only in limited areas such as homelessness, immigration and licensing since judicial review will not be appropriate where other legal remedies exist. Indeed, far from being a panacea, judicial review arguably has limited impact upon public administration, implementation of rights hinging crucially on local authority organisational policies and practices, an issue noted by one writer who states that:

> "that if the goal of administrative lawyers is to ensure that there is respect for legality in all bureaucratic decision-making, attention needs to be paid to the internal processes and administrative culture of public authorities" (Mullen et al 1996A) p134).

Indeed, Halliday (2000)[68] in his study of the influence of judicial review on bureaucratic decision-making, suggests that judicial review is blind to the complexity of factors that mould actual decisions in the workplace, decisions that are stamped by discretionary influences as opposed to being taken simply in an impartial rationalistic manner that derives from contemplation of legal principles. This defect thereby reduces its potential to influence administrative processes. As Halliday (2000) argues, focus by judicial review on narrow areas of administrative processes - coupled with local authority successes vis-à-vis judicial review decisions - may either result in a dampening of scrutiny by local authorities so that, rather than enhancing local authority compliance with legal requirements, judicial review may "operate to reduce the extent to which administrative agencies engage in this self-scrutiny" (Halliday (2000) p122). In short, focus on judicial review by local authorities can

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[68] A Paper derived from the writer's doctoral thesis published in 1999 (Halliday (1999)).

divert them from considering how effectively rights are being implemented throughout service delivery.

iii) Statutory Housing Remedies

There are certain statutory remedies specifically designed for the enforcement of housing rights by means of an application to the sheriff court. It is noted that other rights of appeal by secure tenants aggrieved with their landlord's administrative procedures or decisions in respect of right-to-buy applications are dealt with by the Lands Tribunal. These are not discussed since these rights are not dealt with in the fieldwork. For example, certain rights provide for an appeal to be raised by the tenant when the landlord has taken an adverse decision in respect of an application by the former to exercise one of these rights. Thus, in the case of a tenant formally applying in writing to sublet her/his tenancy or to carry out home improvements, refusal by the landlord sets in motion the possibility of the tenant appealing to the sheriff court to enable the sheriff to consider the reasons given by the landlord for refusal and to determine whether refusal is reasonable. Again, tenants may raise a court action through summary cause procedures to prevent a landlord varying the terms of the tenancy against the tenant's wishes. Finally, tenants can also appeal to the sheriff court by using statutory appeal rights in respect of assignations, lodgers, improvements, and houses repossessed by the landlord using abandonment procedures.

Yet scrutiny of legal provisions reveals that landlords are not obliged to advise tenants either of the actual right, or of their appeal rights to the sheriff court in the case of local authority refusals. Implementation of such rights, then, is likely to depend on the discretionary practices of particular local authorities, for instance, how adequate is the publicity afforded to such rights.[69] For, in the absence of appropriate information being

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[69] Other relevant factors such as tenants' ability or willingness to exercise specific rights are examined later.

provided to tenants, the remedy is likely to be of limited practical import.

Council landlords wishing to evict secure tenants can only do so by raising proceedings as a summary cause in the sheriff court. Prior to raising any action to recover possession, of course, the landlord must first have served a Notice of Proceedings (The Housing (Scotland) Act 1987 s47 (3) (b)). This Notice must be in the prescribed form, specify the ground(s) on which proceedings for recovery are to be raised and set a date from which possession proceedings can be raised. In order to obtain decree for eviction, the court must be satisfied that a) a ground for eviction exists and b) it is reasonable to grant an eviction.[70] It should be highlighted that, at this stage, tenants can offer a number of defences as follows: the action is technically incompetent because of a defective notice or summons; no ground for possession is established eg rent arrears don't actually exist; or it is not reasonable to grant decree eg welfare implications for children if eviction is implemented.

In the event of decree being granted, the legal remedies available to the tenant are to minute for recall, to appeal, or seek suspension and interdict (Mitchell (1995)). The minute for recall is an extremely important remedy that can be applied for in respect of decree pronounced at first calling stage. A minute can be lodged at any point preceding the actual eviction occurring and prevents the eviction proceeding until further court order. The main benefit to the tenant is that the minute for recall defers physical ejection and provides the tenant with an opportunity to appear again in court to attempt to convince the sheriff that an eviction order should not be granted.[71] This procedure, though, can only be used once by

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[70] The Housing (Scotland) Act 1987, s48(2) (a). Schedule 3 lists the relevant grounds. Grounds two and seven were amended by the Crime and Disorder Act 1998, s23 (1) (2) & (3). See Circular 27/1998 for guidance.

[71] With reference to the other remedies that are of more limited use, the following points are noted. Appeals to the sheriff principal are possible in a matter of law only against any final decree whether granted at first (or subsequent) callings or after proof (Summary Cause Rule 81). Reduction ie quashing of decree, or suspension of decree and interdict against its use is possible. This procedure that involves raising action through the Court of Session might be used in cases where landlords seek to implement out-of-date decrees (Mitchell (1995)).

any one party to an action.

Failure on occasion by the judiciary to consider reasonableness when deciding court actions for eviction has already been highlighted as one influential factor that may adversely affect rights implementation,. But another important factor is that many tenants do not attend court to defend against eviction. In one English study, for instance, it was noted that:

> "many defendants fail to participate in the court process with such persons being "more than three times as likely to be placed under the threat of eviction as compared to householders who actively participated in the initial hearing" (Nixon et al (1996) p47).[72]

While in the Scottish context similar findings have been made, tenants who defend personally or are represented being far less likely to be evicted (Adler et al (1985); Mullen et al (1996)). And failure to attend often results in cases being dealt with extremely quickly. To refer to the English study again it was noted that most hearings "last only a few minutes", a timescale that Nixon et al (1996) suggests is inadequate to allow judges to appraise all the circumstances of each case. In one extreme situation, for example, the average time allocated for one hundred and four cases amounted to a mere "1 minute 57 seconds per case" (Nixon et al (1996) p23)[73], a situation explicable largely by the extreme pressures of work that lead the judiciary to expedite case decisions.

b) *Non-Judicial Remedies*

Non-judicial remedies are pertinent to issues of implementation since they provide an important avenue for individuals seeking to vindicate their legal rights. This is of particular importance as individuals may not use legal remedies available, for example, because of

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[72] In English law, the district judge can, however, grant a suspended possession order.

[73] Non-attendance by tenants at court cannot simply be attributed to these factors, of course, since other forces shape the current situation. For instance, extreme pressures of work and a backlog of cases pressurise the judiciary to expedite case decisions.

ignorance of such remedies, or unwillingness to use them. This point is discussed in more detail later (see pp 99-102).

It is interesting to recognise that, prior to the Legal Aid and Advice Act 1949, "Litigation, even in essential areas such as divorce and maintenance, landlord and tenant and industrial accident, was quite simply beyond the means of the majority of the population" (Harlow & Rawlings (1997) p391). In this context, then, alternative forms of accessing justice have been considered and subsequently developed. One such method has involved the development of tribunals that hold jurisdiction to decide legal disputes, for instance, employment disputes dealt with by Employment Tribunals. A plethora of types of tribunals exist and the Council of Tribunals in 1996 was responsible for over two thousand tribunals altogether, comprising almost eighty different categories (Harlow & Rawlings (1997)).

The rationale underpinning the development of tribunals which have proliferated with the expansion of the Welfare State is that the tribunal system offers faster, cheaper and more accessible justice. In respect of housing rights generally, however, it should be emphasised that no specialist housing tribunal exists, hence the omission of tribunals in terms of assessment of remedies.

But it is in the area of non-judicial remedies that there has been perhaps greatest expansion, remedies that are established, generally speaking, to ensure that housing authorities satisfy good practice requirements, but also meet standards of performance often espoused in both corporate and departmental documentation that focuses on customer care and best value services of which providing customers with an opportunity to complain is a key component. Two main types of remedy of a non-judicial nature are briefly considered in this section, namely complaints systems and the Ombudsman.[74] Reference will then be made

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[74] Notification by tenants of problems to staff or councillors is, of course, the most informal method of seeking remedy.

to the right-to-repair scheme where tenants' grievances are dealt with as complaints as opposed to some statutory remedy.

i) Complaints Systems

Complaints systems are relevant to the question of rights implementation since they provide complainants with the opportunity to have their 'case' investigated by officers not party to the original decision. These investigations may lead to the original decision being reversed and thereby protecting the legal rights of individuals.

Research has shown that, although a dearth of complaints systems existed in the 1980's in the public services, this has been largely redressed in the 1990's with "a surge of interest in complaints systems throughout the public services" (Prior et al (1995) p136). Two reasons for this development can be noted: firstly, a response to "an increasingly competitive work place" to retain custom (Williams (1996) p7); Rigby (1998)), in addition to Central Government pressure and exhortations from the Local Government Ombudsman. Indeed, failure by local authorities to have an internal complaints procedure, or to rely on one "which is incomplete or inadequate", may itself constitute 'maladministration" (NCC (1991) p1).

Secondly, principles of good practice that entail that internal complaints procedures should be designed to assure a person's legal rights. As NCC (1991) point out:

> "where the complaint involves a tenant, this includes both the tenants' statutory rights and contractual tenancy agreements" (p3).

It is also possible, of course, for authorities to specify in the tenancy agreement that a tenant has 'a right to complaint', albeit this is not a statutory requirement (NCC (1991)).

The above points, notwithstanding, research indicates that existing practices may require review in the interests of rights implementation. One study by NCC has shown, for instance,

that tenants often lack detailed knowledge of complaints procedures, even where the latter exist; it is necessary, therefore, to publicise the existence of the complaints procedure "if it is to be effective" (NCC (1991) p7). And a recent study by Leabeater & Mulcahy (1996) has highlighted five major reasons why tenants may not complain: firstly, their view that complaining is actually pointless. Secondly, their social and class roots that inhibit complaints. Thirdly, fear of retaliation (eg from neighbours). Fourthly, personality reasons. Finally, lack of relevant information, including one's ability to judge the quality of service provided. Nor should we forget Lipski's critique that bureaucracies, in order to ration and control services, adopt specialist complaints procedures that must be "specialised" as the bureaucracies "cannot afford to hear complaints or vigorous dissent from decisions at the same time that other clients with similar claims but less inclination to speak out are also being processed" (Lipski (1980) p 133). In brief, the complaints process can be seen, according to Lipski, as a control mechanism for managing "dissent or non-compliance" (p133). These alleged shortcomings aside, though, complaints procedures can offer definite advantages, to both tenants and landlords alike. For example, complaints systems enable issues of policy to be reviewed and, following review, may lead to an amelioration in service provision, including securing of rights implementation. This point is of special importance since the Ombudsman must not trespass onto matters of policy in his investigations (McCarthy et al (1992)). Given these advantages, then, pending legislative change that will require landlords to provide their tenants with information about their complaints procedure should be welcome from a rights perspective.[75]

ii) Local Ombudsman Service

The Ombudsman service is important for rights implementation since investigations

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[75] The Housing (Scotland) Act 2001, s 23 (6).

carried out by the Ombudsman might identify instances where the legal rights of individuals have been denied, for example, in the administration of housing or homelessness applications.

The Ombudsman service was created in 1974 (1975 in Scotland) and provides an important avenue for tenants seeking redress in situations where the local authority has been guilty of some form of maladministration. It should be emphasised, though, that the Ombudsman cannot challenge "the merits of a decision based on the proper exercise of discretionary power" (Logie & Watchman (1990) p142). The Commissioner for Local Administration, ie the Ombudsman is concerned, not simply with what has gone wrong, but also with those actions needed to "put matters right", the three principal categories of maladministration identified as being a) administrative shortcomings such as breach of transfer applications, b) bad conduct exemplified in failure by staff to respond timeously to letters and c) the faulty exercise of discretion, for instance, unfair allocations (Logie & Watchman (1990).[76]

The importance of the Ombudsman service from a rights perspective is that it enables individuals to have recourse to an independent body to investigate and adjudicate upon the complaints that may include failure by local authorities to observe the law. Thus, in one recent case involving Council B, (one of the authorities researched in Chapter 4) maladministration was found because of the authority's excessive delay in completion of enquiries, nine months instead of the twenty eight day period to which council policy subscribes. In this case, the officer concerned had sufficient evidence to satisfy herself that the application met the "four hurdles", and the council's "subsequent inaction and reluctance to determine the application appear to have related to "family history" which was of no

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[76] Statistics confirm that housing cases comprise a large proportion of work carried out by the Ombudsman. See Local Government Ombudsman (1996) and (1997) for details.

relevance to the matter before them" (Local Government Ombudsman Report June, 2000). In this case the Ombudsman recommended £800 compensation to make up for the time spent in Bed & Breakfast by the applicant. It is emphasised, of course, that the Ombudsman service is not designed as a mechanism for legal redress, but in practice does provide redress for legal shortcomings. It should be noted in passing that complaints will generally not be investigated where some remedy before a court or tribunal exists, although the Ombudsman may investigate when he is satisfied that it is not reasonable to use an alternative remedy. (NCC (1991)).

It is important to note that several notable limitations exist in respect of the Ombudsman service. The first potential difficulty - particularly from the perspective of individual complainants - is that Ombudsmen cannot enforce their findings, even in situations of clear maladministration on the part of local authorities. In cases where the latter fail to act to comply with the Ombudsman's recommendations, the Ombudsman may issue a second report which again local authorities are not legally obliged to implement, albeit they must consider the document. It should be heeded, though, that local authorities that decide not to act on the Ombudsman's decision can be required to publish the Ombudsman's case[77]. It can be countered, though, that this problem is not major as most local authorities comply with the Ombudsman's findings. For instance, the Local Government Ombudsman (1997) states that:

> "Local settlements – complaints which are resolved voluntarily by the authorities concerned – remain at a very satisfactory level ...(this) is indicative of the positive attitude which authorities now adopt and for which they should be commended" (p7)

A second problem with current provision concerns the limitations inherent in the

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[77] Amendments introduced by ss 27 and 29 of the Local Government and Housing Act 1989 to the Local Government (Scotland) Act 1975.

Ombudsman system itself. For example, the Ombudsman is restricted in his investigations to those complaints alleging maladministration, a restriction which is itself problematic because this presupposes that tenants are aware that maladministration has in fact occurred. As will be argued later, though, awareness of staff maladministration by tenants is in all probability rather patchy, particularly where there is a dearth of clear policies and procedures in operation.[78] It should also be emphasised that, for complaints to be upheld, maladministration must also result in the complainant suffering some injustice as a direct result of the maladministration, a concept that also includes "sense of outrage" or damage to one's reputation (Logie & Watchman (1990)). Nor can complains normally be raised after a period of 12 months has expired after the relevant incident. Further, the Commissioner does not require to publish if it is felt this would be against the public interest, or that of the parties concerned.[79]

iii) Remedies: Right to Repair Scheme

The right-to-repair scheme provides for no specific statutory housing remedies, although local authorities are legally required to furnish tenants with information in writing about the scheme (including details of alternative contractors) on an annual basis.[80] Circular 12/1994 does specify, however, that in the event of disputes, tenants should initially have recourse to the local authority complaints system (if one exists) and thereafter redress may be sought via the Local Government Ombudsman, or by seeking judicial review.[81]

Yet again, though, exercising these particular remedies hinges crucially on tenants being

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[78] Maladministration can occur in many ways, including a lack of understanding and knowledge of staff in reaching decisions (Local Government Ombudsman (1997)).

[79] S 28 (3A) of the Local Government (Scotland) Act 1975 requires the Commissioner to name a member where the latter's conduct constitutes a breach of the National Code of Local Government Conduct. The Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997 now allows the Ombudsman to investigate the complaints of maladministration in respect of both individual members and staff officers.

[80] SI1994/1046, reg 13.

[81] Circular 12/1994, reg 31.

aware of their rights, *that* awareness itself heavily dependent on discretionary practices of local authorities since the legislation imposes no obligation on local authorities to advise tenants of remedies available where the landlord fails to fulfil statutory repair obligations in respect of "qualifying repairs", particularly where repair services do not comply with statutory targets. Yet, as Cotterrell (1992) has argued, rights promotion by enforcement agencies is likely to be rather lukewarm where this might exacerbate current financial pressures. In addition, promotion of rights by local authorities will be even more unlikely in the absence of pressure imposed by Government regulatory authorities such as the Scottish Executive. Indeed, theoretical studies indicate that such pressure often fails to be exerted because of inter-agency accommodation, that is, that regulatory authorities often tacitly accept organisational practices for a variety of reasons, including lack of resources to monitor effectively; inadequacy of existing sanctions and mutual support requirements (Cotterrell (1992)).

And an interesting example of relative lack of scrutiny is revealed by considering the implementation of the right-to-repair scheme. In accordance with this scheme, the Scottish Executive has the role of monitoring local authority practices.[82] Yet discussions with a senior Scottish Executive employee in October 2000 have confirmed that there has only been one monitoring exercise in 1997 that apparently resulted in a poor response from local authorities. It was also confirmed that lack of resources and work pressures entailed that no further scrutiny of rights implementation issues could be undertaken, albeit returns suggested that the scheme may have been implemented inadequately.[83] Consequently, effective implementation of this right is likely to hinge not simply on publicity and information

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[82] To ascertain numbers and types of repairs carried out by both usual and alternative contractors, amount of compensation provided and numbers and outcomes of appeals (Circular 12/1994, par 32).

[83] It was also clarified that the monitoring was undertaken by a relatively junior staff member as opposed to a senior officer. It was notified that Scottish Homes will have enhanced regulatory powers to cover such matters when the pending legislative changes take effect.

provided by landlords, but also on their commitment to a right that could be financially disadvantageous for them to operate.

Summary

This section has examined briefly the role of the judiciary in the implementation of statutory housing rights and the importance of remedies for protecting individuals' legal rights. In carrying out this examination, the judicial role was considered to remain influential in affecting decisions about rights implementation, of particular relevance being the power of discretion exercised by individual judges. Theoretical perspectives that affirm that judicial discretion may be detrimental to rights implementation were assessed. Evaluation of current judicial practice does not, however, lend credence to this assertion. More accurately it was shown that judicial discretion may operate either for or against tenants' interests depending on the particular sheriff in question. Further, there is no evidence that judicial decisions are systematically biased towards the interests of local authority landlords.

Remedies were evaluated under the categories of legal remedies and non-judicial remedies. Although legal remedies were shown to be varied, it was indicated that their relevance to the protection of individuals' rights may be of limited value, particularly where local authorities – as enforcement agencies of the state – fail to publicise the existence of such rights. Again failure by individuals to attend court was highlighted as another important element that can affect rights implementation. Limited or infrequent use of legal remedies by tenants made it important to evaluate the effectiveness of non-judicial remedies as a means of guaranteeing rights implementation. Two main forms of remedy were assessed, namely local authority complaint systems and the Ombudsman service. Despite theoretical criticism of the value of these remedies to individuals, both forms of remedy were

considered to be pertinent to rights implementation as they can identify instances where the legal rights of individuals have been denied and provide the opportunity for redress. The significant role of local authorities in rights implementation was highlighted further by reference to the right to repair scheme where the tenant's right of complaint hinges crucially on the extent and quality of landlord information and advice services.

Individuals' Capacity to Enforce their Rights

Cotterrell (1992) has noted that effective enforcement of law by state agencies is heavily dependent upon citizens' "willingness to invoke law" (p 248). Yet this assertion conceals a number of important questions. What are the factors, for instance, that allow some people to enforce their rights but not others? Inadequate publicity about rights, or lack of tenant training, for instance, seem obvious candidates since these would affect knowledge levels. But what of a person's material ability to enforce her/his rights? General research studies have suggested, for instance, that rights enforcement is easier for those with economic power (Cotterrell (1992)). And what effect, if any, does poverty exert upon someone's willingness to enforce their rights, even where that person possesses the relevant legal knowledge? Again, are landlords supportive of rights, or do they attempt to avoid their obligations?

To these questions, then, the thesis now turns, the issues assessed under the following headings: the effects of poverty; publicity of rights; tenant training; access to advice and information, and tenant willingness to exercise legal rights. The effects of poverty upon rights implementation are considered after first clarifying pertinent council housing characteristics.

a) *The Effects of Poverty*[84]

The political roots of council housing, particularly its role in appeasing working class demands to safeguard the broader economic and political interests of the capitalist system has been emphasised by many writers. (Young (1979); Englander (1983)).[85] And Thane (1982) has noted that the development of council housing was initially viewed as being a political compromise - "a short term supplement to the private sector" (p207) – a perspective that was to change as council housing gradually became the dominant tenure form in Scotland (Whitham (1982)).

Yet, in labelling the council housing sector as being a provider of working class housing, it is critical to acknowledge the following points. Firstly, council housing varies greatly in terms of quality, the quality largely determined by the levels of subsidy available to local authorities to finance house production, housing produced under the 1924 Wheatley Act subsidy arrangements, for instance, superior to the tenement dwellings produced in 1930's to deal with slum clearance.[86] Indeed, Morris & Winn (1990) point out that the "... majority of council tenants live in good quality housing with which they are highly satisfied"(p23).[87]

Secondly, despite the fact that large levels of council house sales have occurred – often involving the most desirable stock – it would be incorrect to categorise the remaining council housing as being solely a bastion of social exclusion. As Cowan (1999) clarifies:

> "...Council housing, as with other tenures, is not uniformly anything – it is temporally, spatially and qualitatively differentiated" (p490).

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[84] As per Townsend (1979) in his seminal study, poverty can only be defined objectively and applied with consistency by reference to the concept of relative deprivation.

[85] Power (1993) makes the interesting point that council housing actually developed first in Ireland because of political concerns surrounding social unrest.

[86] The Housing (Financial Provisions) Act 1924.

[87] A point that has arguably been corroborated by the large number of tenants who have exercised their right-to-buy. By 1994, for instance, about 1.64 million had purchased their houses from social landlords in Great Britain, most of these being ex-local authority tenants.

And research into projected levels of sales under the right-to-buy by Littlewood & Munro (1998) suggests that sales are likely to continue, particularly if tenants' personal economic circumstances were to improve, many tenants still "keen to take advantage of the opportunity offered by the RTB" (Littlewood & Munro (1998) p662).

These points notwithstanding, it remains true that council housing is facing residualisation and statistical information of households currently occupying council housing reveals it to be a tenure "where the lower-income groups are disproportionately represented." (Morris & Winn (1990) p41), a trend that has become increasingly apparent as the more affluent tenants have taken the opportunity to exercise their right-to-buy and thereby exit the public sector (Kempson (1996)). Again, a recent study indicates that of the thirteen million British households currently living in poverty, most of these live "in the hundreds of battered council housing estates where its people were born and where most of them spend their whole lives" (Davies (1998) p37).[88] A Scottish based recent research study, indeed, offers insight into the nature of this poverty (Scottish Poverty Information Unit (1999)). For example, in respect of housing tenure by employment status, households where the head is unemployed "are over-represented in the local authority sector", with 61% of such households located in the public rented housing sector (Scottish Poverty Information Unit (1999) p67). Again, statistics show that tenants in all tenures had lower incomes than owner occupiers and that, in 1994, three-quarters of public sector tenants had incomes on the bottom 40%(of households).[89] This has resulted in the council sector being seen:

"both locally and nationally as a welfare net for those unwilling or unable to provide

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[88] There is no one universally accepted definition of poverty. But poverty entails diminished life chances and involves doing without essentials such as sufficient food, adequate housing, heating and suitable clothing as well as being excluded from services and participation in social and community life (Scottish Poverty Information Unit (1999)).

[89] In 1974 the relevant figure for public sector tenants had been half. As one housing officer has apparently stated. "It was a good thing to get a Council flat in the 1970's. Now you have to be desperate" (Murphy (1997) p6).

themselves with adequate private sector housing (Merrett (1979) p214).

Turning now to address the question as to how poverty might affect rights implementation, two principal issues can be identified. The first point is that poverty may disable someone from accessing justice because she/he cannot afford to use the judicial process. This point has already been noted in an earlier section.

The second point, though, is perhaps more profound and relates to the fact that poverty can exert insidious pressures that impact negatively on individuals' willingness to exert their legal rights. Pilger (1998) makes the cogent point that poverty is a condition of the wealth of the ruling class and that contemporary British society, as created by Thatcher and her successors, is now stratified "with the top third privileged, the middle third insecure and the bottom third poor" (p80). But it is Davies (1998) who forcibly explains how poverty impacts on a person's ability to choose, on their ability to participate in community life. In Davies' view, for example, poverty mangles the emotions of those who experience it, creating a deep-rooted hopelessness that emasculates their ability to defend any legal rights they may possess. And Johnson (1999) clarifies precisely what apathy entails in his damning critique of poverty[90]:

> "Let no-one forget that being poor means being hungry, being cold, having inadequate clothing, inadequate shelter. These days, the poor may refuse to be cold or inadequately clothed, but that just makes the struggle for resources more difficult. Being poor means a struggle to get by that must dominate every waking hour, unless it becomes so overwhelming that it must be blotted out" (p44).

And the effects of such penury, in Johnson's view, are extremely dangerous: the creation of an underclass antagonistic to those in power, or possessing material wealth; unstable

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[90] Johnson's study concerns the often futile attempts to provide meaningful education in areas of extreme deprivation.

family and social relationships where survival is paramount; and – perhaps one of the greatest dangers – the all consuming negativity that is bred by a life without prospect of betterment.

It should be stressed, of course, that the above perspectives do not explicitly relate to rights take-up in the field of housing. Nor, it would seem, has this subject been researched in the Scottish context. It is suggested, though, that poverty is likely to be a major factor in explaining why rights often fail to be implemented effectively, a point that has backing from other quarters, for instance, research into welfare benefits take-up that reveals a strong correlation between social class and failure to claim benefits with the poorest people most adversely affected (Habets (1992)). And two principal reasons as to how poverty might affect rights enforcement should be emphasised. The first reason is that poverty breeds apathy and hopelessness, feelings that blunt concern about rights issues.

The second reason relates to the indirect impact that poverty has on a person's ability to exercise her/his rights, albeit that person still retains these legal rights. Littlewood and Munro (1998), for instance, note that many tenants will be unable to "exercise" the right-to-buy because of low income[91]; while Stewart (1996) points out that inpecuniousness also inhibits one's ability to exercise other rights such as carrying out improvements. Again, the polarisation economically of working class households and their compression into bleak housing estates, stigmatised as crime-ridden ghettos, also has a knock-on effect on the exercise of other rights.[92] For example, the right-to-sublet can be beneficial to those tenants seeking to take temporary employment abroad, but who wish to return at some future stage. But in the case of people who possess few job skills and for whom access to work is

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[91] One of the 'hidden costs' of not being able to exercise one's rights because of economic reasons is perhaps revealed in the paradoxical situation of the financial pressures now facing many mortgagers. As Elliott & Atkinson (1998) note, more than one million properties were stuck in 'negative equity' in 1996. A hint of German *Schadenfreude* perhaps.

[92] As Hurry (1921) cites: "The destruction of the poor is their poverty". (Proverbs x, 15).

extremely limited, to sublet one's home will not be practically possible. As Lister (undated) emphasises:

> "...the millions living on social security benefits are in no sense a detached and isolated group cut off from the rest of society. They are just the same people ...but with simply too little money to be able to share in the activities and possessions of everyday life with the rest of the population" (p26).

b) *Publicity of Rights*

Cotterrell (1992) points out that theoretical studies have shown that poor and inarticulate people often lack knowledge and opportunity to complain against abuses. In Britain, for instance, national surveys reveal that consumers either have no knowledge or rudimentary knowledge about their rights and are ignorant of agencies that can assist with their problems (Cranston (1979)). Many of these studies do not relate to housing, though, and as Cotterell (1992) adds:

> ".. many enforcement agencies do make considerable efforts to publicise the rights and duties established by the law that they are required to enforce" (p 251).

This section addresses publicity issues in the area of housing and how such publicity may have affected rights implementation.

Crucial to the question of an effective rights strategy is whether rights are publicised comprehensively, as well as publicised in a format understandable to tenants (TPAS (undated)). But as Kay et al (1986) note in respect of the introduction of the Housing Act 1980, Government publicity for most of the new rights, with the exception of the right-to-buy, was scant, limited essentially to a series of leaflets and two booklets.[93] Indeed, as these authors state:

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[93] Kay et al (1986). The booklets referred to are the 'Right to Buy' and 'The Tenants Charter'. Low levels of publicity applied similarly in Scotland, albeit a Circular was issued which aimed only to outline the main provisions of the Tenants' Rights, Etc (Scotland) Act 1980. (See Circular 23/1980 for details).

"...the Government has avoided any direct involvement in implementation; no circular was issued either to explain the Government's views on the Act's requirements or to lay down guidelines for implementation" (Kay et al (1986) p235).

In addition to Government information, advice was published by other agencies, for example, Shelter's Guide to the Tenants' Rights Etc (Scotland) Act 1980. Such information was not available for mass consumption, however, and did not address the gap identified in respect of government sponsored information.

Given the dearth of documentation material publicising rights, the role of local authorities is, therefore, instrumental if dissemination of rights information to a wider public is to be achieved. Yet research conducted by Goodlad (1986) indicates that local authority written documentation had failed in this respect. Using three key objectives as a checklist to ascertain if tenants were being given appropriate levels of the information concerning a) meeting housing need, b) using the home, and c) encouraging tenant participation, research highlighted that documentation was deficient on all three counts and important rights information such as security of tenure provision was not notified to tenants by a number of authorities. In addition, much of the information provided by local authorities was poor both qualitatively and stylistically. As Goodlad (1986) emphasises:

"Quite a lot of material failed to mention any legal rights tenants have, though this was less common with handbooks. Others made only passing mention of the law without saying what the law means. Some authorities produce written information which was seriously misleading or legally inaccurate" (p55).

Before moving to the next section one question that might be raised vis-à-vis the Goodlad study concerns the relevance of its findings given its date of publication. For example, Clapham et al (1995) note that, based on a 1993 Organisation Survey, the vast

majority of local authorities (c96%) provide information to tenants on their tenancy rights and conditions, although less than half of the authorities surveyed had handbooks. Yet such findings must be treated cautiously in the light of the following points. Firstly, the provision of information may not reflect clearly or accurately tenants' rights information. A mere statement that rights information is provided, therefore, elucidates little without actual detailed scrutiny of the documentation from a rights analytical focus. Indeed, Clapham et al (1995) expatiate on this by reference to the fact that authorities produce tenancy agreements that contain information to tenants about rights. Tenancy agreements, though, have been heavily criticised on a number of counts. Studies carried out before Local Government re-organisation, for example, reveal major defects from a rights information perspective (Atherton (1983); Mullen et al (1996)); while the research work in this thesis illustrates how rights information is often provided in a skewed or distorted manner.[94] Thus, Goodlad's comments regarding quality of information provided may still be accorded contemporary relevance.

The advent of the 1990's saw the publication by the Government of its Citizens' Charter that promised an improved Tenants' Charter for local authority tenants, one that would both strengthen tenants' rights as well as ensuring better information to tenants on standards and performance levels achieved by local authorities.[95] Himsworth (1994) alludes to the fact that these changes have impacted on the law and practice of housing in Scotland. Yet, while concurring with Himsworth's view that legal changes have indeed been enacted, for example, the requirement by local authorities to publish specified management information to achieve greater public accountability, this does not equate with the provision of adequate

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[94] Chapters 3 and 4 focus on two local authority Case Studies, both anonymised but drawn from the Scottish housing context. The focus concerns policy and work practices post Local Government re-organisation.

[95] Reference here is to the subsequent legal changes contained in the Leasehold, Reform Housing Urban and Development Act 1993.

information about rights. This is now clarified by reference to the following facts. Firstly, published local authority information about management performance focuses on issues such as rent loss due to voids, re-letting timescales and arrears levels. It does not generally address specific tenancy rights issues. Secondly, although local authorities are required to advise their tenants in writing of specific rights on an annual basis[96], this information does not require to be detailed and may, in reality, be relatively inaccessible.[97] Two main points, then, can be inferred from the above. The first point is that nationally publicised information about rights appears to be lacking in detail with the exception of information concerning the right-to-buy. The second point is that detailed understanding of the provision of rights information will depend on scrutiny of individual local authority practices; to cite Loveland's (1995) point again, understanding rights implementation issues depends on analysis of issues contextually.

c) *Tenant Training*

Training constitutes a major issue of potential concern since this can affect levels of knowledge held by tenants and, as a consequence, shape their ability to exercise their rights. And the first point to stress here is that, at Central Government level, financial aid to provide training for tenants is only of recent origin, tenant training "not an area in which local authorities have a strong track record" (Kay et al (1986) p31). Furbey et at (1996) highlight, for instance, that "direct financial support by the British Government for tenant training has been provided through Section 16 of the Housing and Planning Act of 1986" (p259), investment that aims to promote tenant management and active participation in estate regeneration. Section 16 funding has been accessed, for example, to allow tenants to attend further educational courses such as the National Certificate in Tenant Participation

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[96] Right-to-buy, right-to-repair, right-to-compensation for improvements.

[97] For example, notification could be as brief as 'You have a right-to-buy' and might be inserted as part of other documentation.

first launched in 1992. At local levels, on the other hand, a number of agencies have provided tenant training though on a relatively modest scale. Examples of this training would be training carried out by agencies such as Tenant Participation Advisory Service (TPAS) and Tenant Informative Service (TIS), for example, involving training on voluntary stock transfers and implications for tenants in respect of differences in legal rights between assured and secure tenancies.[98]

It is important to note here, though, that Government tenant training is shaped by Central Government's own priority of developing vocationalism, in opposition to the more traditional "civic-republican tradition" which focused on the development of each individual's potentialities as "a member of a political community" (Furbey et al (1996) p261). In line with the ethos of vocationalism, what matters is the notion of 'competence', that is, standards to be achieved for the successful completion of a given task. Thus, for tenants receiving training to fulfil the right-to-manage requirements, competencies needed would include, inter alia, the ability to work as part of a team, exercising sound financial judgement, or displaying good planning and review skills. But at this stage at least two major criticisms of this type of training can be raised. Firstly, competence-based training tends to neglect the question of learning within context, "linking 'skills' and detailed 'knowledge' to a particular project and its individual roles grounded in the present", as opposed to a "collective social, economic and political experience grounded in history" (Furbey et al (1996) p264).

Secondly, competence-focused training tends to ignore the significance of theoretical knowledge in terms of both the direction and advancement of understanding as well as practice (Furbey et al (1996)). Thus, in the vocational framework, tenants would tend to be

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[98] Other training providers include agencies such as PEP and organisations such as Scottish Homes, the latter empowered to assist tenant training (Housing (Scotland) Act 1988, s2 (9)).

given practical training concerning *how* to set up an allocations policy or *what* clauses to incorporate into a tenancy agreement. Vocational training would be unlikely to provide tenants with the legal knowledge as to *why* such provisions are required, far less an understanding of the economic and political ethos that underpins the actual legislation itself.

Following on from this point, it is perhaps a truism to note that tenants will only take steps to have their rights realised in practice provided they are actually aware of such rights. And it is also axiomatic to add that not just tenants, but "most of us are unaware of the exact extent of these rights and obligations" (Benson (1979) p45). In addition, the Hughes Commission survey revealed that lack of information about legal services is "greatest amongst those in the lower socio-economic categories" (Paterson & Bates (1993) p257). Given that council housing is increasingly becoming the tenure of the disadvantaged (Forrest & Murie (1988)), it seems fair to concur with Paterson and Bates' contention that the average tenant has little awareness of housing rights (Paterson & Bates (1993)). Consequently, particularly as training is minimal, it is imperative that appropriate levels of advice and information exist to actualise public awareness.[99] But are such advice services readily available? Let us now address the issue of accessing advice.

d) *Access to Advice and Information*

Access to advice and information is a prerequisite for effective implementation of rights (CIOH (1999)). And it is acknowledged that advice concerning tenants rights can indeed be obtained from a number of sources. In the Scottish context, for instance, frontline providers of housing information are varied, although inter-agency partnership can create systemic working relationships in practice.[100] The main types of information providers are: local

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[99] The question of how local authorities seek to enhance this awareness will be discussed in the final part of this Chapter that assesses a rang of organisational themes that are relevant to the analysis of rights implementation.

[100] Homepoint, the housing information and advice unit of Scottish Homes, provides a co-ordinating and support role for organisations involved in the provision of advice.

authority landlords and landlords of other tenures; professionals such as solicitors; the voluntary sector agencies such as Citizens' Advice Bureaux (CABX), Shelter and specialist client groups such as Age Concern; and statutory services such as social work and planning.[101] (Scottish Homes (1998)). It is also worth emphasising that a limited number of specialist legal rights advice centres exist such as the Castlemilk & Govan Law Centre and the Legal Services Agency and the Dumbarton Ethnic Minorities Law Centre. These agencies provide general and specialist legal information. As Goodlad and Williams (1994) note:

> "Information and support services vary from providing relatively simple facts, such as the eligibility of an applicant for Council housing to, for example, providing practical assistance and representation in connection with a court case" (p30).

A variety of possible sources of advice, therefore, exist and – under the auspices of Homepoint – advice services have developed throughout the 1990's, of particular note being the expansion of the Shelter Housing Law Service networks.

Let us now, then, consider current developments by reference to professional legal advice, advice sought from local authorities and advice sources generally.

i) Professional Legal Advice

With respect to accessing legal advice, particularly where court action is contemplated, a major barrier can be financial in nature, namely whether the person seeking advice qualifies for legal aid. Legal aid, it should be stressed, covers both advice and representation. There are also other limitations in the availability of legal aid. Legal aid may only be granted by the Scottish Legal Aid Board where an applicant has a) a probabilis causa litigandi and b) it is

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[101] Examples of advice given by social work would include rights information concerning children's welfare (eg The Children (Scotland) Act 1995); while planning department staff might advise clients on relevant planning applications.

deemed reasonable to grant aid.[102] Potential weaknesses in the scheme, however, relate to the relatively inadequate professional remuneration paid to solicitors, as well as the lengthy bureaucratic process involved in processing legal aid application. Indeed, it has been suggested that the scheme "provides a curative' service, offering legal assistance to pursue legal rights", (whereas) it should be devoting more time and money to the provision of a 'preventive' service, educating groups in the community about law and legal rights" (Paterson & Bates (1993) p283). It should also be noted that public access to legal advice is much dependant on what area of work is involved, particularly what is the most remunerative for solicitors (Benson (1979)). As Mullen et al (1996A) point out, in their study of judicial review, the quality of advice provided by solicitors can vary, with knowledge being gathered on a piecemeal basis, particularly "those substantive areas of law which are outwith solicitors' traditional areas of work, for example, homelessness" (p111). Given these barriers, then, for many people accessing legal advice in areas such as housing tends to be restricted to specialist legal agencies or other organisations such as CABx or Shelter where services are offered free of charge.[103]

ii) Advice Sought from Local Authorities

Widdowson and Harland (1998) note that the main topics of advice sought from local authorities concern allocations and homelessness, tenants' rights, repairs, arrears and housing benefit.[104] Telephone enquiries are increasing as a major means of accessing advice, although visiting offices remains an important contact method. The study shows that high

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[102] This point notwithstanding, legal aid has been substantially cut in recent years. The Law Society now estimates that "justice is beyond the means of about 12 million people". See The Observer, January 26, 1997.

[103] The Royal Commission advocates three principal ways of improving legal information to the public: corporate advertising and official publicity; referral lists of appropriate solicitors for particular problems; and advertising by individual solicitor firms (See Benson (1979)).

[104] This is based on an empirical study involving (other tenures aside) a total of sixty nine local authority tenants (28% of original mailings involving two hundred and eighty tenants).

proportions of tenants are either unemployed (28%), or retired (33%), and that household incomes of enquirers are often low (59% of tenants earning less that £5,000 pa). Thus, financial considerations that can negatively impact on the implementation of certain rights, particularly the right-to-buy, should be distinguished from actions taken by tenants to identify what their particular rights may be.

According to Widdowson and Harland (1998), the principal gaps in provision of accessing information do not stem from non-existence of information. Rather, gaps derive from institutional deficiencies such as lack of clarity regarding appropriate staff contacts, a dearth of shared information between staff of both the same as well as other departments, and inadequate knowledge of other advice and information services. Bureaucratic deficiencies were also unearthed by the survey summarised as follows: inadequately trained staff both in terms of knowledge and inter-personal skills; poorly developed information and publicity services; withholding of information (by staff); and adherence to rules and the application of bureaucratic processes without applying discretion.[105]

iii) General Advice Sources

In a recent study, Goodlad and Rosengard (1998) have commented on general barriers to accessing information. The first barrier results from the tendency by local authorities to employ housing officers on a generic basis rather than employ dedicated advice workers, a practice that raises difficulties in terms of the nature and quality such officers can realistically provide given their demanding work duties.

A second barrier concerns the diversity of advice agencies currently operating in Scotland, many of which are specialist in nature, and the requirement to harness this diversity to produce closer inter-agency working relationships in practice, thus avoiding

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[105] Widdowson and Harland (1998) also used a "mystery shopper" technique to identify further organisational issues of potential concern. One of their major findings was that personnel resources are often extremely stretched to meet demands for information.

duplication of services and enhancing complementary roles.

A third barrier relates to the lack of advice services, both generally and particularly: generally, in respect of accessibility of location and, particularly, as regards the Highlands and Borders where advice services are either scant or do not exist.[106]

The last barrier noted concerns that of discrimination. Local authorities are legally required to ensure that services, including advice services, are provided free from discrimination and encourage equality of opportunity for everyone within the community.[107] Goodlad and Rosengard (1998) point out, for example, that premises may be restricted both in terms of location and opening hours, priorities that may not meet needs of certain disabled people, or women with families.[108] Again, Widdowson and Harland (1998) highlight that there is a lack of "accessible good quality advice in appropriate languages" (p65), a practice clearly at odds with current legislative and good practice requirements.[109]

Finally, a recent study by Burrows (2000)) has identified that, in respect of current money advice services in Scotland that can impact on tenants' rights issues in respect of repossession actions for rent arrears, several major difficulties exist. Despite increasing demand for such services, for example, research has shown that current provision has been cut due to inadequate finance provision. And a second issue that requires prioritisation if money advice services are to be effective concerns that of training. As per the other studies discussed, training for advisors involved in the provision of money advice services is

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[106] Goodlad and Rosengard (1998) indeed conclude that: "...the evidence of this reports suggests that housing advice services in Scotland are poorly developed in Local Government. In the voluntary sector provision is patchy in geographical coverage, in quality and in breadth and depth of housing expertise" (p27).

[107] Under the Housing (Scotland) Act 2001, s106 (1), local authorities must exercise their functions in a manner which encourages equal opportunities and in particular the observance of equal opportunity requirements. "Equal opportunities" is defined as per the Scotland Act 1998, Part II, Schedule 5.

[108] See the Sex Discrimination Act 1975 (as amended by the Sex Discrimination Act 1986); and the Disability Discrimination Act 1995 for the legal provisions relating to these issues.

[109] See the Race Relations Act 1976 and the Code of Practice noted in the Bibliography. (CRE (1991)). This legislation has now been amended by the Race Relations (Amendment) Act 2000.

minimal, a deficiency that is largely attributable to inadequate allocation of funds towards training.

e) *Tenant Willingness*

The thesis has already touched upon specific factors that may affect the likelihood of persons enforcing their rights, for example, penury, or actual ignorance of one's legal rights. In respect of the latter point, for instance, Dickson (1989) notes, how tenants in rent arrears who complete an application form for a time to pay order and fail to attend the court hearing believing that offering to pay will protect them from eviction, often find to their consternation that decree for payment and eviction has been granted in absentia.[110] It is also possible that tenants may *choose* not to pursue their legal rights and it is worth examining the factors that might discourage them. This section examines, then, three elements that can impact negatively on a tenants' willingness to exercise their legal rights. These three elements are the formalism of legal process, bureaucracy and ideology.

i) Formalism of Legal Process

In response to the question posed by Adler at al (1985) regarding (lack of) attendance by tenants to defence rent arrears actions in many courts, "some courts simply didn't know or suggested that many different reasons must contribute" (p37). Reasons suggested included lack of publicity and tenant ignorance of the court's role. It was even suggested in one court that:

> "it took a while for the "punters" to discover the possible value of appearance" (Adler et al (1985) p37).

Recent studies have indicated other barriers that can affect a tenant's decision to exercise her/his legal rights. The first major barrier stems from the nature of court procedures that

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[110] The Debtors (Scotland) Act 1987 requires landlords raising a variable summons action under summary cause procedures to serve on the debtor, prior to the court hearing, an application for a time to pay order. Dickson's comment relates primarily to Glasgow sheriff court.

can be extremely daunting for many tenants not au fait with court practices. Mason et al (1995) point out, for example, various factors that act as potential impediments: the atmosphere in court is often "more like a criminal trial than civil proceedings" (p15); acoustics can be extremely poor preventing tenants from keeping abreast of proceedings; tenants having to face lengthy delays, "sometimes hours, until their case comes up" (p15) and – of major importance given the limited financial means of many tenants – tenants often had to travel "significant distances" to attend the court hearing. In an English study, Nixon et al (1996) stress that the unduly formalistic nature of court actions further exacerbates matters, court protocols in terms of both dress and speech, ie legalese as well as accent and mode of speech, that permeate court proceedings are often foreign to many tenants who, as a result, lack sufficient confidence to participate actively in court actions. For this reason Nixon et al (1996) have suggested that public court hearings, for example, those that involve rent arrears or anti-social behaviour actions should be held in private as a method of overcoming the negative impacts of court formality.

ii) Bureaucracy

A second important element that may determine whether tenants utilise existing remedies relates to the nature of current landlord:tenant relationships. Widdowson and Harland (1998), for example, have commented on bureaucratic failings in respect of housing advice provision often marked by frosty inter-personal relationships. And this point has been expounded in detail by Lipski (1980)). Lipski argues that public sector services (or street-level bureaucracies) are actually indifferent to the loss of clients or client dissatisfaction, partially on account of the overwhelming nature of demand (for those services) relative to supply, but also because most clients are poor without other means of obtaining essential services. Yet Lipski's point is not a moralistic one. For employees are themselves alienated

within ill-defined and pressurised work processes that lead them to routinise and facilitate such practices, for instance, by withholding of information to depress increasingly heavy service demands.

And it is within this process of limitation of service demands that one can grasp why tenants may wish to minimise contact with landlord officials. According to Lipski (1980), bureaucratic control involves the imposition of psychological costs on clients. Lengthy waiting prior to receiving services and detailed inquiries into people's private lives are two examples offered, both of which belie any respect of individual clients. Faced with such bureaucratic control mechanisms, then, and power relationships that create client dependency on those who use public services (tenants, clients of social work etc), clients often choose to minimise contact with the officials of bureaucracy.[111] Despite Lipski's important contribution to theory by diverting attention to bureaucratic processes and the effects of such processes on policy implementation it is also important to note the following points. Firstly, as Hudson (1997) points out:

> "In Britain no attempt to apply Lipski's theory explicitly has been made" (p396).

And, as Hudson (1997) adds:

> "Academically, the pressing need is to find out more about how street level bureaucrats are actually behaving. Getting at the truth would be problematic, but must be confronted. If we wish to understand policy implementation, we must understand the street level bureaucrat" (p402).

Secondly, Scottish based studies of housing management have indicated a high level of tenant satisfaction with landlord service provision and further empirical research would be required to assess how Lipski's findings might correlate with this position (Clapham et al

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[111] As Lipski also points out, this dependency reveals itself in client anger and frustration.

(1995)). Lipski's study provides an interesting retort, however, to the effect that such tenant evaluations by themselves are of little value since - ignorant of what quality of service or treatment they (tenants) should actually receive - satisfaction surveys tend to produce subjective perspectives of dubious critical value in terms of actual bureaucratic performance.

iv) Ideology

Ideology is the fourth important element that affects personal choice in respect of rights implementation. Thus, tenants may choose – financial and other criteria aside – not to purchase their homes for political reasons or choose not to participate – again because of political beliefs – in group action to change the current landlord (eg stock transfer initiatives). One example of the latter is clearly seen in the politically radicalised minority tenants' movement opposed to the major stock transfer proposal involving the Glasgow City Council housing stock.[112]

Summary

This section has examined the range of factors that affect the capacity of individuals to enforce their rights. These factors were shown to be extremely varied, involving elements of a structural, organisational and individual nature. At a structural level, for example, the effects of poverty (or social exclusion) on individuals blunts their motivation to exercise their legal rights. Organisational factors, on the other hand, were seen to be of significance, of particular import being the role of the local authority as regards the publicity of rights, the provision of training and the establishment of comprehensive advice and information networks. Analysis of existing local authority practices indicated concern on all counts, however, and that current service provision was often poorly developed. This is clearly

[112] See Beck & Woolfson (1994) for further details.

detrimental to effective rights implementation from the perspective of individuals. Specific factors were identified that affect the likelihood of individuals enforcing their rights. For example, the formalism of the court process was viewed as a potential barrier for individuals seeking to access justice. Again, though, the significant role of local authorities in the implementation process was highlighted by reference to current failings inherent within local authority bureaucracy that can be detrimental to effective rights implementation.

Avoidance

It is a familiar observation that those affected by regulatory legislation often actively seek to avoid its impact. In the context of tenants' rights, it is well known that landlords have successfully undermined policy behind legislation to protect tenants' interests through a variety of avoidance techniques. Such techniques would have been less successful had they been sanctioned by the courts which raises again the issue of judicial interpretation of statutory rights. However, critical analysis of relevant literature indicates a marked contrast between the private and public housing sectors. Evaluation of techniques employed by private sector landlords has been well documented (as noted below). Assessment of housing management studies suggests, however, that public sector landlord avoidance techniques – a concept that can imply deliberate action – has been the subject of little research. Indeed, failure by local authorities to meet their obligations fully has tended to be viewed sympathetically by researchers, such failures traditionally explained in terms of inadequate finance (Hogwood and Gunn (1990)), or a sense of indignation at having obligations imposed (Gallagher (1982)). As will be discussed shortly, this may be attributable to an assumption drawn by researchers that local authorities are – at least where situations are favourable – active promoters of rights. An alternative theoretical perspective that landlord

avoidance techniques also occur in the public housing sector because of internal organisational deficiencies will be discussed later after local authority organisational practices are analysed. This will focus on the failure by local authorities to implement service delivery holistically, an inadequacy that will be discussed in the context of systems organisational theory. First, though, evasion techniques used in the private housing sector are examined.

Evasion techniques used by private sector landlords to circumvent the provisions of the Rent Acts have been extremely varied historically.[113] The Francis Report (1971) cites, for instance, the utilisation of deferred purchase agreement schemes by landlords where payments by tenants were regarded (by the former) as purchase instalments instead of rental payments. Such payments, though, were often fixed at such high levels that default was common, whereupon "all payments would be treated as payment towards occupancy of the property" (Robson (1994) p56). And, a second major technique employed by landlords cited by Francis, concerns the landlord practice in London of letting rooms that have little and cheap furniture, while describing the letting as "Furnished" on the Rent Book.

As a result of the Rent Act 1974 which closed this loophole[114], private sector landlords strove to develop other avoidance techniques. Attempting to treat people sharing accommodation as not having tenancy status has been one method, for instance, a particular problem historically in the absence of written tenancy agreements and if tenancy changes were frequent (Robson (1994)). And, in the Scottish context, two of the principal methods adopted in the 1970's involved the granting of "holiday " or "bed and breakfast" lets that are

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[113] The Holland Committee (1965) indicate, in their report on Rent Act evasion by landlords in London that it is impossible to verify accurately the numbers of actual evasions.

[114] That is, by incorporating furnished private sector accommodation within Rent Act protection.

both unprotected by current law.[115] Thus, for example, Shelter's celebrated picture of "holiday flat" in "that world famous playground of the rich – Costa del Partick", a tenemental area that can never be a holiday area (Shelter (1984) pp17/19). With respect to the nature of board provided the decision in *Gavin v Lindsay* suggested that:[116]

> "... not only was it necessary for there to be substance in the provision of board but that there should be a service. Providing vouchers for cafes or boxes of groceries was not sufficient" (Robson and Halliday (1998) p28).

In this case Sheriff Kearney proposed that both elements were required to satisfy a proper bed and breakfast arrangement. Failure to satisfy these elements meant that the "agreement was no more than a tenancy covered by the Rent Act" (Robson and Halliday (1998) p44). In *Otter v Norman*, the House of Lords appears not to have had the opportunity to consider the issues raised in *Gavin v Lindsay* when determining that a single meal is sufficient.

Yet greatest controversy has perhaps arisen from landlords' utilisation of licence agreements instead of tenancies, particularly after the Rent Act changes of 1974 (Coyle (1985)).[117] This is now examined by reference to both the situation in England and Scotland.

This particular avoidance technique has long been recognised as problematic. Megarry (1967), for instance, points out that where grantor and grantee agree that a licence should be created:

> "it would be wrong for the court to extract from the granter an estate or interest in land in the teeth of the intention of the parties" (p60).

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[115] In *Holiday Flat Co v Kuczera*, 1978 SLT (Sh Ct) 47, it was accepted that a continental breakfast would satisfy board requirements. While in *Otter v Norman* [1988] 2 ALL ER 897, it was held that a single meal sufficed.

[116] *Gavin v Lindsay, 1987* SLT (Sh Ct) 12.

[117] In England, a licence constitutes a contract to occupy premises as opposed to a grant of heritage. Licencees have no right of exclusive possession.

Sham agreements, on the other hand, could result in serious social consequences and courts, in Megarry's, view should scrutinise documents that seek to avoid the Rent Acts.[118] What, then, have been the judicial attitudes towards licences? In *Somma v Hazelhurst*, for instance, the Court of Appeal upheld the landlady's claim that a couple allowed to use one room in a flat (with a proviso for a third party to be introduced into the flat at any time) did not constitute a tenancy but simply a licence to occupy.[119] Again, in *Aldrington Garages v Fielder*, two separate agreements entered into between a couple and the landlords were interpreted as being wholly separate by the court, one considered to be simply a licence even though the couple subsequently rented the flat together.[120] Indeed, certain authors have argued that, in the 1970's landlords were encouraged by the courts to evade the Rent Acts (Widdison (1982)). Coyle (1985), for example, suggests that judges "seemed to feel that if, by clever drafting, an agreement could be placed outside the Acts, then so be it" (p15).

Yet it is important to note that judicial attitudes regarding licenses appear to have changed. In the case of *Street v Mountford*, for instance, the House of Lords overturned the landlord's successful appeal to the Court of Appeal which had ruled that the agreement was a licence was in force despite Mrs Mountford having exclusive possession and the use of the word "rent" in the agreement as well as a rent book being provided.[121] In reaching its decision in the House of Lords, Lord Templeman judged that if an occupier possesses an agreement with the three "badges" of a tenancy then that occupier has tenancy status with

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[118] The term 'sham' has been defined by the Court of Appeal as follows; "documents executed... to give to third parties or to the court the appearance of creating between the parties legal rights and obligations different from the actual legal rights and obligations, if any, which the parties intend to create (1967) 29B at 802" (Madge (1998)).

[119] *Somma v Hazelhurst* [1978] 1 WLR 1014.

[120] *Aldrington Garages v Fielder* (1979) 37 P & CR 461.

[121] *Street v Mountford* (1985) 274 EG-821, HL. The word "rent" was described by the Court simply as being "verbal shorthand".

full Rent Act protection.[122] Thus, whereas a licensee is someone merely permitted to occupy premises, a tenancy is created whenever there is exclusive possession, an obligation to pay rent (monetary or in kind), and a term (Madge (1998)).

With respect to cases after *Street*, the House of Lords decided in *Antoniades v Villiers* that the individual agreements enabling the landlord to introduce himself or another party into the flat was nothing other than a sham and that a tenancy not a license was in force.[123] Yet Megarry's concerns have certainly not been put to rest.[124] For despite the above ruling, there continue to be cases in which the licence is successful as a device for taking agreements outside the scope of Rent Act protection. In *Brooker Settled Estates v Ayers*, for instance, on appeal by the landlord to the Court of Appeal, a new trial was ordered to enable a detailed assessment of all the facts to determine "whether or not the occupant enjoyed exclusive possession" (Madge (1998) p11).[125] Again, in *AG Securities v Vaughan*, decided along with *Antoniades v Villiers*, it was held by the House of Lords that a licence existed in the case of sharing between strangers who paid different rents but did not control re-lets nor had responsibilities for costs of defaulting occupiers.[126] It appears, then, that matters are not yet settled in English courts, indeed that there exists a "degree of confusion amongst the judiciary about the nature of licenses and leases" (Robson (1994)). And, as Madge (1988) points out, the principal inference to be drawn from this (and other cases) is

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[122] The Court also indicated its disapproval of the decision taken in *Somma v Hazelhurst* (1978) 246 EG 311, CA, in which the Court of Appeal had held two occupants were licensees instead of tenants. This disapproval was based on the Court's failure to ask whether the occupants were lodgers or tenants and that it did not draw the correct conclusion from the fact that Mr Hazelhurst and Mr Savelli enjoyed exclusive possession (Madge (1998)).

[123] *Antoniades v Villiers* [1988] 3 WLR 1205.

[124] A study carried out amongst Leeds students in 1982, for instance, revealed that 60% of tenancy agreements were in the form of licenses (Gay (1986)). There is no precise information, however, regarding how many private sector tenants actually receive bona fide tenancy agreements. Finnis (1977) suggests, though, that many landlords do not supply rent books and that historically "enormous numbers of multi-occupied dwellings" were not registered (p111).

[125] *Brooker Settled Estates Ltd v Ayers* (1987) 19 HLR 246; (1987) 54 P&CR; (1987), IEGLR 50, CA.

[126] *A G Securities v Vaughan* [1990], 1 AC 417.

that "different judges come to different conclusions" (p16).

It is important to emphasise that Scots law in respect of licenses is different. As Robson (1994) notes, the licence issue has not been discussed in depth by the Scottish courts, although in *Scottish Residential Estates Development Co Ltd v Henderson*, it was held by the court that the intention of the parties to the agreement was the critical element in the determination of whether a tenancy or merely an occupancy agreement existed.[127] Indeed, case law indicates strongly that using a licence to evade the Rent Acts in Scotland through the creation of occupancy agreements is likely to be given short shrift in Scottish courts. In *Brador Properties v British Telecommunications PLC*, for instance, the Court of Session supported the position that the concept of a lease in Scotland is wider than in England and that contracts which are called licences in England are more properly treated as leases under Scots law.[128]

Although evasion of the Rent Acts has been a perennial theme of private sector landlordism, it should not be forgotten that landlord practices vary considerably. Housing association landlords using the SFHA Model Tenancy Agreement endeavour to enhance the contractual rights of assured tenants in order to achieve greater parity with rights enjoyed by secure tenants. Historically, though, private landlords have often resisted both a) the development and b) the implementation of tenants' rights, landlords often supported by influential political figures such as Sir Keith Joseph who, critical of the Rent Acts, has stated: "... safeguards must not be such as to blunt the profit motive" (Cited in Shelter (1984) p3). Other ways in which landlord practices have undermined tenants' rights include

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[127] *Scottish Residential Estates Development Co Ltd v Henderson* 1991 SLT 490.

[128] *Brador Properties v British Telecommunications PLC*, 1992 SLT 490 at p495. However, it has more recently been recognised that certain types of hostel accommodation may be occupied under a contract which is not a lease. See *Conway v Glasgow City Council* 1999 SCLR 1058 & 1999 SCLR 248. In addressing this issue, the Housing (Scotland) Act 2001 empowers Scottish Ministers to make regulations to enhance hostel dwellers' rights.

harassment and unlawful eviction.

Eviction actions must meet specific legal criteria if they are to be valid.[129] Yet research suggests that nine per cent, that is over 144,000 tenants, may have experienced either harassment or unlawful eviction (Jew (1994)). Reasons for carrying out unlawful eviction vary, although it appears that illegal evictions often occur because "many small landlords, out of ignorance, are under the impression that since the 1988 Housing Act they can get rid of their tenants as they please" (Burrows and Hunter (1990)).[130] Other motives for eviction exist, however, of a less salutary nature. For example, the desire by landlords to evict Rent Act protected tenancies with the purpose of charging new tenants higher rents, as well as granting them less security (eg Short Assured Tenancy lets) (Spicker (1988)).

Another factor that has arguably impacted negatively on tenants' rights in the private rented sector has been lack of judicial enforcement of relevant statutory penalties in cases of harassment or unlawful eviction. Jew (1994) has pointed out, for instance, that fines levied by courts have often been low, a practice that fails to act as a deterrence to illegal landlord practices. However, civil damages also provide a financial disincentive to unlawful eviction and more recent cases such as *Haniff v Robinson* indicate that, as a result of the legislative changes in 1988, high levels of damages are now being received by tenants, particularly in the English context.[131] In *Haniff* the sum of £28,000 was awarded where a landlord evicted the tenant forcibly prior to the date in the court order (Robson (1994)).

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[129] That is, service of appropriate notices and summons followed by court action at which one or more specific grounds for eviction must be satisfied.

[130] Factors that give rise to illegal evictions are themselves manifold and include rent arrears (often stemming from delayed Housing Benefit payments),desire to re-let or sell, tenants; behaviour etc (Jew (1994)). Harassment and unlawful action cases that tend to come to the attention of local authorities involve small to medium sized landlords (Marsh et al (2000)).

[131] *Haniff v Robinson [1993]*, I ALL ER 185.

Summary

Attempts by private sector landlords to circumvent the provisions of the Rent Acts have varied historically ranging from deferred purchase agreement schemes to the granting of 'holiday' or 'bed and breakfast' lets. Of more recent interest has been the attempt by landlords to use licence agreements instead of tenancies, of particular concern from a rights perspective given that licensees have no security of tenure. It has been highlighted, though, that using a licence to evade the Rent Acts in Scotland is likely to be given short shrift in Scottish courts. This section also touched upon the question of neglect of rights by public sector landlords and it was noted that this has been the subject of little research, an omission that may stem from an assumption drawn by researchers that local authorities are active providers of rights. This issue is re-assessed at a later stage.

Organisations

The remainder of this Chapter considers the role of local authorities in the implementation of housing rights. A number of comments have already been made suggesting that what local authorities do affects the implementation of citizens' rights, for example, whether or not they give information about rights, or provide advice about rights, or provide training. These are clearly aspects of organisational behaviour and remind us of the point made at the outset: the factors affecting implementation of housing rights are overlapping and interacting What is emphasised at this point of the Chapter is how the way local authorities function as complete organisations affects the implementation of rights.

Prior to examination of the role of local authorities, it is important to clarify *how* and *why* local authorities should be seen as having a major responsibility for the implementation of rights in housing law.

Local authorities play a significant role in the rights implementation process. Despite increasing legislative control by Central Government in recent years over local authority activities, for instance, the implementation of housing rights remains the clear duty of local authorities. In short, they are the main enforcement agency of housing law possessing broad discretionary powers in respect of both interpretation and application of legal provisions.

Yet the question remains as to why we should expect local authorities to be promoters of rights? It has already been highlighted, for example, that support for a rights culture was not integral to the historical ideological precepts of housing management. And Gallagher (1982), in her study of housing management and its ideological leanings, argues that housing managers – with the introduction of secure tenants' rights in 1980 – felt resentment "at the imposition of more work on already hard-pressed departments" (p148), that administrative work concerning legal rights is unjustified since "housing management is liberal and fair" (p148). And this point can be developed to add that the promotion of rights may even lead to conflict between landlord and tenant as in the case of eviction actions where protecting tenants' rights by showing reasonableness, in addition to establishing the ground for eviction, may prove costly in terms of time and effort required by the landlord.

But recent political and ideological developments suggest that local authorities should have a prominent role in actively promoting rights implementation. These developments are now elucidated by reference to public sector service providers, the Citizens' and Tenants' Charters, and the development of citizenship ideals.

i) <u>Public Sector Service Providers</u>

Individual citizens and communities in general often hold high expectations concerning council service provision, a service that traditional social democratic thought considers "is an effective way of extending citizenship rights through meeting the objectives of equality,

freedom, democracy and community" (Clapham (1989) p25). This is particularly relevant "in areas of predominantly local authority housing ownership where virtually all public and social activity is influenced by council ownership of facilities and provision of services" (Kerley (1994) p16). Indeed, Prior et al (1995) argue that local authorities have two primary functions. Firstly, to assist individuals to meet their "basic needs as healthy and autonomous members of society" (Prior et al (1995) p150). Secondly, to ensure that services attain appropriate quality standards. This includes the provision of comprehensive information that arguably should include information about rights so that people "can judge for themselves the quality on offer and take appropriate action" (Prior et al (1995) p151).

ii) Citizens and Tenants' Charters

Adherence to the principles of the Citizens' and Tenants' Charters is a common feature of councils' strategic policy documentation. And, in line with such Charters, councils undertake to promote specific ideals. In relation to the Citizens' Charter, for example, public authorities are expected to give effect to six principles of public service, including the provision of comprehensive and accurate information about the nature and extent of public service (Page (1999)).[132] Clearly implicit in this principle, then, is the commitment to rights promotion.

iii) Citizenship

Citizenship principles have already been discussed in the context of Central Government political strategy (see pp 43-44). This strategy, as we have seen, seeks to harness resources available to meet community interests in general and the interests of individuals in particular.

Yet local authorities, too, have an important role in developing citizenship due to the fact that:

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[132] The six principles being standards, information and openness, choice and consultation, courtesy and helpfulness, putting things right and value for money.

"Local government occupies a special place in the relationship between citizens and government" (Prior et al (1995) p146).

This special role is simply that local authorities are the agencies through which "many of the rights and obligations of citizenship are exercised" (Prior et al (1995) p146).

From the perspective of rights implementation, this role of local authorities is extremely important. For example, local authorities – as agents of Central Government – must develop local citizenship strategies. As emphasised by Prior et al (1995), an important strand of such strategies involves "continually making explicit the rights and entitlements of citizens and the procedures for ensuring they are upheld, and supporting citizens in seeking to obtain entitlements". An important factor in this approach is the development of Tenants' Charters as discussed above.

Despite professed commitments to rights, however, the literature review has indicated that a variety of organisational factors may inhibit effective implementation of rights. External influences on organisations have been considered as being highly relevant to rights implementation, for instance, the severe fiscal controls now imposed by Central Government upon local authorities (Monies (1996)). More specifically, the type of organisational culture adopted by local authorities has been held as being of particular relevance to rights implementation, organisational practices heavily dependent on cultural values (Cairncross et al (1997)). With reference to work practices and workload pressures, on the other hand, Lipski (1980) has argued that such factors greatly inhibit effective rights implementation. Finally, both staff attitudes and lack of training have been emphasised as being of major significance, Loveland (1995) noting in particular the low levels of housing staff who are professionally qualified and suggesting that, as a result, "most authorities could not have satisfied the demands of a rights-based approach to management." (p25).

The rest of Chapter 2 now turns to examine these organisational concerns under the following headings, although their close inter-relationship is stressed: external constraints; organisational culture and structure; work methods and practices and personnel matters. This examination will identify specific organisational matters of greatest concern for detailed evaluation in the empirical study undertaken in Chapters 3 and 4.

a) *External Constraints*

Organisations are inevitably shaped by their environment. Some of these external influences have already been considered, including the political and ideological climate. This section considers in more detail aspects of Central Government policy and decisions which affect local authorities, and the importance of regulatory and professional bodies. Such external influences may impinge on local authority housing and affect the implementation of tenants' rights. In carrying out this examination, three issues are considered: legislative and fiscal changes; the development of partnerships and the influence of other agencies and organisations.

i) Legislative and Fiscal Changes

By 1978 local authorities owned more than a third of all housing stock in England and more than half of the Scottish housing stock (Letwin (1992)). Yet, as highlighted already, legislative changes primarily the right-to-buy have led to radical restructuring of the current local authority public housing sector. The sector is now reduced dramatically in size, and providing housing increasingly for the poorer sections of the working class.[133] In tandem with legislative change, fiscal housing policies have shifted from "bricks and mortar" subsidies to individual rebates or allowances (Housing Benefit) (Malpass and Warburton

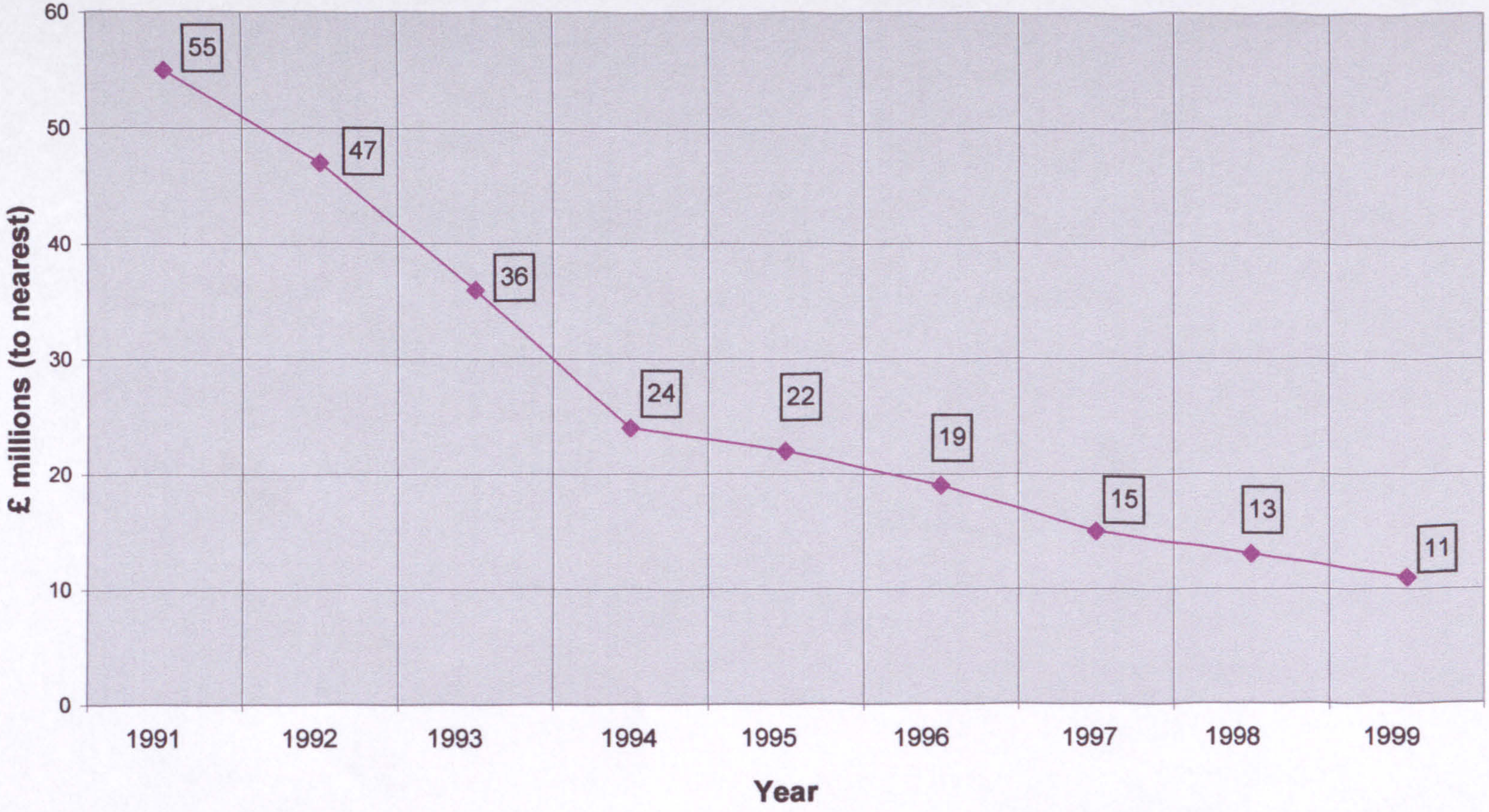
[133] Politically determined, of course, by the politics of the 'New Right' that seeks to unbridle restrictions on market economies by general programmes of deregulation and privatisation (Gamble (1994)). Laffin (1989) p171)) notes how this transition from the public service being regarded as model employers, setting an example to the private sector, towards becoming market place employers occurred during the Thatcher years, the public sector now regarded as a "haven of inefficient labour market practices".

(1997); Goodlad (1999)). In 1978/79, housing support grants made up a significant 39% of the housing revenue account (SLGIU (1996)).[134] But grant support to local authorities has fallen dramatically throughout the 1990's with most Scottish councils now receiving little grant and 37% of councils receiving no grant. Figures 1 and 2 illustrate the housing support grant figures for Scottish councils and also Councils A and B, the two councils in which empirical work was carried out.

It is within this context of a declining and financially depleted public rented housing sector that links with the question of rights implementation can be drawn. Hogwood and Gunn (1990) point out, for example, that "expenditure restrictions may starve a statutory programme of adequate resources" (p199), citing as an example the Control of Pollution Act 1974 which, coinciding with public sector cutbacks, meant local authorities lacked sufficient funds to appoint the additional staff needed to implement the Act. Again, with reference to the contemporary housing climate, expenditure cuts pursued by senior management operating within the New Public Management context critically affect the resources that can be used to implement rights, particularly those rights that may have adverse financial implications for local authorities such as the right-to-repair, or the statutory duties originally imposed on local authorities as a result of the Housing (Homeless Persons) Act 1977, particularly in areas of great housing need. Nor should it be forgotten that the reduction of housing stock actually serves to divert existing resources from the management of public rented housing stock to the management of the housing stock sold under the right-to-buy, ie in the provision of common factoring or property management services to the new owner

[134] The statutory housing account created by the Housing (Scotland) Act 1935. It should be noted that controls have strengthened to prohibit subsidisation of the housing revenue account from the rate fund contribution (Monies (1996); SLGIU (1995)).

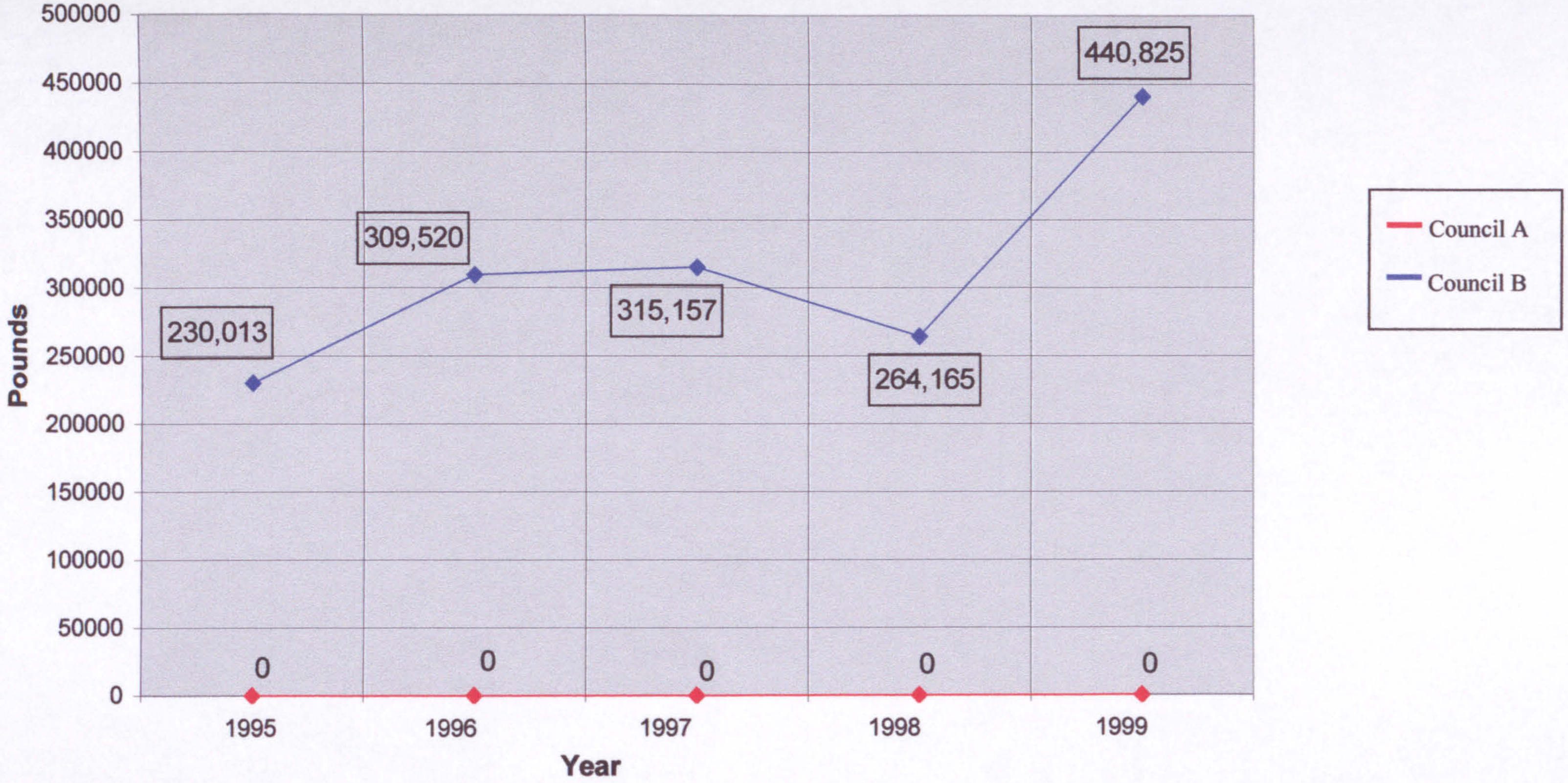
Figure 1: HOUSING SUPPORT GRANT TO SCOTTISH COUNCILS*



(Source: Scottish Executive Housing Statistics)

* 37% of Scottish councils no longer receive any Housing Support Grant (1999). Detailed scrutiny of these statistics reveals that most councils receive very little funding, over £5 million of the £11 million figure being allocated to just two councils, namely Shetland and Comhairie.

Figure 2: HOUSING SUPPORT GRANT TO COUNCILS A AND B*



(Source: Scottish Executive Housing Statistics)

* The Council B grant is payable in respect of a hostel for homeless persons.

occupiers (IoH (1986A)).[135] As Sim (1995) points out, local authorities have had "to introduce factoring systems for owner-occupiers where there are issues of common repair and maintenance" (p93).[136]

Yet it would be simplistic to apportion the blame for non-implementation of specific rights to fiscal measures alone. Kay et al (1986) have argued, for example, that lack of funding does not by itself justify the poor implementation of secure tenants' rights, especially as "some authorities did manage the implementation reasonably well and proved that the majority could have done so too" (p40), albeit comprehensive publicity and encouragement of rights take-up was not the norm (Cairncross et al (1989)). In their view Central Government's lack of pressure on local authorities to implement rights is of greater relevance - right-to-buy excepted - in explaining the poor performance of councils. Again, Adler et al (1985) have argued that certain rights receive less support in view of the fact they are regarded as being potentially antagonistic toward local authority interests (eg security of tenure). But it is perhaps by reference to the housing profession as modified by fiscal and legislative changes that further insight can be gained regarding factors that might inhibit rights implementation.

ii) <u>The Development of Partnerships</u>

An integral element of Central Government strategy, in fact central to current housing privatisation, is the development of New Housing Partnerships (NHP's) that prioritise "well-founded proposals for transfer partnerships which promote community empowerment and

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[135] An invalid argument often cited by councillors in support of reducing staff levels is that fewer staff are required as a result of house sales. This is simply a non sequiteur. For it is the better quality housing stock that tends to be sold, the stock that requires less management and maintenance. Increased administrative demands placed on housing staff by remaining and potential tenants creates the paradox that greater numbers of staff may be required to meet organisational objectives.

[136] Many authorities, it should be noted, had not yet provided factoring systems by the early nineteen nineties, but the majority were in the process of establishing them.

living in private finance"[137] (CIOH (1999) p2). The NHP programme is also part of the Government strategy to tackle social exclusion, an initiative to tackle low levels of investment in the worst council areas drawing on private sector funds to facilitate investment needs (Goodlad (1999)).

But will such proposals impact favourably on the development of tenants' rights? Goodlad (1999), for example, suggests that no viable alternative to this approach exists that can deliver "empowerment, quality and security" (p14), although it is acknowledged that local authorities may retain housing management control where quality services currently exist. Indeed, coupled with the legislative opportunities contained in the Housing (Scotland) Act 2001 to expand statutory rights, NHPs represent a golden chance to legislate to eradicate many of Scotland's housing problems.[138]

Yet criticisms of the NHP programme have been raised. Firstly, it has been argued that funding provided by the Government under the NHP is insufficient to meet investment requirements, a fact inherent in the nature of the NHP programme that relies on private sector funding (CIOH (1999)). But this itself may prove problematic from the perspective of rights development if private financiers are reluctant to invest in the development of housing in which tenants possess the full range of rights – and possibly more – to those currently enjoyed by secure tenants. The right-to-buy with discount undoubtedly falls into this category, although changes to the cost floor rules go some way towards assuaging private investment concerns.[139] These changes entail that a house cannot be sold below the price calculated as per the statutory provisions, including the price not falling below a

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[137] A total of £278 million has been earmarked for Scottish housing partnerships by the Government for the period 1999/2000 (CIOH (1999)).

[138] For example, the new statutory right to participation (the Housing (Scotland) Act 2001, s53-s56).

[139] Particularly as the highest returns to the mortgagee occur in the early years of the loan where interest charges are "front-loaded".

statutorily defined "cost floor" in the case of recent housing[140]; the sale price and discount payable is calculated by reference to historic costs involving the previous time period, but rolling forward. The restriction of maximum discount, in respect of Scottish secure tenancies, to a level of £15,000 will also soften such concerns.[141]

Secondly, the NHP programme has been sponsored as an important mechanism for developing effective community and tenant participation networks, a catalyst as it were for creating community empowerment thus assisting in the process of rights development. Yet community development programmes have in many situations led to conflict between the state ie Local Government and community activists. Alcock et al (1996), for example, argue that anti-poverty and empowerment strategies are often rooted in bureaucratic interests and, as such, are primarily rhetorical in nature. According to Alcock et al (1996), empowerment and effective community participation will be largely dependent on proper monitoring and evaluation systems being in place; while Goodlad (1999) concurs by reference to the need to have all social and public landlords monitored by an independent agency.

The final criticism is that espoused by Corry et al (1997) who – while acknowledging the long history of private–public sector partnership (PPP's) – argue that current models focus on private sector involvement to a far greater extent, a reliance that may in the longer term have serious adverse effects on the quality of service delivery, for example, the tendency for organisations to reduce standards may creep in because of financial motivations.[142] Yet, as the authors also note, privatisation of service delivery may be beneficial if the NHP

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[140] The general determination of sale price was previously made in accordance with SDD Circular No 32/1988, the Housing (Scotland) Act 1987 (Right-to-Buy) (Cost Floor) Determination 1988. This has now been amended by the Housing (Right-to-Buy) (Cost Floor) (Scotland) Order 1999, SI 1999 No 611 (s35) that extended the period over which relevant costs are counted towards calculation of the cost floor from five to ten years. Circular 8/1999 provides detailed guidance on the new provisions.

[141] The Housing (Scotland) Act 2001, s49 (2) (c).

[142] Corry et al (1997) also emphasise the need to have independent regulation of PPP practices to inhibit such developments.

programme results in a "good shake up of the service concerned" (p57), fossilisation of local authority housing services arguably a key component in explaining ineffective service delivery.[143]

iii) Other Agencies and Organisations

Brief mention is made in this section of the role of other agencies that interact with local authorities and, through that interaction, may affect rights implementation. This covers bodies of a statutory and non-statutory nature.

One important external control over local authority activities is that exercised by the Accounts Commission, the body responsible for auditing all local authority accounts. The powers of the Accounts Commission were extended by the Local Government Act 1988 to include studying local authority activities to ensure better value for money is being achieved.[144] Current legislative provisions, for example, require councils to "make proper arrangements for securing economy, efficiency and effectiveness"[145]; this duty has been considered unnecessary, however, given that auditors already have this duty under previous legislation.[146] As the terminology suggests, the main focal point is that of achieving cost efficiency within the new market and business orientated structure to which local authorities must conform. Thus, auditors pay little attention to rights issues and their chief concern lies with monitoring financial matters, for example, levels and trends vis-à-vis rent arrears. Of particular importance in this respect is that there is no standard or regular monitoring in respect of most tenants rights.[147] Thus, the influence of current audit controls in respect of

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[143] The same authors also note, somewhat tongue-in-cheek, that should private sector agencies themselves become 'fossilised' in future, the "Blair government may need to do the move between the public and private sectors all over again - in reverse" (p57).

[144] The Local Government (Scotland) Act 1973 lays down the functions of the Accounts Commission in Scotland.

[145] The Local Government (Scotland) Act 1994, s 170.

[146] The Local Government Act 1988, s35.

[147] This point is examined again later.

rights promotion is likely to be minimal.

A number of other agencies and organisations exist that can influence service delivery in respect of housing management activities. Examples of such agencies are the Chartered Institute of Housing, Cosla, other professional bodies, Shelter and the whole gamut of the voluntary sector agencies that proliferate in the Scottish housing context.[148] Methods of influence vary but include political canvassing, consultation regarding pending and existing legislation, the publication of statistical and good practice reports.

Yet influences exerted by the above hinge crucially on local authority receptiveness to their views, as well as their relative standing politically. Nor do reports issued by these bodies as regards good housing management practice have mandatory status. Thus, the comprehensive Chartered Institute of Housing Standards Manual which teems with good practice suggestions emphasising the need for local authorities to promote and develop tenants' rights is merely informative in nature.[149] (IoH (1993)). It is interesting to note in passing, though, that Scottish Homes is to be replaced by a new agency, "Community Scotland" in late 2001, its remit including the future regulation of the activities of local authority and social housing landlords.

b) *Organisational Culture and Structure*

Central Government strategies – fiscal, legislative and ideological in character – shape to a large extent the organisational cultures and structures that local authorities adopt in practice. It is important, therefore, to assess how local authorities have developed their organisational structures to take account of the interests of individuals perceived as having

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[148] The list is too extensive to cover but could include Scottish Council for Single Homeless, Women's Aid, and (for housing associations) SFHA, TIS, TPAS.

[149] Cosla, the local authorities' representative body, focuses little on housing or tenants' rights issues. Interestingly, its recently published national Code of Conduct (Cosla (1999)) for Local Government employees is advisory only and omits possession of knowledge in its list of seven key principles of public life, knowledge in fact essential if tenants' rights are to be met.

citizenship status under New Labour (Gyford (1991)).[150]

In assessing the question as to how organisational culture might impact on the implementation of tenants' rights, the following methodology is adopted. Firstly, a definition of culture is provided. Secondly, a number of cultural organisational typologies derived from contemporary management theory are identified. Finally, the relevance of typology to the question of effective rights implementation is examined.

i) Culture Defined

Organisational culture has been defined at its simplest level as "how things are done around here" (Mullins (1996) p711). More specifically though - and a point highlighted by Handy (1993) in his seminal work on organisational theory - is that there is no precise definition of culture. Indeed, culture is something to be perceived, reflected in a variety of ways, including organisational goals and objectives, behavioural patterns of employees, and qualities such as customer care espoused by specific organisations in policy and procedural documentation, as well as protocols regulating interactions between organisational employees and customers. And crucial to matters of culture, of course, is the organisational structure adopted as the vehicle of implementation of key objectives.

ii) Organisational Typologies

A variety of different organisational cultural typologies have been proposed, typologies that enshrine the value systems inherent to particular organisations. Thus, Handy (1993) has described four key cultures that symbolise organisational activities, the rule-bound culture most pertinent to public sector bureaucracies where administrative duties are controlled through a web of procedural guidelines, the other cultures being the person focused culture, the task centred culture, and the power based culture. Handy acknowledges, of course, that

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[150] Local authority organisational structures vary considerably and housing services can stand alone or be merged with other departments such as social work. Indeed, such mergers became increasingly common after local authority re-organisation in April 1996.

such descriptions are impressionistic only and cannot reflect the complexities and nuances associated with actual organisations. Applying Handy's model to a housing context, then, this would be reflected, say, in allocations being made precisely as the rules determine and allow for no discretion, a position of course that may conflict with principles of judicial review.

Lawton and Rose (1994), on the other hand, specify that public sector culture can be defined by using a four-fold typology, namely that organisations can reflect cultures stamped by political, administrative, legal, or market force aspects, or may contain elements of all these cultures. The latter is pertinent in the case of housing where culture is moulded by a variety of influences, for example, housing administrative practices such as house sales that have been determined by legal provisions rooted in political strategy to privatise public sector housing.

A third model to explain organisational culture, and one that is housing specific, has been espoused by Cairncross et al (1997) who argue that the organisational culture of housing authorities typifies an ethos that can be classified as being either traditionalist, consumerist or citizenship focused.[151] In the first model, for instance, the emphasis is on the interests of the bureaucracy, with information controlled in an authoritarian fashion; this is Handy's rule culture. In the second model, on the other hand, emphasis is on individual tenants, with focus being on issues such as that of tenant choice; in political terms this would be reflective of Conservative Party Councils. Only in respect of the citizenship model is there emphasis on both individual and collective tenant issues, including detailed information being provided on tenants' rights; this, according to Cairncross et al (1997), would be reflective of Labour Party controlled Councils.

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[151] The authors, like Handy, acknowledge that actual organisations do not reflect these ideas fully with many views and political persuasions evident at different organisational levels.

iii) Typologies: A Critique

Turning now to evaluate the typological models hitherto discussed, the following points are made. On a positive note, the models highlight the large number of elements that constitute organisational culture, elements that link systemically to enable a general description of cultural characteristics to be identified, for example, whether organisational structures and information strategies appear to be promotional of rights issues. Yet as both Handy (1993) and Cairncross et al (1997) themselves acknowledge typologies do not represent actual organisations. In the latter's study of tenant participation structures best suited for the promotion of tenant's rights, for example, the authors conclude that even the citizenship model that provides tenants with opportunities for greater power and community action may not suffice to ensure rights are protected.[152] Their scepticism stems from the fact that tenants lack power vis-à-vis the leading political parties and professional staff who control the housing bureaucracy, a bureaucracy that promotes tenant participation because it is perceived as representing good practice (thereby accruing political kudos), but also because it tends to confine debate to local management issues as opposed to policy matters.

A second problem associated with using ideal typologies to access how effective such organisations might be in the implementation of rights is the fact of organisational variability, the fact that no two organisations are alike. Nor for that matter are the individuals who work within organisations, all of whom possess their own personal values and attitudes that may (or may not) synthesise with professed organisational cultural norms espoused in corporate policy documentation. There remains always the latent possibility, then, that espoused commitments to rights matters are not shared by personnel in key positions within the organisational hierarchical echelons.

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[152] Tacitly suggested within the author's argument, of course, is that even Labour Party acolytes may lack commitment to citizenship ideals in practice.

c) *Work Methods andPractices*

In the evaluation of rights implementation, it is necessary to analyse actual local authority housing management services. This premise is based on the following points. Firstly, local authorities play a pivotal and political role "in transmitting public housing 'law' from central government to the citizen" (Loveland (1995) p20). Secondly, as state agencies, local authorities, are expected by Central Government to "govern their local areas, rather than simply administer centrally defined services on an agency basis" (Loveland (1995) p21).

The paramount role of local authorities as administrators of public law, therefore, entails that organisational practices that might impact negatively on effective rights implementation should be of focal interest. In assessing such practices, then, it is important to assess administrative processes in context, to analyse the effects of factors such as workload and training on administrative practice. As Loveland (1995) highlights:

> "Logistical overload, poor working conditions, and a tendency for cases to be handled by unsupervised and badly trained junior staff might all be presumed to reduce the likelihood that welfare bureaucracies would consistently produce legally accurate decisions " (p24).

Work methods and practices in public sector housing management are, theoretically, determined by the policies and procedures agreed at strategic managerial levels. It should be emphasised that such policies require to be aligned to corporate council strategies and policies. Further, and as Legg et al (1981)) note in their study of how council housing management might be improved, two essential factors are involved. Firstly, policies must be clear and unambiguous, indicating standards of performance to be achieved. Secondly, organisational structures and set procedures must be in place that allow policy objectives to be met. Yet the study indicates that "poor quality of management" does occur "in a

substantial minority of cases", primarily because of a gap in practice between stated policies and what actually occurs in the work place, a problem exacerbated by a dearth of clearly defined "standards to be achieved in the activities and services" (Legg et al (1981) p133). The thesis now examines those factors within the work place that can affect adversely the implementation of tenants' rights. This is carried out by reference to the following factors: policies and documentation; communication strategy; workload; performance management and personnel matters.

i) Policies and Documentation

The Baseline Study of Housing Management in Scotland (Clapham et al (1995)) showed that many council landlords had failed to develop comprehensive and detailed policies and procedures in respect of tenancy management issues. Such an omission is of some importance from the perspective of rights implementation since staff a) will thereby lack clear information on which to advise tenants of their rights and b) documentation will not be available to tenants in a format that is both easy to understand and capable of dissemination.[153] As Clapham et al (1995) emphasise:

> "The lack of written policies and procedures is an important issue which has arisen in a number of places in the report and which deserves further emphasis. It is difficult to see how staff can be effectively managed, or tenants well-informed if policies and procedures are not written down and widely available to both staff and tenants" (p153).

Again, in respect of tenancy agreements that are critical in setting the contractual framework for the development of service standards between landlord and tenant (University of Stirling (1995)), Mullen et al (1996) noted that many local authority secure tenancy

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[153] It should be noted that this study pre-dates Local Government re-organisation and matters may have improved in respect of policy documentation standards. A fresh empirical survey is required to ascertain current developments.

agreements are poor qualitatively, both in respect of content and presentation.[154] And, albeit that tenancy agreements that do not contain the legal rights of tenants do not negate such rights, without a clear exposition of the latter, tenants "may be unaware of these rights because they are very often not mentioned in their tenancy agreement and thus not able to exercise them (Mullen et al (1996) *pv*). It should be emphasised, though, that both studies relate to the analysis of local authority policies and tenancy agreements pre-Local Government re-organisation and their findings may not reflect current practice given that a number of local authorities have since adopted new leases.[155]

This point is of particular relevance given the findings of Scott et al (2001) in the most recent research survey of housing management practice in Scotland. For example, this research confirmed that there have been many changes affecting the organisation of housing authorities since the last Baseline Study was carried out in the early 1990's" (Scott et al (2001) p122). And - of potential importance from a rights perspective - the research revealed that:

> "The post-re-organisation councils were more likely to have tenant participation policies, to provide information to tenants on a range of issues, to use a variety of forms of consultation and to consult on a range of issues" (Scott et al (2001) p117).

To this issue the thesis will return in Chapter 3 when detailed evaluation of the relevance of policy documentation to rights implementation is carried out (see pp 178-189).

ii) Communications

In addition to internal housing departmental policy documentation, implementation of rights is also likely to be affected by the communication strategy adopted by local

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[154] In terms of the Unfair Terms in Consumer Contracts Regulations 1994, Reg 6, leases require to be drafted in clear intelligible language.

[155] Some authorities have adopted the Charted Institute of Housing Model Agreement (1997)known as MOSTA.

authorities. Failure to provide tenants with detailed rights information in clear unambiguous language, for instance, can effectively 'block' opportunities for tenants to exercise their legal rights. As the University of Stirling (1994)) points out, though, having an information or communications strategy should be as central to housing management practices as other policies such as allocations. Thus, the development of tenant participation strategies that encourage community networks to enable debate – including discussion of rights - should be implemented as part of communications strategy. Yet, as Clapham et al (1995) suggest, at least two major deficiencies in existing local authority practice can be discerned. Firstly, although quality of information materials issued to tenants varies greatly among authorities, much of the information is often unsatisfactory in terms of rights matters. Secondly, and in developing this point, the same study revealed that less than half of the local authorities, New Towns and Scottish Homes had written tenant participation policies", with "over two thirds of tenants requesting "more influence over important decisions that affect them" (p56).

Ensuring that tenants are fully aware of their legal rights is a necessary factor (albeit not a sufficient one) in empowering them to exercise such rights. Inducing local authorities to publish their performance in respect of rights implementation could be an important method of enhancing tenant awareness of rights issues. Yet current information provided to tenants on performance standards achieved is likewise open to criticism from a rights standpoint.[156] In England and Wales, tenants of local authorities must receive annual reports outlining housing management performance; such reports must be received by the end of September each calendar year (Hughes and Lowe (1995)).[157] Circular 10/94 outlines minimum

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[156] This information is provided to enable tenants to assess whether quality services are being achieved. "Quality" in this context essentially means bringing about customer satisfaction and is seen today as "the key to achieving competitive advantage" (Armstrong (1995) p284).

[157] The Local Government and Housing Act 1989.

information requirements and these include such things as target response times in relation to repairs, allocations made, voids and re-let timescales. Information can include both qualitative and quantitative matters and local authorities can also provide whatever additional information they choose. In Scotland, local authority tenants enjoy similar rights to information concerning standards and performance in housing management, as well as the right to be consulted on what matters are to be published.[158] In addition, local authorities are also obliged to publish certain performance information which enables the Accounts Commission to compare standards of performance achieved by different authorities on an annual basis and thus draw appropriate comparisons (The Accounts Commission (1993/94)).

At this stage, though, consideration of the type of information produced by local authorities would suggest it is mostly devoid of information concerning tenants' rights. The statutory indicators required by the Accounts Commission, for instance, involve only quantitative measures of performance such as time taken to complete specific categories of repairs, void losses, re-let timescales, rent arrears and housing benefit statistics, house sales and homelessness issues such as length of stay by applicants in temporary accommodation. There are no statutory indicators covering such rights as the number of tenants refused access to their files and/or appeals lodged, nor levels of compensation paid to tenants under the right-to-repair scheme.[159] Again, there are no indicators concerning eviction actions raised and outcomes of these actions.

With regard to the apparent dearth of qualitative standards of measurement available, Lipski (1980) offers an interesting perspective. In his view, organisations develop surrogate performance indicators which can be readily quantified, as opposed to more complex issues

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[158] The Leasehold Reform, Housing and Urban Development Act 1993, s 153.

[159] It may be, of course, that such information is provided by individual local authorities to their tenants, a matter which would require empirical research to corroborate. Certainly, a broad range of standards in respect of individual tenants' rights are possible. See, for instance, NFHA (1987).

such as assessment of staff advice to clients which requires a greater element of supervisory control. Yet meeting these indicators does not necessarily entail a quality service has been achieved, especially since "behaviour in organisations tends to drift towards compatibility with the way the organisation is evaluated" (p52). To quote the same author:

> "Housing inspectors can appear to increase their productivity by inspecting more premises, but this is at the expense of lowering their standards and reducing their time spent for inspection" (p52).

Again, even when information is provided to clients about service provision, the ability by the latter to assess critically such information is affected badly by a) lack of knowledge about what constitutes quality service and b) how different organisations compare, particularly if only quantitative performance indicators exist. In brief, although bureaucracies may strive to be accountable through published performance criteria, as Lipski adds, "there are really few valid statistics where the quality of performance is at issue" (Lipski (1980) p 52).

iii) Workload and Methods of Work

Legg et al (1981) cite the problem of workload as having a crucial impact on the quality of service delivery and, by implication, that pressures on staff exert a negative influence upon rights implementation. Reasons for workload pressures are varied but include the following: the growth of decentralised housing management services that tend to be delivered by housing officers often carrying out a generic, as opposed to specialist, job remit ie responsible for most mainstream housing management functions (allocations, estate management, homelessness, and arrears).[160] The problem of workload is further compounded by the fact that duties themselves comprise clerical and administrative work, as

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[160] Generic working by housing officers stemmed partly from the generic social and community worker approach that evolved in the early 1970's.

well as fieldwork duties with no clear delineation of task priorities provided either within the employee job profile ie job description, or set performance targets. Other difficulties associated with workload that are noted by Legg et al (1981) concern unsatisfactory office conditions, inappropriate distribution (by management) of staff resources vis-à-vis actual work generated and a lack of review concerning what is happening in practice.

And similar difficulties have been confirmed by other studies.[161] Lipski (1980) points out that workers in public sector organisations generally have heavy caseloads relative to actual responsibilities, citing the case of legal services lawyers who may only be working actively on a dozen or so cases out of a caseload approaching one hundred. Indeed, Lipski propounds the view that high quality services are not politically feasible given the costs involved, a stance based on his assumption that demand is elastic, expanding in line with supply of advice services. Thus, street-level bureaucrats often become immersed in a 'cycle of mediocrity'[162], unable to provide quality services because of unduly excessive pressures of work and – as a consequence – adopt or mould policies to job demands, in effect work is routinised and simplified as a way of coping. Again, as Loveland (1995) points out, in respect of homelessness applications, that:

> "Excessive workloads can also have a readily identifiable effect on an authority's willingness and capacity to respect even straightforward legal constraints in its decision-making autonomy (p137).

Despite the importance of these assertions from the perspective of rights implementation, however, it seems that workload by itself is insufficient to explain housing management ineffectiveness. Malpass and Murie (1994), for example, criticise the assumption that "the

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[161] The two studies given here, it should be stressed, identify major problems already existing before the massive changes that have occurred since 1980 and that have greatly exacerbated work pressures.

[162] The term 'street-level bureaucrat' describes "those public service workers who interact directly with citizens in the course of their jobs and who have substantial discretion in the execution of their work (Hudson (1997) p394).

key element determining the nature and effectiveness of housing management relates to staffing and organisational attributes" (p306), suggesting other factors as being crucial such as fiscal arrangements or demographic characteristics. Indeed, these authors emphasise the difficulty in "identifying the effectiveness of housing management", noting that landlord organisations tend to "perform unevenly" and that, "None fall down in every respect and none perform well in every respect" (p310). Thus, it can be asserted that evaluation of housing management effectiveness requires detailed scrutiny of individual landlord practices involving some measurement methodology for specific service functions, a key test being whether service provision is, to quote Malpass and Murie again, "responsive to the interests of tenants and applicants" (p312). And other points can be raised in support of the above. Workload levels and their effects on rights issues cannot be assessed thoroughly without taking cognisance of such factors as different ability levels among housing staff, or specialist training required to enable staff to manage time more effectively[163], issues that are addressed in the concluding section of this Chapter.

A related issue that has featured in the literature review, though, concerns work methods, in particular the implications of generic as opposed to specialist working practices. Arguments in favour of generic practices are varied, including improved services to tenants, increased efficiency and enhanced career development opportunities for staff versed in comprehensive housing management functions. Yet in his theoretical study of generic housing working practices, Saunders (1993) argues that generic working is likely to prove less effective where specific conditions remain unfavourable. These conditions comprise, inter alia, the following elements: inadequacy of performance measurement; organisational crisis such as severe fiscal constraints or personnel problems; low spending on housing

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[163] This is not, of course, to suggest that failure to carry out job tasks within an allotted timescale is a problem attributable to individuals. In situations where workload is excessive, time management is no panacea for resolving such problems.

management services, for instance, "one training officer for the whole housing service" (p11), or excessive workload duties for staff; low levels of trained or qualified staff; a dearth of leadership skills, particularly at middle-management levels where staff are subservient to the whims of senior policy staff; and lack of political commitment.[164] With specific reference to housing management and effective practice Saunders (1993) suggests that patch sizes averaging over five hundred properties would generally represent an unfavourable work condition not conducive to generic working.

Despite these concerns, though, consideration of the literature confirms that there has been little research concerning the effect of generic working on effective implementation of legal housing rights. Clapham et al (1995), in their Baseline Study of Housing Management in Scotland, for instance, note simply that :

> "Problems could occur, however, if the workload was high and staff had to prioritise between important competing claims. Training (was) considered to be essential if staff were to perform effectively the wide range of tasks involved in generic working" (p33).

Again, in the most recent research of current housing management practice in Scotland, Scott et al (2001A) highlight that organisational structures vary greatly and that:

> "The study points to a need for further research specifically focused on alternative ways of managing housing services. This should examine the generic versus specialist role, and the in-house or external provision of services in areas such as anti-social behaviour, rent arrears and factoring. The aim would be to develop guidance which would assist housing managers to assess the advantages of one approach as more appropriate than the other in particular circumstances" (p113).

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[164] As the following Chapters clarify most of these conditions are unfavourable in both Council A and Council B.

The thesis will return to this theme in the case studies.

iv) Performance Management

The Best Value strategy adopted by the Labour Party endorses performance measurement as a central feature. Boyne (1998) claims that Labour is even keener on measurement than the Conservatives. And failure to meet specified Best Value standards could result in CCT being re-imposed on local authorities as a punishment.[165] Performance measurement is chiefly carried out through performance indicators that aim to reflect "economy, efficiency and effectiveness, with an emphasis on value for money and quality" (Jacobs and Manzi (2000) p90).[166] Integral to this process, then, is that of organisational audit that symbolically transforms public sector administration into public sector management:

> "a benchmark for securing the legitimacy of organisational action in which auditable standards of performance have been created not merely to provide for substantive internal improvements to the quality of service but to make these improvements externally verifiable via acts of certification" (Power (1997) p10).

The performance management culture has, however, been criticised because of inherent defects that can prejudice the effectiveness of service delivery, including rights implementation. These criticisms are now examined in detail.

Kemp (1995) highlights the fact that measurement of housing management performance is an important issue. Yet establishing the causal elements of desired outcomes is far from easy, indeed performance itself being a contestable notion and one laden with value

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[165] The origin of performance indicators in Government emanates from the Financial Management Initiative in the early 1980's (Jacobs and Manzi (2000)). It is a model originating in mass production processes in the private sector Western economics (Stewart and Walsh (1992)).

[166] Service efficiency is measured by inputs (resources used) and outputs (services produced) and service effectiveness by outcomes or objectives (what is achieved by producing services eg tenant satisfaction) (Kemp (1995)).

judgements as to what differentiates good from bad performance.[167] And problems inherent in evaluating the precise causes of actual outcomes is compounded by the complex nature of housing management itself, for instance, differences in both stock and tenant characteristics that obfuscate the determination of clear causal mechanisms in service delivery. Indeed, Harvey (1999) goes further by criticising the performance indicators produced by Central Government[168], referring to them as "crude and second order indicators" that have negative effects on both the nature and level of services delivered by staff, for example, by creating considerable administrative work that diverts staff from providing services, particularly services to those who live "in the most difficult areas with the poorest populations" (p17).

Further criticism against the performance assessment systems in British housing management has been penned by Clapham and Satsangi (1992). According to these authors, the essential aim of the performance management culture has been to "strengthen the accountability of housing management to Central Government" (Clapham and Satsangi (1992) p73). The culture of performance management has not, however, been of practical benefit to tenants given the performance management focus on efficiency measures with fair "assessments of the effectiveness of services" and little attention paid to the "consumer voice" (Clapham and Satsangi (1992) p70). Indeed, the authors claim that performance assessment systems will not improve service delivery (including rights implementation) without "direct consumer-citizen participation in the design and operation of these schemes" (Clapham and Satsangi (1992) p71). Clapham and Satsangi (1992) affirm:

> "Not only should the views of tenants be used as indicators of performance, but tenants should be involved in choosing appropriate indicators and therefore in

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[167] Causal factors in outcomes, for instance, comprising staff ability, or attitudes, organisational factors, tenant participation etc.

[168] See the DETR's consultation paper "Performance Indicators for 2000/2001' that proposes fourteen best value performance indicators and another six Audit Commission performance indicators.

defining the criteria of success" (p71).

Yet perhaps the criticism raised by Jacobs and Manzi (2000) is the most damning regarding the negative impact on service delivery likely to derive from promotion of a performance management culture. By applying a constructivist model of management analysis, Jacobs and Manzi (2000) identify six key problems of performance indicators in respect of housing-related topics.[169]

The first problem is that performance indicators focus on specific areas such as rent recovery and voids with identifiable quantitative outcomes and affects standards of service in two ways a) staff time is concentrated on particular areas of work and b) work is focused on short-term as opposed to long-term matters, such as the development of a rights strategy. As Jacobs and Manzi (2000) affirm: "The resources devoted to a narrow range of tasks may subvert other aspects of the organisation's functions" (p97).

A second problem is that indicators are seen by staff as being a form of control that can damage staff morale and result in potential organisational conflict, a situation that is extremely detrimental to the provision of a quality housing service that inculcates commitment to rights.[170]

The third problem associated with the performance management culture concerns that of atrophy. Work practices focus solely on task completion at the expense of creativity and discretion which can be a key element in ensuring that housing practices are delivered in a lawful fashion.

Mediocrity and deception are further bed partners of performance management

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[169] Social constructivism acknowledges that research is not neutral, that factual knowledge is in fact contested. Power relations are explored as part of constructivism that regards management, not as a given, but as something that has evolved out of practice and constructed through processes that reinforce existing institutional relationships (Jacobs and Manzi (2000)). The problems are classified by reference to parochialism, self-interest, homogeneity and atrophy, mediocrity and deception.

[170] Managers are aware, for instance, of limitations in view of low levels of training and investment in staff development.

confirming concerns of other theorists such as Lipski (1980). Mediocrity is reflected in patterns of work shaped by an organisational tendency to secure only moderate levels of performance; while the figures relevant to achievement of targets, particularly where targets have been set unrealistically, are routinely falsified, for example, either at staff level to stave off managerial reprimand or at organisational level not to prejudice strategic requirements.

d) Personnel Matters

Loveland (1995) notes that the professional qualification in housing traditionally served to meet "the needs of practising housing officers" by offering a detailed knowledge of housing management functions (p24). Of some importance from a rights perspective, however, is Loveland's criticism of the housing qualification because of the "limited role that legal training played in the IOH qualification", although this is "perhaps understandable given successive governments' evident disinclination to place tight legal controls on public sector management" (Loveland (1995) p25).

Yet as Loveland himself acknowledges these comments about the tangential connection between housing management education and legal training related primarily to the situation prior to 1991 when the Chartered Institute of Housing professional qualification was restructured. Indeed, Scottish University courses on housing management have proliferated in recent years and training in housing law has become an integral component of these courses. Given that housing administration involves the implementation of housing law it is extremely important to consider what training and education housing staff receive.

i) Staff Training: Background

The importance of training for housing management staff was explicitly recognised as early as 1959 when it was stated categorically that:

"Efficient management of housing estates of the size and value of those now owned

by local authorities cannot be achieved without trained and qualified staff' (CHAC (1959) p30).

The nature of what this training should comprise remains a matter of debate (see below). But training programmes that encapsulate knowledge of relevant law have been regarded as being an essential element of good housing practice (Clarke (1981)). Again, Saunders (1993) has emphasised the central role of training, not merely as being integral to effective policy implementation, but its primacy in meeting the needs of generic housing officers whose work encompasses a broad range of legal matters. And, more recently, the importance of training to overall organisational development and the "pursuit of business excellence" has been stressed (Reid et al (2000) p3). Further, it is critical to the successful implementation of local authority best value strategies that training receives appropriate organisational priority (CIOH (2000)). And, in the rapidly changing environment of Local Government, Hender (1993) stresses that both officers and members require "constant training and re-training if they are to be fully effective" (p115). This point was highlighted as being of particular significance in an early study by Stanforth et al (1986) that revealed poor delivery of repair services to be largely attributable to inadequate training. To quote these researchers:

> "Training should not be seen as a 'once and for all' event, since it needs to be continuous if it is to be effective, and authorities should again have sufficient staff to be able to release a proportion regularly for training" (Stanforth et al (1986) p74).

Yet general reports indicate that, in the national context, training may be receiving insufficient priority. Murray and Steedman (1998) reveal that 52% of the UK population of those aged between 16-64 are low skilled and lack upper secondary (or vocational)

education[171]; while Wilson (1999) highlights organisational concerns in respect of a shortage of professional staff. With specific reference to the Scottish context, an early study noted that, although training was receiving greater consideration, expenditure on training provision remained low (University of Strathclyde (1989)).[172] And of serious concern from a distinctly housing management perspective are the various studies that reveal the relatively low priority afforded to training within the field of housing management. Prior to evaluation of these studies, though, it is important to take cognisance of the following points. Firstly, training is used in this thesis to denote all forms of learning, including education that has often been distinguished on account of its allegedly academic learning focus (knowledge as a process of self development), as opposed to practical workplace learning associated with training.[173] This follows the position noted in recent research that suggests that many employers no longer make a clear distinction between education and training (Reid et al (2000)).

Secondly, whereas training provision may be a *necessary* element in equipping employees with the relevant knowledge to advise clients of their legal rights, thereby assisting with the implementation of such rights, this training is not a *sufficient* factor to ensure the latter. Quantity of training, for example, is not cognate with quality of training (see below). Nor does the provision of training (quality issues aside) ensure that learning objectives have been achieved. Staff members, as individuals, all have different learning capacities as well as training needs. Assessment of both factors – in tandem with the provision of quality training

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[171] Based on the ISCED classification standard that equates low skilled as being ISCED 2 or below, or individuals without general or vocational secondary education.

[172] In the British context, however, Wilson (1999) has pointed out that British employers in global terms spend considerable resources on training with expenditure exceeding £10.6 billion pa. Wilson outlines a range of factors, though, that can act as disincentives to training, namely a) costs involved in providing training, b) the fear of poaching, c) deemed to be unnecessary, and d) workload pressures on staff.

[173] Etymologically derived form Latin educare – to lead out. The dictionary, though, defines training as involving the process of education (Chambers (1994)).

– is critical if training is to be effective in practice.[174] The studies of training examined below, however, focus essentially on quantitative training issues, as distinct from issues of a qualitative nature, a focus that is itself largely attributable to the dearth of data concerning qualitative matters.[175]

ii) Staff Training and Housing Management

In their study of the impact for rights in practice resulting from the introduction of the Housing Act 1980, Kay et al (1986) reveal that training for staff on the new rights introduced as a result of the creation of secure tenancies was minimal, an occurrence the authors consider to be unsurprising given the fact that, historically speaking, "housing management is weak on training" (p31). The low priority traditionally afforded to training by the housing management profession has also been corroborated by official government reports that stress the urgency of providing greater investment in in-service training (Audit Commission (1986)). Again, with reference to the pre-1980 situation, it has been noted that "only 4 per cent of some fifty thousand housing administrators has a work-related professional qualification" (Loveland (1995) p25), a fact which can partly be explained by reference to the late emergence of housing management as a separate 'profession', coupled with its lack of status "within a fiercely competitive policy market place" where competition was rife with other professions (such as architecture, engineering, and social work), and - more important – the competition between housing professionals and local politicians "who have traditionally taken a close interest in housing matters" (Laffin and Young (1990)

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[174] The Chartered Institute of Housing has confirmed to the present writer this particular problem insofar as employers frequently send to the same training course employees with greatly varying levels of current knowledge and experience. Failure to address the above points, then, must cast doubt on the benefits to certain staff of attending these courses.

[175] Such matters would include assessment of, inter alia, the impact of training on staff outputs (efficiency), or improvement of service quality to clients (effectiveness).

p21).[176] Indeed, from a historical perspective, housing has been largely ancillary to these other services, often considered to be simply an administrative function of allocating houses and collecting rent (Provan and Williams (1991)).

And the situation appears graver still if more recent statistics are taken into consideration, particularly those compiled by the Chartered Institute of Housing. Previous reports, for instance, revealed that scant resources were allocated to training and that few staff held a housing professional qualification.[177] But concern about inadequate training remains as highlighted in Keoghan and Scott's (2000) Chartered Institute of Housing millennium report.[178] Although certain improvements have occurred, for example, the development of more training policies and specialist training officers in post, the study notes that *quantity* of training provided falls below Audit Commission recommendations.[179] With respect to qualifications held by housing staff, the study found that less than 7% of housing staff held a professional qualification, a figure that appears to have declined since 1992. The study cites declining sponsorship by local authorities as a principal cause, although the number of qualified staff who left employment as a result of Local Government restructuring may also be an important factor.

Despite acknowledging the positive contribution the study makes to the training debate in Scotland, it is important to note the following points. Firstly, having a policy or a specialist training officer in post does not entail that either more or better quality training will ensue.

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[176] For the older traditional professions and Local Government training generally, training historically focused on qualifications by examination and was mostly white-collar (Fowler (1980)).

[177] Chartered Institute of Housing surveys of training and education need first began in Scotland in 1975 (Keoghan and Scott (2000)). See bibliography for details of the Chartered Institute of Housing reports (IOH (1986B) & (1990) and Scott (1993)).

[178] This study, it should be noted, distinguishes education from training, the former concerned with housing courses delivered by Universities and Colleges throughout Scotland, the latter provided essentially by employers.

[179] Twenty three local authorities (or 72% of all councils) responded to the Chartered Institute of Housing questionnaire. On average each staff member is receiving only four days training per annum as opposed to the ten days recommended by the Audit Commission. Training provision, of course, varies among councils, this figure being an average figure only.

Training policies may be 'paper exercises' only, for example, and training officers may have job roles involving mainly administrative duties, thereby having little input into the determination of actual training priorities or on training delivery.

Secondly, estimated numbers of training days required, ie quantity of training, must be refined in the light of both a) actual training needs assessed against job requirements and b) individual staff learning time requirements. In short, the study makes no reference to training theory, in particular the training cycle. This point is discussed in greater detail later (see pp 240-241).

From an organisational standpoint the question of quality training involves the creation of a workforce that, as a direct result of training provision, can fulfil job requirements, thereby leading to the fulfilment of corporate organisational strategic objectives. As Offe (1984) points out, the purpose of training within capitalist society is not simply to provide knowledge and abilities to people; rather is it to enable individuals to "*use their labour power as commodities in the labour market to meet the strategic objectives of management*" (p127).[180] Training, in this view, is not primarily concerned with personal interests but with 'conditioning' employees to perform tasks that are often routine and tedious in nature. Indeed, training staff to higher levels than required to complete such tasks is not merely wasteful of resources; it is also potentially disruptive of workplace harmony.

For this reason, then, there has been a proliferation of vocational qualifications (VQ's), qualifications whose prime intention is to ensure that employees are equipped (through training) "to perform in a range of work related activities" in line with agreed standards of competence (Jessup (1991) p15). Although educational housing courses continue to have a

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[180] Just as training in the workplace aims at creating a compliant workforce, education too aims to turn out loyal subjects who do not challenge the existing corporate-dominated social order (Parenti (1998); Johnson (1999)).

high profile in Scotland, Keoghan and Scott (2000) confirm that 43% of local authorities are now registered on an SVQ centre and there's considerable interest for developing VQ's with 48% of organisations stating that "their staff would be interested in undertaking housing related Scottish vocational qualifications in the workplace"(p20).[181] It should also be emphasised that this interest stems from the organisational perspective that views training as being a cost and not an investment. VQ programmes, by focusing on essential job areas as opposed to (from the employer perspective) extraneous issues integral to higher or further education programmes, are consequently more acceptable to organisational fiscal strategies and also more adaptable.[182]

Keoghan and Scott (2000) highlight employers' opinions to the effect that support for educational courses is likely to increase rather than diminish. They also note, though, the belief held by increasing numbers of employers that take-up of vocational qualifications will also increase. Such viewpoints are highly subjective in nature, of course, and actual outcomes will hinge on a variety of factors, for example, whether VQ's become established in the Scottish training market, financial pressures on training budgets, professional employee developments that may tilt the balance of current training support, as well as employers becoming aware of the many training programmes and products available[183] (Reid et al (2000).

Professional competence-based vocational education in Scotland has been heavily criticised, however, by different theorists, criticism that is important from a rights

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[181] Whether this is staff or organisational drawn interest is of course a moot point, requiring more information about whether staff are being given options between further educational and in-house VQ training courses.

[182] That is, VQ's operate on the basis of modular outcomes. Thus, employees can be provided with particular modules (even particular elements within those modules) thus minimising costs associated with employees at training being "off the job".

[183] Research carried out involving five hundred housing employers in the rented housing sector across the United Kingdom.

perspective since vocational education is potentially antithetical to rights development. Winch (2000), for instance, stresses that New Labour training policy fails insofar as vocational qualification frameworks do not incorporate three crucial elements: theoretical knowledge gained "off the job", simulated work environment that enables staff to practice, and supervised work in authentic work conditions. While Canning (2000) argues that learning achievements of current VQ programmes tend to be narrow and superficial, programmes tending to neglect "in-depth coverage of underpinning knowledge" in favour of an "emphasis on mechanistic learning" (p89). In addition, Canning argues that the promotion of VQ programmes is driven by bureaucratic and institutional interests rather than employer led.[184]

Prior to carrying out an assessment of how staff attitudes might impact on the implementation of tenants' rights, it is important to emphasise the issue of staff ignorance that results from lack of appropriate training. In situations where neither staff nor tenants are aware of legal provisions, for example, particularly if relevant policies and procedures are poorly developed, it is likely that tenants' rights fail to be met in practice. Another issue of concern, though, is the fact that staff, unaware of their own ignorance because of limited knowledge, may well provide wrong information to tenants on the understanding that it is actually correct.

ii) Staff Attitudes

Attitudes of staff are often considered to be an influential factor affecting the implementation of tenants' rights[185] (Smith (1991)). Before discussing this topic in more

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[184] That is, the interests of the Enterprise Network. Canning acknowledges, though, that the study of students carrying out SVQ's at levels 4 and 5 cannot be definitive given the relatively low level of 'students' surveyed ie two hundred and thirty six (or 37% of the total number of such students of six hundred and forty).

[185] Attitudes of the judiciary have already been considered in an earlier action. As Lipski (1980) notes in respect of judicial attitudes: "courts differentiate among people charged with the same offence on the basis not of their street behaviour but of their courtroom behaviour".

detail, it is important to determine what the term "attitude" actually denotes, as well as the question from where attitudes arise. At a superficial level, attitude is the way a person communicates her/his mood to others; more specifically, attitude is a "mind-set", the way one considers matters mentally (Chapman (1995). As Burns (1986) adds, though, attitudes comprise three elements, namely a) a person's beliefs about something, b) an affective component of how the person feels about something, and c) a behavioural aspect concerning what a person tends to do about something, either verbally or non-verbally. Burns also highlights the discrepancy that can arise between a person's behaviour and her/his professional beliefs, the latter concealed in opposite behavioural patterns to assure societal acceptance.[186]

Regarding *how* attitudes arise, their origin of course stems from a broad range of factors. Social class and environmental factors are critical, for instance, as are influences resulting from peer pressures and educational achievement. Thus, many attitudes exist prior to employment of individuals by housing organisations. But organisations, too, play a crucial role in shaping staff attitudes towards their clients, attitudes never simply originating in *vacuo*. For example, staff workers experiencing excessive work demands may well 'screen' homeless applicants to reduce workload, or mould their perceptions of clients to apportion blame primarily as a method of coping with stressful work situations.[187] And attitudes are further shaped by organisational bureaucratisation and the evolution of a performance measurement culture that can actually interfere with the quality of service provision by inducing staff to focus their energies on the quantitative job measurements in place, as opposed to qualitative aspects of providing tenants with advice and information. As Lipski (1980) notes, performance indicators can actually produce negative effects in the present

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[186] This is known in psychology as cognitive dissonance.
[187] A psychological defence mechanism known as displacement (Burns (1986)).

work climate because of their demands on overworked staff. Finally, the effects of Local Government re-organisation have undoubtedly served to exacerbate a deterioration of staff attitudes because of the following: reductions in levels of staff employed, either through suspension of recruitment; failure to replace staff, particularly problematic where more experienced staff with critical skills leave (through early retirement, say); and the demotivation of public sector staff caused by a variety of factors such as increasing workload, wage limiting practices and a stressful working environment. Indeed, this latter point has been recognised as a major reason why top quality managers leave the housing field, thereby leading to a less efficient housing service (Audit Commission (1986)).

The nature of attitude has now been noted briefly, as well as the range of factors instrumental in its origination. But to what extent does attitude actually affect rights implementation? Mason (1991) comments, for example, that the tendency of housing staff to adopt paternalistic attitudes towards tenants has been "well documented".[188] And Widdowson and Harland 's (1998) focus groups found that certain staff, in addition to lack of knowledge of current legal rights, tended to be rule-bound in their dealings with tenants. Yet neither paternalism, nor being a stickler for the rules – albeit reflective of attitudes – necessarily impacts negatively on rights implementation, although it is conceivable of course that unsatisfactory relations may act as a disincentive for people to use services and thereby fail to exercise their rights. And the matter is compounded further by findings gleaned from recent research studies that indicate high tenant satisfaction levels with the way Council housing services are delivered to tenants (Clapham et al (1995); Widdowson and Harland (1998)). For example, as Clapham et al (1995) point out in connection with their major study of housing management in Scotland: "Only 8% of tenants thought that housing staff

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[188] A tendency already noted as being inherent in the drafting of local authority tenancy agreements (Atherton (1983)).

were not approachable or friendly" (p16). It should be highlighted, though, that variations occurred among housing organisations and that, in one urban local authority, the research showed that 14% of tenants interviewed considered staff to be of unfriendly or unapproachable disposition.[189]

Identification of links that might exist between attitudes and effects such attitudes may have on rights implementation, then, is far from straightforward. Observation of staff working practices and relations with clients would be one method of identifying links, but empirical research in housing that addresses this topic is negligible. Again, organisational systems could be implemented to monitor whether documentation issued by staff contained attitudes of a "negative" nature that appeared to link to decisions taken, for example, treating someone as being intentionally homeless for attitudinal reasons (dislike of person etc) rather than applying the intentionality test.[190] The chief reason for carrying out such an attitudinal survey would be to identify where attitudes held by staff negatively impact on rights implementation, to be consolidated by staff training programmes to redress any problems. As Walker (1990) points out:

> "... the information from the staff attitude survey is crucial to the design of a custom-built service strategy, enabling the culture of the company to be changed to support customer orientation while taking staff along with the change" (p57).

But auditing of this nature is not part of the statutory performance management systems and local authorities performance management systems focus on quantitative as opposed to qualitative performance measurements. It seems, therefore, that identification of links between staff attitudes and rights implementation must rely on other methods of analysis,

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[189] A total of two thousand two hundred and and twenty two tenants from local authorities, New Towns and Scottish Homes, were interviewed. As Clapham et al (1995) acknowledge, this was not necessarily representative of all public sector tenants in Scotland despite the size of the sample.

[190] For example, assessing x% of written documentation from an attitudinal perspective.

chiefly of an inferential nature. The thesis now addresses this by reference to allocation studies, including homelessness.

Allocation and homelessness policies operated by local authorities have been the focus of much empirical research, a variety of studies having shown how certain disadvantaged groups in society have often received less favourable treatment in the allocation process. Thus, people allocated housing in deprived difficult-to-let estates are often homeless people with no other choice (Spicker (1998)). Or, in the case of ethnic minorities, racism and discrimination institutionalised in allocation policies are prejudicial to the interests of ethnic groups, for example, by giving greater priority to existing tenants or those with local connections (Runnymede Trust (1982); Breitenbach (2000)). Owner occupiers, too, have traditionally received lower priority, a factor that may discriminate indirectly against ethnic minority householders, many of whom live in poor quality owner occupied properties. (Niner (1975); Niner and Karn (1985)).

And with reference to general allocation practices, staff attitudes have also been credited as being influential in the meting out of less favourable treatment to certain individuals or groups.[191] Cullingworth (1979), for instance, cites the practice of 'grading' of applicants by housing officers "according to their suitability for particular standards of housing" (p42). While Spicker (1991) reports that over 40% of local authorities use home visits as a means of assessing housekeeping standards of applicants, those adjudged to be failing to meet acceptable standards refused alternative housing offers.[192] Again, a recent study suggests that decision-making may be affected prejudicially by attitudes as reflected by staff comments to clients such as "you will never get another house as you are a criminal" (SYHN (2000) p5).

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[191] This subjective assessment is part of the lettings process known as secondary allocations (Shelter (1982)).

[192] This statistic is gleaned from the Institute of Housing (1990) Report. Housing Allocations: report of a survey of local authorities in England and Wales, IoH.

Yet, in evaluating these practices critically, it is important to note the following points. Firstly, grading of applicants may fail to constitute good practice[193], but it is not unlawful for authorities to re-house applicants where they choose based on such grading reports, management of stock remaining a discretionary power of local authorities.[194]

Secondly, it is critical to distinguish unlawful practice that results from housing officers carrying out poorly developed allocation procedures from unlawful practices that result from officers deliberately flaunting legal requirements, for example, ignoring the rights of individuals because of attitudinal bias towards specific applicants or groups of applicants. As Loveland (1995) notes in his fieldwork, although housing officers did express bias against a range of applicants, there was nothing to indicate that such bias reflected the legality of decision-making in respect of homeless applicants.[195] To quote Loveland (1995):

> "It is one thing to observe that an applicant's status or behaviour may sometimes 'piss administrators off', quite another to suggest that such irritation thereafter provokes subversion of legal norms" (p147).

Indeed, in Loveland's study, despite the fact that unlawful decisions were frequently made by housing officers, these decisions occurred because of ignorance of legal principles, not because of attitudinal perspectives. The role of attitude vis-à-vis rights implementation is, therefore, from an empirical perspective as yet unclear.[196]

Summary

This Chapter has examined the broad range of factors that potentially impact upon the

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[193] For details on good practice see IOH (1993).

[194] The Housing (Scotland) Act 1987, ss17-18.

[195] Loveland also notes that one local authority did harbour systematic (and unlawful) bias against 'outsiders' and travelling persons.

[196] The Council B Ombudsman case referred to earlier in this Chapter is interesting from an attitudinal perspective insofar as it suggests that an officer's opinion of a particular applicant resulted in "inaction and reluctance to determine" the application.

implementation of tenants' legal rights. This examination has shown that, albeit all factors are pertinent to the debate, certain factors are of greater relevance to the question of effective rights implementation. It is also critical to note that these factors are overlapping and interlinked, a perspective that accords with the principles of systems theory outlined in the next section..

A nexus of ideological and political elements explain the origins of current legal housing rights. These elements also explain the origins and development of the New Public Management (NPM) culture that exerts a major effect on contemporary local authority culture, transforming councils into quasi-market organisations. This point is expanded below. Yet political influence – right-to-buy excepted – has been limited vis-à-vis issues of implementation. This itself can be attributable to the present relationship between Central and Local Government and the primacy afforded to the latter in the regulation of housing management service provision, including the administration of law that governs that provision.

It has also been demonstrated that the judiciary continues to play an influential role in the determination of individuals' legal rights, a fact clearly shown in a web of case law that also reveals the autonomy of the judiciary in its wide-ranging interpretative and discretionary powers. This has been particularly evident in the area of homelessness. Research has suggested, however, that the importance of judicial decisions in affecting actual administrative practice varies considerably among different councils and is often not considered by housing practitioners in the decision-taking process (Loveland (1995)).

Remedies have been examined to gauge their influence in respect of rights implementation, categorised as being either of a legal or non-judicial nature. Analysis has suggested that remedies – although prima facie critical as a means of protecting tenants'

legal rights – are often of limited practical value. Reasons for this were shown to vary but can be attributed primarily to organisational practices that fail to promote the existence of remedies, or personal characteristics of tenants themselves that make them either unable or unwilling to exercise their legal rights. In evaluating these characteristics poverty was seen to be significant, its effect often impacting adversely on the exercise of legal rights, for example, people opting not to pursue legal remedies that incur costs because of inability to meet such costs; while tenants' willingness to exercise their legal rights was affected by other considerations, too, of particular import being the dearth of publicity about these rights, low levels of tenant training, and limited opportunities for tenants to access rights information given the inadequacy of current levels of advice provision.

Deliberate avoidance by landlords of their legal obligations under the Rent Acts was examined briefly . It was highlighted that avoidance techniques have been a perennial theme of research concerning implementation of legal rights in the private sector. This contrasts markedly with the public housing sector where avoidance has not featured in major research. This issue is, therefore, addressed within the case studies.

All of the above factors are pertinent to rights implementation. Yet research indicates that the role of local authorities is paramount in understanding issues of implementation, a role that requires them to implement housing law through routine administrative work processes. As Allott (1980) so succinctly avers:

> "Administrative discretion runs largely unchecked through the western bureaucracies... (albeit) these discretions are exercised within the law, in terms of enabling powers given by some specific enactment" (p244).

The primary role afforded to local authorities to implement legal housing rights suggests, then, that analysis of organisational practice is the most fruitful area for locating those

factors most critical to effective rights implementation. This is not to deny, of course, the fact that local authorities face certain constraints that interfere with their capability of ensuring rights are implemented. Central Government legislative provisions, consolidated by specific fiscal strategies, influence local authority culture and organisational work practice, for example, often starving them of funds. Again, the Government's Best Value strategy – and its concomitant audit control systems – have contributed to the development of the NPM ethos, an ethos that – despite its rhetoric – focuses on the three 'e's of economy, efficiency and effectiveness. In consequence, contemporary local authority culture is stamped by a proliferation of regulatory performance management systems, a culture that treats training as a cost as opposed to investment and attempts to modularise work activities into a plethora of input-output processes.

Yet it would be simplistic to allege that such constraints are intrinsically incompatible with the development of a rights culture. For the literature review has highlighted that rights implementation varies among different councils, for example, an occurrence that can be attributed in part to a range of 'human' factors such as personal knowledge and commitment to rights, factors themselves often determined by a particular individual's position within the organisational hierarchy, or an individual's attitude as moulded by a variety of influences, environmental and organisational in nature.

Contemporary local authority organisations are embroiled in a struggle for survival, their future direction likely to take the form of housing partnerships involving both public and private sector agencies. But central to the great British housing paradox[197] - an excessively regulated public housing sphere co-existing with a largely unfettered housing market - remains commitment to the development of rights, a commitment espoused in the corporate

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[197] See Hoggett (1996).

policy documentation of local authority housing organisations that profess adherence to legal and good practice guidance issued by a range of other agencies. Evaluation of this putative commitment, then, is the focus of Chapters 3 and 4 which present the findings from fieldwork based on two Scottish local authorities. Prior to carrying out this evaluation, though, it is necessary to highlight what factors have been selected for analysis and the reasons for their selection.

Selection of Fieldwork Issues: Rationale

The literature indicates that the way local authorities operate organisationally is likely to have a major impact on the implementation of rights. Evaluation of the literature suggests, however, a gap in current research. For example, court practice has been the subject of detailed scrutiny. Again, organisations have been analysed to some extent as regards to individual organisational practices, for instance, the provision of information and advice to tenants. However, research has in general – Loveland's (1995) study of homelessness rights excepted – omitted to evaluate systemically what organisations do with direct reference to how organisational practice affects rights implementation.

Chapter 1 identified the rights selected for empirical examination. The rights chosen for analysis are a) the right of access to personal files, b) the rights of the homeless, c) rights of repair and d) security of tenure. As emphasised, the major rationale in selecting these rights is that the literature review suggests that implementation problems exist in respect of such rights.

Having identified local authority public sector landlords as the key agents involved in the implementation of legal housing rights, it still remains to clarify *what* particular elements of local authority activities are most relevant to the question of rights implementation. Prior to

considering this question, though, it is first necessary to identify what organisational theory is most pertinent to the analysis of local authority housing management services. This is of particular significance given that earlier analysis focussed on the role of local authorities as being agencies theoretically promotional of rights, not organisational theory to elucidate what elements of organisational practice are critical to effective rights implementation.

Organisational theory has been viewed broadly as comprising the four major categories of classical human relations, systems and contingency theories[198] (Mullins (1996)). Classical theory, on the one hand, focuses on technical issues, prescribing "how organisations should work" (Handy (1993) p20); whereas human relations theory stresses psychological and human factors as being crucial to understanding how organisations function (Mullins (1996)).

Evaluation of systems theory, however, suggests a model that is most appropriate for understanding local authority organisations. In accordance with systems theory, for example, all organisational elements impact on each other, that "nothing can stand on its own or be understood on its own" (Handy (1993) p23). As Mullins (1996) expatiates, rather than perceiving the organisation as comprising separate parts – a methodology associated with classical atomism[199] - organisations can only be analysed effectively by focussing attention on both the external environment as well as the organisation as a whole. As Mullins (1996) expresses matters, what is of fundamental importance is:

> "the total work organisation and the inter-relationships of structure and behaviour, and the range of variables within the organisation" (p55).

Applying this model to the analysis of local organisational practice provides a useful

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[198] The latter is "best viewed as an extension of the system approach" (Mullins (1996) p57). As Mullins emphasises, each of these categories can be sub-divided, for instance, the classical school also comprises scientific management theory.

[199] See Meikle ((1985) p9) for further details.

theoretical framework for identifying those factors that, linked systemically, are crucial to effective service administration, including the implementation of legal housing rights. How this framework is incorporated within fieldwork methodology is now elucidated.

The literature review has indicated that organisational culture is a key element in effective administrative practice (Cairncross et al (1997)). This applies because organisational cultural values are intended to permeate all organisational service activities. Corporate values expressing adherence to rights implementation should, prima facie, be incorporated into organisational practice. For this reason corporate organisational policies are first evaluated in Chapter 3 to analyse Council A's commitment to the promotion of rights.

Actual organisational practice is, supposedly, regulated by policy and procedural documentation, documentation that itself should espouse commitment to general organisational cultural values. Housing management policies and procedures are, therefore, examined next to assess a) to what extent such documentation enshrines a rights ethos and b) to identify any "gaps" that might exist between the espoused aims of strategic organisational commitments and actual housing documentation.

Policy and procedural documentation is a strong indicator of organisational commitment to rights. From a theoretical perspective it is also a critical factor in shaping actual work practice since the administrative functions of staff (including implementation of legal housing rights) should conform with policy and procedural requirements. It was extremely important, then, that the thesis address the question of what housing employees were actually doing in practice in respect of policy implementation. For this reason the thesis evaluates administrative practice in respect of four specific rights. The rights chosen for analysis are a) access to files, b) homelessness, c) rights of repair, particularly the right to repair and d) security of tenure. The principal reasons for selecting these have already been

summarised in Chapter 1. In carrying out this analysis, it is emphasised that most research studies in the field of housing have tended to neglect analysis of actual practice vis-à-vis legal rights implementation. The thesis research, therefore, has significant theoretical implications for the field of socio-legal study concerning the implementation of rights in housing law. This point is reflected in the detailed level of analysis undertaken in Chapters 3 and 4 in respect of administrative practice.

Examination of the above issues sheds light on three themes namely a) whether a discrepancy exists between corporate rights commitments and actual housing policy documentation, b) defects in documentation from a rights perspective and c) deficiencies in practice in respect of the implementation of four particular rights. In short, analysis of the above matters will elucidate *how* effectively Councils A and B currently perform in respect of rights implementation. It does not suffice, however, to explain *why* rights may fail to be implemented effectively. Using systems theory to analyse organisational practice as a "whole", however, coupled with information gleaned from the literature review, it becomes possible to identify key factors that explain *why* rights implementation is often ineffective within organisations. For purposes of clarification, these factors are assessed under a range of headings albeit – and a defect commonly mooted by most taxonomists – there is much overlap among the issues concerned. These headings are: communications; workload and methods of work; performance management and personnel. In carrying out this assessment, analysis of interviewee responses regarding these topics is provided to aid general understanding of legal housing rights implementation.

Prior to carrying out the fieldwork, though, it is important to refute a critique of implementation theory put forward by Malpass and Murie (1994) and alluded to earlier in this Chapter (see p 115). According to these writers it is arguable that:

> "... some critiques start from a fundamentally false position. This is the assumption that the key element determining the nature and effectiveness of housing management relates to staffing and organisational attributes" (p306).

In their opinion other elements drawn from the broader societal context are more critical in explaining effective implementation of rights, for instance, financial constraints currently facing local authorities within the NPM, or a depleted housing stock. In support of their argument they cite the latter element as being fundamental in explaining increasing inability on the part of local authorities to re-house homeless applicants. In addition, Malpass and Murie (1994) stress that:

> "It is inappropriate to imply that formal policy–making or setting of objectives is the critical element. Equally the formal organisational arrangements for departmental responsibilities, decentralisation or staffing and training arrangements do not determine the way in which policy is translated into action" (p292).

This is an important critique and it has already been highlighted in this thesis that resources (or rather lack of resources) do affect the ability of local authorities to implement legal rights. With this point there is no theoretical disagreement. It is highlighted, for example, in the Scottish Executive commitment to provide funding to help implement the new tenants' rights package under the Housing (Scotland) Act 2001. In respect of a £10 million package announced by Minister for Social Justice, Jackie Baillie, it was emphasised by Ms Baillie that this funding "will help local authorities and RSLs to implement the new provisions" (Scottish Executive Press Release, 15 June 2001, p1). Yet detailed scrutiny of this position, however, clarifies that – far from sounding the deathknell to the theory espoused in this thesis – it is in fact supported by systems theory. This is now clarified as follows. Firstly, although organisational attributes such as structure, or activities such as

training do not, per se, determine effectiveness of rights implementation – a perspective supported by systems theory – these elements are critical in explaining effective rights implementation when considered holistically, that is, effective implementation depends on the integration of all elements into organisational practice.

Secondly, the authors' particular comment regarding training is misleading. It fails, for example, to elaborate on the nature of training, or to acknowledge that quality training can determine the policy implementation process. As we shall see shortly in the case of Council A, for instance, where no separate written policy on homelessness exists and council "policy" is allegedly based on the Code of Guidance (1997), quality legal training to staff is undoubtedly a critical element in determining whether rights are implemented effectively.

Finally, as Malpass and Murie (1994) emphasise, resources indeed affect the ability of local authorities to fulfil their legal obligations, for instance, lack of housing to provide accommodation for those accepted as being statutorily homeless. Yet simply to claim that lack of resources is paramount in explaining ineffective rights implementation can be challenged on two grounds. Firstly, organisational administrative practice remains critical to effective rights implementation irrespective of resource issues. Failure by housing staff to process homeless applications in accordance with legal provisions, for example, may result in unlawful practice that is detrimental to tenants' interests, for instance, the refusal (wrongly) of homeless applicants.

Secondly, as Loveland (1995) illustrates, it is also important to examine resource constraint issues in context. In the Loveland study fieldwork, for example, failure to meet the needs of homeless applicants stemmed not simply from lack of housing stock; it also stemmed from lack of strategic planning to consider options, for instance, using nomination arrangements with housing associations to secure housing for statutorily homeless

applicants. With respect to this latter point, for instance, neither of the two councils assessed in this thesis had incorporated homelessness as a strategic element of nomination arrangements with the many housing associations operative in both council areas.

Chapter 3: Legal Rights Implementation – Council A

(Regarding rights support)

"I think Council A is fully signed up to rights and to securing best value. I think one of the key points, with best value, is about continued improvement and it's about continuing to look at what we do and trying to do better for the future. I think we've made a lot of good progress in service development, but recognise that it is a constant process of continually trying to enhance that … there are a number of areas that will be tackled on the agenda over the next couple of years to further improve on where we are at the moment."

(Council A senior officer)

(Regarding quality of homelessness decision-taking)

"And a lot of them are rubbish, and I mean complete nonsense. How they can come to some decisions even on common sense is beyond me. But they do and they get past the area manager. Area managers are signing these things. I think that gives you an idea of what time is devoted to homeless cases. There isn't a great deal of it by the people that should be looking at them. I certainly wouldn't sign a letter saying somebody is intentionally homeless if they are fleeing domestic violence and I've seen that actually being signed. Or a single woman fleeing domestic violence being given a no priority notification. Now it's clearly against everything that the policy is about."

(Council A senior officer)

Introduction

As the quotations that preface this Chapter suggest, staff opinions on the effectiveness of current service delivery vary considerably. And this variation, it is emphasised, occurs across all echelons of the organisational hierarchy. It is the purpose of this Chapter, then, to evaluate how effectively Council A implements a select range of tenants' rights.[200] This evaluation comprises three key elements as follows: the assessment of Council A documentation in respect of four specific rights[201]; the examination of council practice concerning these rights involving a total of one hundred and two files henceforth referred to as cases for reasons of confidentiality; and a critical evaluation of Council performance based on a survey carried out during 1999. This evaluation assesses staff views on specific factors that affect rights implementation, namely communications; workload and methods of work; performance management; and personnel matters. Prior to undertaking this assessment, a brief summary of the four legal rights whose implementation is to be evaluated is provided.

Legal Rights Provisions

This section summarises briefly the main provisions of the legal rights that are assessed in Chapters 3 and 4 in respect of implementation issues. This provides the reader with guidance on relevant legal provisions to enable easy comparison between legal requirements and actual organisational practice. The rights covered are access to files, homelessness, repairs and security of tenure.

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[200] Council A refers to a Scottish local authority that has been anonymised for reasons of confidentiality. The same issues are evaluated in the case of Council B in the following Chapter.

[201] Chapter 1 identified the key rights as access to files, homelessness, repairs and security of tenure, as well as providing reasons for their selection (See pp 21-23).

a) *Access to Files*

The right to access files is now governed by the Data Protection Act 1998. Prior to this legislation coming into effect, two distinct pieces of legislation that the 1998 Act repealed were relevant. Accessing data held on computer systems, for instance, was regulated by the Data Protection Act 1984, whereas access entitlement to manual information held by local authorities was regulated by the Access to Personal Files Act 1987 and the Access to Personal Files (Housing) (Scotland) Regulations 1992 (SI 1852). In view of the fact that empirical work carried out within this thesis focussed on the *earlier* (and still extant) legislation, in particular on the legal rights to accessing manual information, it is the previous law that is now highlighted followed by a brief summary of the main changes.

The Data Protection Act 1984 regulated access by service users in respect of personal information processed electronically. Data denotes information relating to a living individual who can be identified from that information. The Act stipulated eight principles and lays down obligations on data users, for instance, data must be processed fairly and lawfully (The First Principle), or not disclosed in any way incompatible with the purpose for which it is held (The Third Principle) (Pounder et al (1987)).

Landlords affected by the Access to Personal Files Regulations included local authorities, development corporations and Scottish Homes.[202] The regulations applied, not just to existing tenants of these landlords, but also former tenants or applicants for a tenancy. As soon as requested by the tenant, the landlord had to advise the tenants in writing whether there were records held containing *personal information* which was accessible and allowing the tenant to access that information. Requests made by the tenant had to be in writing and sufficiently detailed to allow the landlord to establish the tenant's identity and locate relevant

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[202] Housing associations were not directly affected, albeit Scottish Homes standards require the former to take cognisance of the regulations in their general housing management activities, for example, allocations.

personal information. In addition, the landlord was entitled to request a fee, not exceeding £10, to accompany any request for information. The tenant was legally entitled to access information in six weeks, or eight weeks where third parties were involved.

Restricted access could apply, however, in specific situations as follows: personal information relating to another person(s); matters of health; or local authority discretion where it was suspected that allowing access might pose a serious health risk.[203] The Regulations also allowed for information to be refused, for instance, where it was held to assist in the prevention or detection of a crime (or the apprehension or prosecution of offenders) and giving access might prejudice the case.

A tenant also had the right to have any local authority decision reviewed within twenty eight days of him/her being notified of the local authority decision. This review can be dealt with by either members who took no part in the original decision or before a full council meeting.[204]

The Data Protection Act 1998 came into force on 1 March 2000. As O'Carroll (2000B) notes, the Act has three chief effects, namely a) to increase the duties of those who process personal data, b) to increase the rights of the data subjects and c) to extend the data covered by the legislation. The principal aim of the new law is to protect the right to privacy of individual citizens against organisational misuse of personal data. (See pp 180-181 following for further comment on the importance of accessing rights.)

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[203] Access restrictions are modified in situations where third parties give consent, or the health authority authorises release of medical information. On the other hand, access to personal information by another individual is not restricted if the only person likely to be identified is a member of the tenant's family, a health professional, or an employee of the housing authority.

[204] Scottish Office Circular (33/1992) provides comprehensive guidance to local authorities on how to interpret and utilise the legislative provisions. For instance, it is recommended that information denied should be restricted to 'exceptional ' circumstances. Again, the possible fee of £10 that can be levied to cover administrative costs involved in accessing data is, in the view of the Scottish Office, to be considered in the light of prevalent poverty levels among council tenants.

b) *Homelessness*[205]

The main statutory provisions in terms of local authorities obligations in respect of homelessness are examined by focusing on what has been termed the 'four hurdles', ie the stages involved in processing an application to ascertain a local authority's legal obligation regarding provision of housing.[206]

i) Homelessness/Threatened with Homelessness

Local authorities owe certain duties to persons who are homeless within the meaning of the Housing (Scotland) Act 1987. In accordance with this Act a person is homeless if she/he has no accommodation in Scotland, England or Wales.[207] And a person is to be treated as having no accommodation if there is no accommodation which the person (along with other people who normally reside with her/him) either i) is entitled to occupy by virtue of an interest in it or by virtue of a court order, ii) has a right or permission (either express or implied) to occupy, or iii) occupies as a residence by virtue of any enactment or rule of law.[208]

Secondly, someone may be homeless even if she/he has accommodation in five specific situations[209]: entry cannot be secured; occupation is likely to lead to either violence (or threats of violence) from some other occupant or someone who previously resided with the applicant; the accommodation is moveable and there is no suitable site, for example, no site for caravans; the accommodation is both statutorily overcrowded and potentially injurious to the occupant's health; or it would not be reasonable to continue to occupy the

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[205] The crisis concerning homelessness alluded to in Chapter 1 is reflected in statistical data. Leckie (1995) has noted the official United Nations statistics that assert that more than one billion persons world-wide do not have adequate housing and over one hundred million have no home at all.

[206] The Housing Act 1996 introduced major changes to homelessness legislation in England and Wales. As indicated, though, the thesis concentrates solely on the legislation that currently applies to Scotland. Major changes that will be introduced by the Housing (Scotland) Act 2001 are noted at the end of this section.

[207] The Housing (Scotland) Act 1987, s 24 (1).

[208] The Housing (Scotland) Act 1987, s 24 (2) (a) to (c).

[209] The Housing (Scotland) Act 1987, s 24 (3) (a) to (d).

accommodation.

Threatened with homelessness also has a statutory definition to the effect that a person is deemed to be threatened with homelessness when homelessness is likely to occur within twenty eight days.[210]

Where local authorities are satisfied that an applicant is either homeless or threatened with homelessness, they are legally obliged to inquire further as to whether the applicant has a priority need and - if so - whether the person became homeless or threatened with homelessness intentionally.[211]

ii) Priority Need

Local authorities owe a duty to ensure that accommodation is available for persons who are homeless and have a priority need. The Act lays down a list of categories of persons deemed to be in priority need. These categories are[212]: any pregnant woman, regardless of the stage of her pregnancy or her age, together with anyone who normally resides with her or might reasonably be expected to reside with her; a person with whom dependent children are living or might reasonably be expected to live; a person who has been made homeless as a result of an emergency such as fire or flood or any other disaster; a person who is vulnerable as a result of old age, mental illness or mental handicap (learning disability) or physical disability, or other special reason; and young people under 21 who were previously looked after by a local authority under the Children (Scotland) Act 1995, or were in the care of a local authority, or subject to a supervision requirement under the Social Work (Scotland) Act 1968 at school leaving age or later the most recent addition in 1997.

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[210] The Housing (Scotland) Act 1987, s 24 (4).
[211] The Housing (Scotland) Act 1987, s 28 (2) (a) and (b).
[212] The Housing (Scotland) Act 1987, Part II, s 25 (1) (a)-(d), as amended by the Homeless Persons (Priority Need) (Scotland) Order 1997, S1 1997/3049.

iii) Intentionality

Assuming that an applicant satisfies the above criteria, the local authority may then consider whether the person became homeless (or threatened with homelessness) intentionally.[213] If a person with priority need is intentionally homeless the local authority duty is reduced to a duty to provide temporary accommodation. Deciding whether a person is intentionally homeless involves several more specific questions: was there a deliberate act or omission as a result of which there was a loss of existing accommodation? Was the accommodation actually available to the applicant at the time of the act? Was it reasonable for the person to reside there?

The Code of Guidance also stresses that even where a person has been considered to have become homeless intentionally, he/she should not be considered "to be intentionally homeless for all time" (Scottish Office (1997) p44). Nor should local authorities apply blanket restrictions as they must consider all circumstances in respect of each individual application. Thus, any "blanket resolution" that treats whole groups such as rent arrears cases as being automatically intentionally homeless is clearly unlawful

iv) Referral of Applications

The duty to secure housing for a homeless applicant who has priority need and is unintentionally homeless may be transferred to another local authority provided specific conditions of referral are satisfied.[214] These conditions are a) that the applicant doesn't have a local connection with the authority to whom she/he has applied, b) the applicant has a local connection with another authority and c) there is no risk of domestic violence in the area where the applicant has a local connection.[215] It is emphasised, however, that the act of referral to another authority is purely discretionary. Local connection may be established on

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[213] The Housing (Scotland) Act 1987, s26 (1) - (4).
[214] The Housing (Scotland) Act 1987, s33 (1)
[215] The Housing (Scotland) Act 1987, s 33 (2).

a number of grounds such as normal residence in the area, either past or current, or employment in the area.[216]

v) Local Authority Duties to Inform and Assist Applicants

Duties to applicants under the legislation are varied. Housing authorities must advise applicants in writing of their decision after completion of inquiries.[217] Reasons must be given where the local authority makes an adverse decision in respect of the application.[218] With regard to the nature of assistance to be provided, this varies depending on the result of inquiries, that is, whether the applicant is homeless/threatened with homelessness, is in priority need, is intentionally homeless, and whether the conditions for referral are satisfied.

Advice and appropriate assistance only will be offered in those situations where the applicant is homeless but not in priority need, or where the applicant became threatened with homelessness intentionally.[219] In cases where the applicant is believed to be both homeless and to have a priority need, on the other hand, the local authority is legally obliged to provide temporary accommodation pending completion of inquiries.[220] Temporary accommodation must also be provided in situations where local authorities are exploring whether a local connection exists elsewhere,[221] or in cases where the local authority has determined that an applicant is homeless and in priority need but intentionally homeless.[222] As Robson and Poustie (1995) note, such accommodation should be provided for a length of time sufficient to enable the applicant to secure other accommodation.[223] Finally, in the case of homeless applicants who are in priority need but not intentionally homeless (unless the

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[216] The Housing (Scotland) Act 1987, s 27 (1) (a) to (d)
[217] The Housing (Scotland) Act 1987, s 30 (1) - (5).
[218] The Housing (Scotland) Act 1987, s 30 and s 36.
[219] The Housing (Scotland) Act 1987, s 31 (4) and s 31 (3) (b).
[220] The Housing (Scotland) Act 1987, s 29 (1)
[221] The Housing (Scotland) Act 1987, s 34 (1)
[222] The Housing (Scotland) Act 1978, s 31 (3).
[223] The Code of Guidance (Scottish Office (1997)) recommends a period of at least 28 days (par 10-12).

duty is to be transferred to another authority), the authority must ensure that accommodation is made available.[224] The actual nature of the accommodation offered, though, has generated intense debate. The House of Lords' decision in the case of *R v London Borough of Brent ex parte Awua*[225] ("Awua case") that the accommodation did not have to be either permanent or settled overruled earlier court decisions that had said permanent accommodation should be given. Despite this decision, though, the Code of Guidance recommends that local authorities should seek to implement long-term solutions to reduce risks of further homelessness recurring, thus always seeking to re-house homeless applicants in permanent accommodation with full security of tenure.

It is worth noting at this point changes contained in the Housing (Scotland) Act 2001 and the implications of the Human Rights Act 1998 for homelessness.

The main changes contained in the Housing (Scotland) Act 2001 are as follows: firstly, a new requirement on local authorities to prepare, and submit to Scottish Ministers, a strategy for preventing and alleviating homelessness in their areas.[226]

Secondly, local authorities must ensure that advice and information services concerning homelessness are available free of charge, although this duty could be undertaken by other agencies.[227]

Thirdly, local authorities will have an interim duty to accommodate anyone they believe may be homeless irrespective of priority need issues.[228]

Fourthly, local authorities will be empowered to request other registered social landlords to provide a Scottish secure tenancy for an unintentionally homeless person in priority

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[224] The Housing (Scotland) Act 1987, s 31 (2).
[225] *R v Brent London Borough Council, ex p Awua* (1994) 26 HLR 539, CA
[226] The Housing (Scotland) Act 2001, s (1) – (6)
[227] The Housing (Scotland) Act 2001, s2 (1) & (2).
[228] The Housing (Scotland) Act 2001, s3 (2).

need.[229]

Fifthly, the Act enables Scottish Ministers to make regulations establishing minimum rights for homeless people living in hostels.[230]

Finally, the Act will reverse the effects of *Awau*.[231]

It is, as yet, too soon to evaluate the effects of the new Human Rights Act 1998 upon housing law; this is particularly true given the complexity of the legislation. What should be stressed, though, is that the Convention on Human Rights doesn't guarantee a specific right to housing, although Article 8 does guarantees individuals with the right to respect for home life, privacy, the home and correspondence (O'Carroll (2000A)).

c) *Repairs*[232]

As Himsworth (1994) notes there are three main sources which govern a landlord's repair obligations toward tenants, namely common law, statute and the tenancy agreement.

i) Common Law

At common law, landlords are required to provide a house in a habitable and tenantable condition (Himsworth (1994)). In determining the latter, each situation must be assessed on its merits, taking account of both safety and physical condition of the property.

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[229] The Housing (Scotland) Act 2001, s5 (1).

[230] The Housing (Scotland) Act 2001, s7 (1).

[231] The Housing (Scotland) Act 2001, s3 (3).

[232] The main provisions are contained in the Housing (Scotland) Act 1987, Schedule 10, as amended by the Housing (Scotland) Act 1988, Schedule 8. Other relevant Acts include the Occupiers Liability (Scotland) Act 1960 and the Environment Act 1995. This section will not examine building regulations, details of which are contained in relevant legislation and regulations. See Hamilton et al (1993) for further information. Nor will it deal with management issues such as the urgent funding required to provide new houses, or repair existing stock which one estimate puts at £21 billion in respect of public sector houses (Park (1998)).

ii) Statute[233]

Certain principal statutory repair obligations are incumbent upon landlords irrespective of tenure. Firstly, it is an implied term of the lease of every house let at a rent below £300 per week that it must be "reasonably fit for human habitation" when the tenancy begins (Himsworth (1994)).[234] The level of rent limit means that nearly all rented houses are covered. Regard must be had to the relevant building regulations in adjudging habitability.

The second obligation – also an implied term of the lease - is that landlords keep in repair the structure and exterior of the dwelling house (including drains, gutters, and external pipes (as well as to keep in repair and proper working order installations for the supply of water, gas and electricity, and for space for water heating. This obligation is limited to leases of less than seven years duration and granted on or after July 3 1962.[235] However, it does not cover defects caused by the tenant,[236] defects caused by damage such as fire,[237] nor fittings and fixtures removable by the tenant, for instance, an electric fire that can be easily unplugged (Brown (1987)).[238]

A further principal statutory repair obligation that affects only specified landlords, including local authorities, is the right-to-repair scheme that became effective on 1 October 1994 and applies to all secure tenants except housing association secure tenants.[239] A secure tenant is entitled to have a *qualifying* repair carried out up to a level of £250. Repairs involve things that may jeopardise the health, safety or security of tenants if not remedied quickly. The list of qualifying repairs provides for statutory timescales to remedy defects,

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[233] The Housing (Scotland) Act 1987, Schedule 10 as amended by the Housing (Scotland) Act 1988, Schedule 8. Landlord repairing obligations in respect of the new Scottish secure tenancy will be to ensure that the house, both at the commencement and throughout the tenancy, is wind and watertight and kept reasonably fit for human habitation (Housing (Scotland) Act 2001, Schedule 4, (a) and (b).

[234] The Landlord's Repairing Obligations (Specified Rent) (Scotland) (No 2) Order 1988, SI 1988/2155.

[235] The Housing (Scotland) Act 1987, Schedule 10, para 4.

[236] The Housing (Scotland) Act 1987, Schedule 10, para 3(2) (a).

[237] The Housing (Scotland) Act 1987, Schedule 10, para 3(2) (b).

[238] The Housing (Scotland) Act 1987, Schedule 10, para 3(2) (c).

[239] Secure Tenants (Right to Repair) (Scotland) Regulations 1994, SI 1994/1046.

although landlords may choose to operate shorter response repair times. The maximum time begins on the first *working day* (public holidays, weekends excluded) after the date the repair was first notified to the landlord, or where the landlord inspects the house, the *actual date of inspection*. To meet targets, councils must maintain a list of contractors, including the usual contractor, prepared to carry out qualifying repairs.

Maximum time will be suspended when circumstances of an exceptional nature exist which prevent repairs being remedied such as inclement weather. The landlord is legally obliged, however, to advise the secure tenant that maximum time has been suspended.

Where the previous procedures have not been started by the last day of the maximum time, the secure tenant may instruct another listed contractor to carry out the work.[240] The council, in turn, must advise the other contractor of the maximum number of days allowed to do the repair. Significantly, the secure tenant is entitled to a flat rate payment of £10 where the usual contractor fails to fulfil the qualifying repair by *the last day of the maximum time*. Payment should be made automatically by the landlord. Where a second contractor has been instructed by the tenants, an additional £2 a day for every working day the repair remains outstanding, can be made up to a maximum of £50. The scheme does not apply in certain situations, for example, where the tenant fails to provide access, either for an inspection or the actual repair work, provided the tenant has been given reasonable opportunity to give access.

iii) <u>The Tenancy Agreement</u>

As the main contractual document between the landlord and tenant, the tenancy agreement is, arguably, extremely important in the development of rights and obligations

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[240] This will not apply where exercising the right would infringe upon terms of other guaranteed work or material supply. For example, a guarantee by one contractor to maintain central heating systems for a fixed period. Tenants may choose *not* to opt for another contractor. In such cases £10 compensation only would be paid.

between the parties. It can be used, for instance, to extend tenants' rights in terms of both common law and statutory rights, although it cannot be used as a vehicle for contracting out of statutory obligations such as the landlord's repair obligations.

d) *Security of Tenure*

A secure tenancy can only be legally terminated in a number of prescribed ways.[241] These are as follows:

- by the death of the tenant (and there is no qualifying successor)
- where the legal successor declines the tenancy
- by written agreement between landlord and tenant
- where the local authority operates the abandonment procedure
- by an order for recovery of possession
- by 4 weeks' notice by the tenant to the landlord.

Of particular note here is recovery of possession: the local authority can recover possession of a secure tenancy on any of sixteen possible grounds.[242] These grounds are of two types, namely discretionary or mandatory.[243]

In order to recover possession under grounds one to seven, the local authority must show that a) they have a relevant ground and b) that it is reasonable to recover possession.[244] In respect of grounds eight to sixteen, in addition to establishing the relevant ground, the local authority must also ensure that suitable alternative accommodation is available for the household evicted on the date the order takes effect.[245] In these cases reasonableness need

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[241] The Housing (Scotland) Act 1987, s 46. These can be added to if we consider other ways a secure tenancy can end, ie through right-to-buy, rent-to-mortgage, stock transfers and tenants' choice. Methods for terminating a Scottish secure tenancy are similar with the main exception being when the landlord takes action to convert the tenancy to a short Scottish secure tenancy (Housing (Scotland) Act 2001, s35).

[242] The Housing (Scotland) Act 1987, Schedule 3, Part I.

[243] Aka conduct or management grounds. Conduct grounds are 1 to 7, management grounds 8 to 16.

[244] See Brown (1991) for full discussion of reasonableness.

[245] Suitable alternative accommodation is defined by the Housing (Scotland) Act 1987, Schedule 3, Part II.

not be shown by the landlord with the exception of ground sixteen. Suitable alternative accommodation entails that households evicted for management grounds will receive another secure tenancy that is essentially 'like for like' with the previous tenancy.

Council A: A Profile[246]

Council A was formed on 1 April 1996 as a result of Local Government restructuring that involved the merger of previous district council authorities. Council A is controlled by the Labour Party, labour councillors constituting a large majority. Council housing stock represents 40% of the total stock in the area of which the majority tenure form is that of owner occupation (54%). The exact number of houses owned by Council A is not given to preserve anonymity.

Fieldwork was carried out in two area offices, one covering a predominantly rural area, the other predominantly urban. This enables the assessment to take note of any geographical variations that might exist in practice. The two area offices jointly manage over 13,000 units or over 25% of the total Council A housing stock. The stock comprises a variety of house types with flatted properties being the predominant form. The performance of all housing management functions is delegated to the area offices.

Housing staff carry out generic working practices that cover all major housing management functions including homelessness with the exception of maintenance which falls within the remit of specialist maintenance officers. A total of nineteen housing staff, or c3% of all housing staff were interviewed. This figure includes a substantial proportion of Council A senior officers, as well as over 10% of area housing office staff in respect of the two offices that were surveyed. The majority of staff interviewed at area office level were

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[246] See "Reference List" for sources of information.

housing and maintenance officers as opposed to senior officers. One Council A lawyer was also interviewed, as well as two tenants. Analysis of tenant views is given in the concluding section of the thesis (See pp 321-326).

Organisational Culture

> Many management theorists assume that 'strong' cultures imbued with specific values "contribute to exceptional levels of organisational performance" (Legge (1995) p190). Peters and Watchman (1982), for example, assert categorically that: "Without exception, the dominance and coherence of culture proved to be an essential quality of the excellent companies" (p75).

Again, and as highlighted by Cairncross et al (1997) in the literature review, commitment to rights implementation is most explicit in those labour-controlled councils that espouse adherence to the principles of citizenship.

Prima facie, then, cultural values professed by an organisation will be extremely pertinent to rights implementation issues. This assumption will be subject to detailed scrutiny shortly, however, after consideration of Council A's cultural typology. This is extremely important given the critique of ideal typologies in Chapter 2. Council A affirms that its primary aim is to become a model authority that, in developing its strategy, it will strive to ensure that service quality is paramount and that citizenship values are integral to this strategy. As the Council A Vision affirms:

> "Council A will be a place where people's well-being, particularly those most disadvantaged, will be successfully promoted, and where the partner agencies, working closely with communities, will develop employment opportunities and high-quality housing, health, education, and leisure and support services which are

sustainable and accessible to all" (Council A Community Plan).

Examples of quality initiatives developed by Council A include Investors in People and the Chartermark in the housing department (Council A Best Value).

In line with these commitments, Council A emphasises that a major corporate priority is to ensure services are delivered with a "customer/citizen focus", a process that requires full and regular public consultation on quality, level and accessibility of services to be provided. Further, Council A's Corporate Plan emphasises that "the provision of information to the public will be integral to the culture and working" of Council A service administration. To fulfil corporate objectives, Council A confirms its intention to provide comprehensive staff training programmes to equip staff with the relevant skills and knowledge to ensure quality service provision, service that meets both legal and good practice requirements.

Commitment to principles of best value and citizenship is endorsed, too, in documentation produced by Council A housing department. The departmental Strategic Services Plan states, for instance, that strategic housing objectives include the provision of a "responsive, local housing management service which represents best value for all Council tenants and others in need of housing advice" while the Customer Charter Leaflet in the departmental Induction Pack promises to "provide you (the tenant) with accurate and relevant information and advice" and "train staff to ensure they are efficient and effective in their dealings with you". Council A's Housing Plan confirms that advice and information provided should incorporate relevant legal advice. In its commitment to addressing homelessness, for instance, the Housing Plan stresses the need to "ensure the availability of good quality information and advice" for people who are "homeless or threatened with homelessness".

It appears, then, that Council A's cultural values are supportive of rights promotion. But

of what relevance are corporate policy commitments to the actual implementation of legal rights? It has so far been assumed, for example that:

> "there is a positive correlation between organisational performance and the strength of an organisation's culture "(Beaumont (1993) p43).

Yet such an assumption has been subject to academic scrutiny. On the one hand – and a point emphasised in Chapter 2 – the concept "culture" is "elusive and not easily measured", nor can it be applied to "all organisations in all circumstances" (Beaumont (1993) p430). And, of greater significance perhaps, is the fact that the relationship between culture and actual organisational performance is "not necessarily monotic" (Legge (1995) p190). Particular cultural values may not impact uniformly on all administrative processes, for example, a point that is extremely pertinent if local authorities fail to develop a rights-based strategy based on systems organisational methodology. Malpass and Murie (1994) reinforce this particular criticism when they note that "policies fail for different reasons" (p231), and – by way of extrapolation – "sometimes performance fails to match intentions because the objectives are not shared by those responsible for implementation, or because they are unaware of what the objectives are " (p231).

Indeed, information from other sources within Council A suggests that organisational commitments may not have been translated into practice. Effective customer care services depend on effective "staff care". Although this may be considered as simply a truism, it is important to highlight this principle as failure to adhere to it can adversely affect rights implementation, for instance, lack of investment in staff training resulting in unlawful service delivery. And, as we shall see in the fieldwork it is a principle that is often forgotten in organisational practice. As Herman (1999) writes:

> "If management treats employees well, there's a pretty good chance the employees

will treat the customers well. If management treats employees badly, expect the same kind of treatment to be extended to customers" (p77).

Consideration of organisational practice suggests, however, that not all bodes well. Feedback from the annual staff conference in 1999, for instance, reveals that 56% of respondents believed that employees are not valued.[247] In describing this process certain staff alluded to the careerist motivations of senior management staff and their failure to address high stress levels currently facing housing officers and other junior staff. In addition, it was felt by specific individuals that management support was inadequate in terms of the volume of organisational changes occurring, in particular:

"more extensive training is required at grassroots level and clearer lines of communication are needed internally".

In evaluating Council A's corporate policy commitments to rights, therefore, it is necessary at this point to express caution pending analysis of other organisational factors to which the thesis now turns.

Policies and Documentation

Effective transmission of cultural values into practice by an organisation requires a systematic approach that "consists of a formal and an informal part" (Buchanan and Huczynski ((1997) p522). The formal elements require the establishment of clear policies and procedures, as well as effective communications and training strategies to ensure staff are fully aware of strategic organisational goals.[248] Clear policies and related procedural documentation are of particular import, then, insofar as it is by means of such documentation

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[247] Discussions with the Council A officer responsible for re-organisation of the staff conference has confirmed verbally in September 2000 that concerns are to be addressed by two developments, namely a) the staff development review process and b) closure of offices for training.

[248] Informal cultural transmission include, inter alia, organisational dress codes or types of office layout such as open-plan (Buchanan and Huczynski (1997)).

that organisational core values are communicated to employees directly involved in service administration. Indeed, failure to incorporate relevant legal rights information within this documentation is likely to result in staff ignorance of these rights – particularly relevant where staff receive inadequate training concerning legal housing rights – and, as a consequence, to cause ineffective rights implementation. As Malpass and Murie (1994) highlight:

> "The general point here is that the study of implementation requires consideration of policy instruments because of the extent to which the instruments deployed are likely to reflect the nature of the policy objectives and the way in which implementation proceeds" (p226).

Recent literature review studies have suggested that across the local authority sector as a whole policy documentation has improved (Atkinson et al (2000); Scott et al (2001)). In their major research survey, for example, Scott et al (2001) point out that "higher proportions of the post re-organisation authorities were providing information in almost every category" (p27). Of particular interest from a rights perspective is that all local authorities apparently provide their tenants with information concerning the responsibilities of landlord and tenant. And possession of such information is arguably an important element in assisting tenants to exercise their rights. Yet, and as noted in Chapter 2, it is necessary to treat survey findings cautiously. For example, as the researchers emphasise, the survey did not seek to evaluate the *quality* of information provided by landlords to their tenants. To quote:

> "We did not ask landlords to supply copies of their information to tenants so there is no information on the quality of information provided" (Scott et al (2001) p27).

This section now turns, then, to assess the extent to which rights information is contained within council documentation in respect of the rights of access to files, homelessness, rights

of repair and security of tenure.[249] Prior to undertaking this assessment, however, it is important to note some general points that may assist the understanding of policy development in Council A.[250] Firstly, Council A was created by merging a number of local authorities that existed pre-organisation, a situation that has caused difficulties in the development of unified policies and procedures, difficulties arising partly from the scale of change but also from the political complexities associated with change.[251]

Secondly, housing policies of Council A are expected to conform with strategic policy corporate objectives. In addressing the rights issues under examination, therefore, reference is made to corporate matters, where appropriate, in order to pinpoint any anomalies existing between corporate and specific departmental policy documentation.

Thirdly, policies have been developed by different officers dependent on the particular subject matter. Internal consistency and cohesion – or lack of it – may well then be an issue that will require further assessment. It is also emphasised that councillors' role in the development of the policies under consideration in this thesis has been minimal. This confirms the point made by Loveland (1995) in Chapter 2 to the effect that the role of elected members in policy development varies among councils.

a) *Access to Personal Files*

Issues concerning the protection of data are, as O'Carroll (2001B) highlights, "very important to the functions of many housing providers in the public sector and RSL movement" (p35). This arises in view of the large volume of data held by local authority landlords. O'Carroll then focuses on the need for housing professionals to adhere to

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[249] Most homeless people are not, of course, tenants and do not, as such , possess legal rights enjoyed by secure tenants. The purpose of including homelessness in this section is to assess how adequately local authorities meet their legal obligations in tackling homelessness.

[250] The points made here, it should be noted, apply also in the case study following that involves Council B.

[251] A point perhaps illustrated by the development of Council A's allocation policy only from early 2000 and Council B's allocation policy from late 1999.

legislative provisions in housing management practice. And, to reiterate a point noted in Chapter 1, from a rights perspective it is important to tenants in the public sector "to be able to gain access to information concerning them which is held by their landlord" (Himsworth (1994) p97). Instances of situations when this right could be important are as follows. Firstly, the right to access personal information enables applicants seeking rehousing to evaluate the accuracy of information held on file. This is of import since inaccurate information could adversely affect an applicant's right to housing, for instance, in the case of homelessness applications.

Secondly, accessing files information can be critical in those situations where the local authority is seeking to repossess the property. The opportunity to evaluate information held on file by the landlord can be an important part of establishing a defence to the landlord's action. In this respect Mitchell (1995) notes the interesting point that:

> "It is not unheard of for decrees to be granted in such circumstances after the landlord's representative at first calling has simply mixed up two files[252] (p21).

Thirdly, affording individuals the right to access personal information provides an important check against arbitrary actions by state authorities, as well as against possible maladministration concerning the use of such data. Indeed, this point has been specifically made by First Minister Henry McLeish who stated:

> "...we believe that the rights of the individual must be protected, and again forthcoming legislation will put this into practice. There is no more secure foundation for the protection of individual rights than access to information, and the legislation we propose envisages a powerful and independent Scottish Information Commissioner, and assured access to information held by a wide range of public

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[252] *Glasgow District Council v Lindsay*, Glasgow Sheriff Court, 24 June 1986, unreported.

bodies."[253]

Consideration of Council A's written documentation to both staff and tenants, however, does not reflect the priority that should be afforded to this particular right as little information is provided in respect of the legal right to access files. It is not mentioned in the council's allocation policy, for instance, and is similarly omitted in the case of the major policies of estate management and rent arrears. Indeed, the only staff information concerning this right is provided in an internal briefing note that has, however, apparently not been disseminated to frontline staff.[254]

But information provided to tenants about this right is even more scant. There are no departmental leaflets concerning the right, for example, nor is it mentioned in the Tenants Information Pack that is provided to tenants. But most worrying perhaps is the deletion of the relevant clause from Council A's tenancy agreement that is allegedly based on the Mosta Agreement.[255] Thus, the Council A tenancy agreement specifically omits direct reference to the relevant legal regulations that govern access rights to personal information, although this information is embedded in the Mosta Agreement.[256]

b) *Homelessness*

With regard to the question of homelessness, it is important to note that Council A has no written homelessness policy. Homeless applicants (if qualifying) are placed within the statutory homeless list that forms one of six main waiting list categories. Council A's allocations policy is based on a "List plus Date of Application Scheme" with "a percentage of the houses which become available in each area" being allocated to each list (Council A

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[253] An address to academics at a Glasgow University Conference held on 20 August 2001 to discuss the core aims and values of the Scottish Executive.

[254] This is dealt with later. (See p 231).

[255] The Mosta Secure Tenancy Agreement was produced by the Chartered Institute of Housing in 1998. Paragraph 8.2 deals with the access to files rights information.

[256] Dearth of publicity undoubtedly a root cause of why only six requests by tenants to access their files had been received since Local Government re-organisation.

allocations policy).[257] An internal appeal system exists, with appeals being made in the first instance to the divisional housing manager and thereafter to the director of housing and property services. In dealing with homeless applicants, the allocations policy states that it will take account of the Scottish Office Code of Guidance (1997) on homelessness, as well as the applicant's choice of area. The policy also adds that, in addition to satisfying the legal criteria ie the "four hurdles", the council:

> "must also have decided that the offer of a council tenancy is the best way of carrying out our duty".

With regard to information provided to homeless applicants, consideration of existing documentation reveals that for homeless applicants such information is scant, consisting of some leaflets only in addition to snippets of information about homelessness contained within the Council A's allocations policy whose rules the latter is statutorily required to publish.

In the absence of relevant documentation, then, implementation of legal rights is largely dependent on other commitments being in place, for instance, the key homelessness priority contained in the council's housing plan of ensuring that good quality information and advice networks exists and – integral to the process – ensuring that there is "ongoing staff training on current legislation and good practice guidelines". To these issues the thesis will return.

c) *Rights of Repair*

Council A's written documentation concerning repairs obligations in general and the right-to-repair scheme in particular appear, prima facie, to be more informative. The council's tenancy agreement, for instance, follows the Mosta document almost verbatim as far as landlord repair obligations are concerned and also includes information on the right-

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[257] Although the policy blandly adds, without clarification, that "We may disregard this rule in appropriate cases, to make best use of the housing stock.

to-repair scheme, including the tenant's possible entitlement to compensation, as well as the common law right enjoyed by tenants to effect repairs and – provided proper procedures are adhered to – to "withhold rent" accordingly. The statutory provisions of the landlord's repairing obligations are also included, as is the Mosta clause relating to effecting repairs due to any dampness.[258] Again, in respect of the Tenants' Information Pack, the correct information about the legal right is provided to tenants when it is stated[259]:

> "This scheme gives you the right to get another contractor in and claim financial compensation if we do not carry out certain priority repairs within our time limit. We will let you know when the job has gone over its time limit".

Yet consideration of organisational procedural documentation concerning the right-to-repair scheme reveals important gaps in the provision of information. It is not mentioned in the current maintenance policy, for example, although the new draft repairs procedures manual contains a section on right-to-repair. Nor is it mentioned in the estate management procedures that do include sections on a) secure tenants' rights to carry out improvements and make alterations, and b) their entitlement (in specified situations) to receive compensation. But the most glaring anomaly is in respect of information provided to tenants at the point of actually reporting repairs to the council, especially important in that many tenants may not digest information provided to them in the form of handbooks and information packs. For, although Council A provides secure tenants with written confirmation whenever a right-to-repair "qualifying repair" has been reported, including

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[258] The Mosta clause relating to replacing heating systems that are causing condensation dampness, however, is omitted because of cost reasons. The level of capital allocations available for housing investment, for example, has halved since 1990/91. Also, the council's ability to invest in its housing stock has been constrained since 1996/97 by the requirement to use 75% of council house sales receipts to repay debt (Council A Housing Service Plan).

[259] Council A Tenants Pack. It is also mentioned very briefly in the council's "Customer Charter" booklet and a new departmental repairs leaflet published in 2000. This latter notes that maintenance staff will be able to explain what repairs are covered but – as is explained in the next section – this is problematic given lack of knowledge among staff about this right.

details about the right-to-repair scheme, and alternative contractors available to effect repairs, information provided is erroneous insofar as it makes claming compensation dependent on utilisation of an alternative contractor, whereas in terms of substantive law, the tenant should receive the minimum compensation payment ie £10, where the original contractor fails to complete the repair timescale laid down for each of the eligible statutory "qualifying repairs".[260]

d) *Security of Tenure*

Security of tenure issues are dealt with in two principal documents, namely the rent arrears procedures manual and the estate management procedures manual.[261] Each of these documents is now assessed in turn.

i) Rent Arrears Procedures Manual

Council A's rent arrears policy and procedures manual became effective from April 1996.[262] The policy is extremely detailed and outlines a broad range of activities to be undertaken prior to seeking eviction for rent arrears. These include issuing of standard letters, carrying out home visits and tenant interviews, as well as procedures to be implemented from service of Notice of Proceedings to court stage and beyond ie after decree for eviction has been granted.

As part of the policy's preventative approach to evictions, maximisation of benefit entitlement is pursued, as are a range of repayment methods to clear debts, including establishing of arrears direct payments via the Benefits Agency. Non-housing sanctions that are applied to stimulate repayments include suspension of applications for garages, or refusing to accept tenants onto the home contents insurance scheme; while housing

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[260] As the letter to the tenant states: "When a delay occurs and an alternative contractor is used to carry out the work, the tenant will be compensated for the 'inconvenience'".

[261] These documents contain the policy principles and modus operandi of these principles.

[262] As with the estate management policy, this policy was agreed during the shadow year preceding re-organisation and resulted from a harmonisation of predecessor council policies.

sanctions include refusing mutual exchange applications, or tenancy transfer requests, sanctions that could possibly be challenged if applications are lodged via the right-to-assign route, thereby opening up the opportunity of appeal via the sheriff court where refusals of such applications are subject to the test of "reasonableness".[263] In addition, the policy also highlights the need to liaise with other council departments such as social work, as well as the utilisation of debt counselling agencies to assist tenants in financial hardship. In this sense, the policy appears to include the key principles of sound arrears control and debt management that the sheriff should take cognisance of in the determination of the reasonableness of the council seeking eviction.

Assessing actual council practice in respect of eviction actions against relevant statutory provisions indicates, though, that unlawful practice is occurring. In granting a court order for eviction, for instance, the order appoints a date for recovery of possession and has the effect of ending the tenancy and empowering the landlord to recover possession at that date as per the Housing (Scotland) Act 1987, s 48 (4) (a) & (b). And, as Mitchell (1995) clarifies:

> "There is only one form of decree specified by the summary cause rules for recovery of possession, and only one date is specified therein"[264] (p30).

Thus it is the court, not the housing authority, which decides the date of termination of the tenancy. Further, it is important to note that if the tenant remains in occupation after the date of the decree and pays rent, then a new tenancy is automatically created.

Consideration of cases in Council A where decrees for eviction have been granted, however, reveals that these are not implemented either by or even close to the date specified

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[263] Important changes to allocation rules will apply to Scottish secure tenants and affect certain sanctions. Liabilities such as rent arrears of less than one month are to be disregarded, for example, as are liabilities where arrangements are in place to repay the debt and such arrangements have been maintained for three months (Housing (Scotland) Act 2001, s10 (4) (a) and (b).

[264] Form U3.

in the court order. Indeed, it is common practice within Council A to hold decrees and implement them for up to one year after the date specified in the decree extract even though the Council continues to accept rent both in respect of current rent and payment towards the arrears.

ii) Estate Management Procedures Manual

Council A's estate management policy and procedures document also became effective from April 1996. The policy document contains a set of principles and a number of objectives that, in respect of anti-social behaviour, attempt to initiate effective remedies for tackling neighbour disputes and anti-social behaviour (see below). The document also sets staff targets for carrying out duties, for example, answering correspondence in ten working days, contacting complainant of anti-social behaviour within three working days and a written decision within twenty days (Council A Housing Plan).

Remedies stipulated in the policy document for dealing with anti-social behaviour are comprehensive and include both management and legal remedies. Examples of the former are: the utilisation of an inter-agency approach to tackling problems (police, social work etc); appointment of professional witnesses/investigators to collate evidence; and offering mediation services where voluntarily chosen by tenants. And, in respect of legal remedies, examples cited include the main remedies discussed in Chapter 2 such as implement, interdict, nuisance, Asbo's and eviction (as a last resort). In addition, the document lists a variety of laws that can be used for specific purposes, for instance, the legislation that deals with malicious letters or correspondence.[265]

Despite acknowledgement of the range of issues encompassed by Council A's policy document, three specific concerns can be noted. Firstly, the policy omits reference to

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[265] The Post Office Act 1953. s 11 (1).

important actions for dealing with anti-social behaviour such as serving Notice of Proceedings to seek a management transfer (compulsory transfer).[266]

Secondly, the information provided to staff regarding possible legal remedies is scant and, on occasion, misleading. In the table contained in the policy that lists possible legal powers "to deal with common nuisances", for example, the Public Order Act 1986 is cited as being relevant in dealing with the criminal offence of racial harassment. Yet, whilst this point is true, this Act relates to England and Wales only and not in Scotland in 1996 where no specific criminal offence of racial harassment existed. The Crime and Disorder Act 1998, s33 and s96, has, however, introduced the offences of racial aggravated harassment and racial aggravation into Scotland.

Finally, written information provided to tenants regarding security of tenure issues – in relation to both rent arrears and anti-social actions – is little developed save for advising tenants to contact the local Citizens Advice Bureau or their lawyer. It should be emphasised, though, that offering such advice tends not to happen prior to court action being considered. Indeed, advising tenants to contact advisors etc happens generally only prior to the first calling in court. It is also worth stressing that tenants are not provided automatically with alternative advice agency contacts such as the Shelter Housing Law Service.

Summary

With respect to the four specific legal rights under review, Council A documentation has notable defects that may lead to both staff and tenant ignorance of legal rights and housing law. Access to files information is extremely limited, for example, and the relevant clause

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[266] The Housing (Scotland) Act 1987, Schedule 3, ground 8. An eviction order must be granted by the sheriff if the ground is satisfied and the council provides suitable alternative accommodation, to be available when the court order takes effect.

concerning this right has been excised from the model Mosta Tenancy Agreement allegedly adopted by the council. Nor has Council A developed a clear policy in respect of the important area of homelessness, albeit that certain procedures are in place. Information about the right-to-repair scheme, on the other hand, is more substantial but this positive development is somewhat diminished by inconsistency of information provided to both staff and tenants. Information in respect of security of tenure issues is arguably more developed in line with legislative requirements, especially the professed adherence to satisfying both ground(s) for possession and reasonableness criteria prior to seeking an eviction. As with the other rights, though, tenants receive little information from Council A about this right.

Implementation of Rights

As indicated in the literature review, work practices have been regarded as an important area for research. In their study of housing management performance, for instance, Bines et al (1993) highlighted that:

> "While there was some correlation between landlord performance in each of the core management tasks, few landlords were either high or low performers for all of them. Many landlords were doing well on some tasks but less well on others" (p143).

Again, Scott et al (2001) argue that landlord performance appears to have improved since the last major Scottish housing management research survey (Adler et al (1995)). With reference to homelessness, for instance, Scott et al (2001) note:

> "... the advice contained in the 1997 Code of guidance on Homelessness appeared to have been largely accepted by councils" (p120).[267]

Evaluation of this research, however, indicates that – unlike the Loveland (1995) study

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[267] One example cited by the authors relates to the fact that provision of advice seems to have been "given an increasingly high profile" (Scott et al (2001) p60).

on homelessness – previous Scottish studies have not analysed in detail the actual implementation practices of local authorities. And, as Loveland (1995) stresses, it is essential to evaluate implementation issues in context, indeed that a variety of contexts "play an important role in explaining the 'gap' between legal form and empirical reality" (p3). It is emphasised, of course, that this perspective is compatible with the systems theoretical framework of organisational analysis currently being applied. In line with Loveland's position, then, evaluation of legal rights implementation occurring within the organisational administrative process must take place as part of strategic organisational analysis that considers the inter-relationship of all key organisational processes including work methods, performance management systems, communications and personnel matters. To these issues the thesis will return. First, though, Council A work practices in respect of the four rights issues identified in Chapter 1 will be assessed in context. These rights are a) access to files, b) homelessness, c) rights of repair and d) security of tenure. The relatively greater time afforded to analysis of these issues in this section reflects the innovative nature of this research within the field of socio-legal studies.

This section examines how effectively Council A implements the aforementioned legal rights in the day to day operation of housing management, that is, a) access to files, b) homelessness, c) rights-of-repair, and d) security of tenure.[268] This is carried out by the evaluation of working practices as gleaned from assessment of tenancy files and procedural documentation, as well as feedback received from interviewees. It should be emphasised that the focal point of the research is to identify practices that either are or may be in conflict with existing statutory provisions, as opposed to identification of practices that are merely

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[268] The latter issue is concerned mainly with the legality of repossession actions raised by Council A staff in respect of arrears or anti-social behaviour.

PAGE

NUMBERING

AS ORIGINAL

nine cases.

Table 2: Household Profiles of Refused Homelessness Applicants

Category of Households						
Single Female (%)	Single Male (%)	Partners (%)	Female & Child (%)	Male & Child (%)	Partners & Child (%)	Total
5 (10.2)	27 (55.1)	3 (6.1)	7 (14.3)	2 (4.1)	5 (10.2)	49

(Source: Council A Housing Office Files)

The above figures show that almost two thirds of applicants refused comprise single males (55.1%) or single females (10.2%), which reflects national statistical trends.

General Patterns

Turning now to consideration of general patterns vis-à-vis homelessness applications, the following points are noted. Firstly, the particular cases assessed appear to have been processed by housing officers, a practice that complies with good practice.[280] Yet advice provided orally by senior officers suggests the housing officers often "vet" applicants and refuse applications - particularly those lodged by single persons who appear have no priority - without completing an application form.[281] It is also indicated that initial screening of homeless applicants by reception staff occurs, albeit more sporadically.[282] As one senior officer states:

"My own opinion of Council A is that that (ie screening) happens far too often. Do you know what I mean by first screening... where the person comes to the front desk

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[280] Scottish Office (1997), par 5.2.

[281] Unfortunately, the frequency of this practice is unrecorded but is believed to be common.

[282] A practice disparaged by the Code of Guidance, par 5.3 (Scottish Office (1997)) and one currently under review by Council A. This review is currently assessing three options, namely i) to retain generic working practices, ii) to create specialist posts of homeless officers working within area offices and iii) to centralise working practices.

and they are virtually told they wouldn't qualify in terms of homeless legislation so here's a list of bed and breakfast, away you go. Now I'm aware that that that happens all too often in terms of single men and single women in Council A".

This is then followed by the explanation that :

"I think that housing officers feel under pressure a hell of a lot and that they sometimes perceive a homeless application as taking twenty minutes/half an hour with somebody that they feel they can't allocate to that particular person because they feel in their own mind that they wouldn't qualify anyway and there are maybe calls for them to answer."

Secondly, examination of the forty nine applications reveals that most applications are refused at the homelessness or priority need stage with very few cases progressing towards assessment in respect of either intentionality or local connection. The actual refusal figures are as follows; nineteen (or 38.8%) at homelessness (or threatened with homelessness) stage; twenty four (or 49%) at priority need stage; six (or 12.2%) at intentionality stage; and in no case did the council attempt to transfer a duty to rehouse to another landlord.

Council A homelessness practice is now assessed against legal provisions by reference to the following criteria: inquiries; homelessness; priority need; intentionality; local connection; notification (including adverse decisions); and advice provided to applicants.

i) <u>Inquiries</u>

Local authorities are required to carry out sufficiently detailed inquiries to ensure compliance with law. Council A has implemented specific procedures, therefore, to strive to ensure that housing staff carry out sufficient inquiries, in particular to ensure that they ask the relevant questions to establish whether applicants can surmount the "four hurdles". This is done procedurally by having a standard form decision guide that asks detailed questions in

respect of each of the "four hurdles".

Yet, consideration of current council practice reveals deficiencies. The standard form used to collate information to satisfy the inquiry process, for instance, is often either incomplete or remains uncompleted by housing staff.[283] Again, and as part of standardised council procedure, housing staff are required to complete an investigation report. But consideration of council homelessness files reveals that often no inquiries were recorded. In Case sixty nine, for instance, in which the male applicant has just been released from prison and may require specialist advice, the notification letter is sent on the same date as the application is lodged and no checks seem to have been carried out to assess case details. It should also be stressed that, in none of these cases has the decision guide that leads staff through the 'four hurdles' process been completed. Data is not available, therefore, to confirm whether or not staff had a sound basis for their decisions.

ii) <u>Homelessness</u>

Consideration of the nineteen cases refused on the basis of not being homeless reveals some interesting points.[284] Firstly, and arguably attributable in part to staff failure to utilise the decision guide, occasionally staff make erroneous decisions in terms of homelessness status. Thus, in Case 89, in which a joint tenant is refused access to his home by his father on account of apparent inability to reside together, the applicant is deemed to be not homeless simply because he holds a joint tenancy. However, an applicant would be homeless as a matter of law if he had accommodation but occupation of it would probably lead to violence. Yet while the housing officer apparently accepted the applicant's statement that he would be at risk of violence if he returned, this officer determined that he was not homeless.

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[283] This is particularly evident in the housing office that is of a predominantly urban status. Reasons for the divergence in practice are not known.

[284] Only one of the nineteen cases, it is noted, involved a "threatened with homelessness" situation.

Secondly, in determining whether an applicant is homeless, it is necessary to ascertain if it is reasonable for the applicant to continue to occupy her/his accommodation. Examination of the Council A files, though, suggests some concerns on this point, now illustrated by reference to three cases.[285] In Case 79, for example, the applicant is advised that her own accommodation is deemed available despite the applicant's claim of potential violence from a neighbour. The decision appears to be based solely on one police report that states:

> "we have no evidence to substantiate a claim from Ms... that 'X' would cause her any danger if she returned to her home address"..[286]

Lack of police evidence by itself, however, does not invalidate the applicant's claim, although no further checks seem to have been carried out, for example, checks with other neighbours or other departments such as social work. Failure to contact social work, in particular, seems to be a major omission, particularly given the fact that the applicant has two children and local authority obligations towards their welfare may be an issue.[287] This might be thought to be a failure to carry out adequate inquiries as required by section 28 of the Act.

The second Case involves Case 84 where the applicants claim that they are unable to reside in their own tenancy because of neighbour problems and fear of violence. Again, though, there was no assessment of whether it is reasonable to occupy the accommodation, of particular concern given the "evidence" supplied by the local health centre with reference to one of the applicants:

> "She recently took an overdose. I believe that the problem she is having with her neighbours is contributing to her mental state and her health would definitely benefit

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[285] Indeed, lack of assessment of reasonableness seems to involve the majority of cases, particularly where single people are involved (eg Cases 62, 67, 86, 92, 97).

[286] Strathclyde Police correspondence to Council A, 7/4/99.

[287] That is, obligations towards "children in need". Children (Scotland) Act 1995, Part II.

from her being re-housed".[288]

This case is also illuminating in that the decision was taken that the applicants were not homeless because a) they had returned home and b) had notified Council A that "they would rather stay with relatives" than accept temporary accommodation offered by Council A. Yet again, though, returning home does not entail that the accommodation is reasonable to occupy, nor does refusal of temporary accommodation offered.

The third and final Case relates to Case 97. In this Case a single parent is deemed not to be homeless (or threatened with homelessness) because she *can* reside with her parents. Consideration of the details underpinning this Case, though, is most revealing. For instance, confirmation that the applicant can remain in the house is given by the applicant's mother. There is no consideration given, however, to the question as to whether it is reasonable for the woman and her child to stay in the accommodation, despite the applicant stating that she could no longer reside there, the reasonableness issue of particular relevance here given the applicant's claim that there is family discord that is causing tension. Again, it is not clear whether this decision may have had something to do with the applicant's previous case history gleaned from the housing officer's written comments:

> "Ms... left accommodation at... with rent arrears. She had been advised when she applied under homeless persons the last time to make an effort and clear arrears. Ms... also been charged with possession on drugs."[289]

iii) <u>Priority Need</u>

The Code of Guidance provides particular guidance on those persons who might be classified as being in priority need on account of vulnerability for some special reason, for example, young people previously looked after by a local authority, young people at risk, or

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[288] Health Centre correspondence to Council A, 30/9/99.

[289] Extremely interesting since arrears, although possibly relevant at intentionality stage considerations, should not be taken into account when assessing homelessness status.

women suffering (or fearful of) violence. And case law has indicated that, in determining vulnerability, it is not simply a question of whether someone is at great risk, but whether - on account of that person's particular difficulties - she/he is in comparison to other homeless people at more risk of harm and less able to cope with homelessness (Himsworth (1994)).[290] In addition, in reaching its decision the local authority must ensure that its decisions do not conflict with the principles of judicial review.

Prior to carrying out the assessment of those applications refused on the basis of not satisfying priority need, evaluation of the twenty four applications refused reveals the following patterns. Firstly, of the twenty four cases, single males comprise twenty two cases and single females two.[291] Secondly, the reason cited for non-priority status in all cases is that of non-vulnerability. Thirdly, decisions taken are based on information provided in the completed application form and the actual interview at which staff assess each application on its merits.

Turning now to assess the priority need decisions taken, examination of the files suggests that – based on the data available – the majority of refusals appear to conform with legal principles. Yet detailed scrutiny of individual applications suggest that staff practices may be at odds with legislative requirements. In Case 70, for example, the applicant is notified of failure to satisfy priority need status because of non-vulnerability. Yet in this particular case, priority need status may be argued based on the fact that the applicant, a separated parent, undertakes care responsibilities for an autistic dependent child for approximately three to

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[290] *R v Waveney District Council, ex p Bowers [1983]* QB 238 at 244, CA; *Wilson v Nithsdale District Council 1992* SLT 1131. In the *Bowers* case Lord Justice Waller held that vulnerability should not be treated literally but as denoting situations where someone is "less able to fend for oneself so that injury or detriment would result when a less vulnerable man will be able to cope without harmful effects" (Robson and Poustie (1996).

[291] As is noted shortly, one of these cases appears to have been categorised erroneously.

four days per week, the extent of actual care crucial to decisions concerning priority.[292] In *Vagliviello*, for instance, the court overturned a previous decision to the effect that the father was not in priority need when a child spent exactly half of the week with each of the mother and father.[293] On the other hand it has been held that parental agreement to satisfy access arrangements for children that depends on housing being available does not oblige councils to provide accommodation.[294]

Apart from the possibility of securing priority need status on the basis of dependent children, the housing officer also failed to take cognisance of the adequacy of the existing accommodation in which the child currently lives when "cared for" by the applicant. In this particular case, for instance, the applicant has been requested to vacate a relative's home (by that relative) on account of the latter's inability to cope with the behaviour of the applicant's autistic child. As such, it seems feasible to suggest that a homelessness finding based on the inadequacy of existing accommodation to house the autistic child may have been appropriate, a finding that necessitates the granting of priority need status.[295]

Case 93 appears to represent another instance of possible mistaken categorisation. In this particular case, for example, the applicant is notified that he does not meet priority need status despite the fact that the application submitted included the applicant's partner and dependent child, both of whom might be expected to reside with the applicant. The decision was based on the fact that the child is living with grandparents and not with the parents. This point, it is emphasised, is specifically covered by the Code of Guidance that states that children don't need to be living with the applicant at the time the applicant applies for housing since children "may be living temporarily with other relatives because of the

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[292] Indeed, the existence of a dependent child who might reasonably be expected to reside with the applicant is actually acknowledged in the decision guide by the housing officer.

[293] *R v London Borough of Lambeth, ex p Vagliviello (1990)* 22 HLR 392, CA.

[294] *R v Port Talbot Borough Council, ex p McCarthy (1991)* 23 HLR 207.

[295] *R v Lambeth London Borough, ex p Bodunrin (1992)* 23 HLR 647.

applicant's homelessness".[296] In addition, the file reveals no inquiry being carried out to assess if any other impediment to them having custody existed, for example, contacting Social Work to discuss child protection matters.

In assessing vulnerability housing staff are expected to "react to applications with a degree of common sense where there is prima facie evidence of vulnerability" (Robson and Poustie (1996)). And this approach is indeed reflected in general file documentation. Thus, in Case 82, the housing officer cites the reasons for not granting priority status as follows:

> "Single person with no dependent children and (he) did not appear vulnerable during interview".

But evaluation of particular practices suggests that there may be breach of legislative provisions. In Case 96, for example, a single male is deemed not to be in priority need status on account of non-vulnerability. Yet consideration of the file details suggest that further checks are required to justify such a decision. For the applicant is a 'rough sleeper' who – in the words of the officer concerned:

> "... was in a very poor state physically and his clothes and personal hygiene were of a poor standard".

And, as the officer later opines:

> "Mr... also adds that he has not eaten since Sunday or Monday of this week and had only 2 cans of super lager today. (I think he had more alcohol than that - however - due to Mr... poor state of health and years of alcohol abuse – it would not take much alcohol to set him off again".[297]

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[296] Scottish Office (1997), paragraph 7.2. Case 93 is also interesting insofar as the file documentation indicates another possible agenda behind the spurious reasoning that led to the decision. In this case, for instance, the applicant had previously had a tenancy and, at interview stage, was advised by the housing officer as follows: "Mr... was shown a copy of his original Missive with his name on it and advised he was intentional homeless as he had abandoned this tenancy on... and left rent arrears of £466.67 and had rechargeable repairs of £317".

[297] An interesting example too of staff judgementalism.

In discussing this issue with one senior officer, it was acknowledged that wrong decisions often occur because staff:

> "have clearly not carried out the necessary inquiries and have incorrectly come to the wrong decision".

In teasing out the numbers involved, the same officer suggested that:

> "Possibly the majority have been correct. But there is still quite a level of incorrect decisions. Now Council A deals with about 2000 homeless cases per year and I wouldn't be able to put a definite figure on it. But certainly a much higher number than I would have expected have been proved to be clearly the wrong decisions."

Failure to decide in accordance with the principles of judicial review is also illustrated in Case 102, another case that involves a single male rough sleeper. As per *Bowers*, it is critical to consider vulnerability comparatively; and to quote Lord Prosser in *Wilson*[298]:

> "The comparison must in my view be with some assumed average or normal or run-of-the mill homeless persons".

Yet examination of the applicant's file details reveals that the applicant has learning difficulties and substance abuse problems, factors that may satisfy vulnerability criteria, particularly if corroborated by medical support. But here again council practice is lacking. For, as the Code of Guidance recommends in respect of issues concerning learning disability, the homelessness officer "should enlist the help of the health board, local Community NHS Trust, or the social work department as appropriate" (p40). And, in respect of Case 102, none of these things were tried.[299]

iv) Intentionality

Intentionality is the legal test introduced at the original Housing Bill report stage to

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[298] Op cit.

[299] It should be noted in passing that the four cases considered represent over 16% of all cases refused at priority need stage and may signify grounds for concern given the volume of refusals within Council A.

soften concerns of certain councils and MP's that individuals might voluntarily leave accommodation in order to queue-jump existing housing list applicants. Statistics show, however, that reasons for homelessness occurring are usually genuine with 33% of applicants becoming homeless following domestic dispute and a further 33% because friends/relatives are no longer being able to accommodate.[300] Intentionality is also an extremely complicated test and, as noted earlier, involves three specific elements, all of which must be satisfied to justify a decision of intentionality, the onus of proof lying with the local authority.[301]

Turning now to consider the Council A sample, examination of the files shows that six cases or just over 12% of all cases included a decision on intentionality. Table 3 below provides the reason(s) given by the council for reaching an intentionality decision and whether – on the basis of written documentation available – the legal test has been applied correctly.

Table 3: Area Office Intentionality Refusals.

Case No	Applicant Status	Reason(s) for Intentionality
57	Single Parent	Gave up Secure Accommodation
61	Pregnant Woman	Gave up Secure Accommodation & Owed Arrears
72	Couple with child	Gave up Secure Accommodation
73	Single	Income Sufficient to maintain Mortgage
75	Single Parent	Gave up Secure Accommodation
76	Single	Eviction from Hostel

(Source: Council A Housing Office Files)

In assessing issues rising from Table 3, the following points are made. Firstly, information recorded on file tends to be incomplete and it is impossible to know whether

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[300] Scottish Office (1997), paragraph 3.6.

[301] The three elements being as follows: deliberate act or omission which results in homelessness; it must be reasonable for the applicant to continue to occupy the accommodation; and the applicant must have been aware of all relevant facts before taking the deliberate action.

staff have evaluated cases in accordance with the legal test. Failure to consider the three elements, of course, leaves Council A open to charges of having acted unlawfully, although this is not to say that decisions would necessarily have been different if the test had been properly applied. Three cases serve to illustrate this point

In Case 76, the tenant lost accommodation because of continuous breach of tenancy conditions, that is drinking in a hostel, despite having been warned on five separate occasions regarding such behaviour.[302] Yet scrutiny of available file documentation suggests that the person has learning disabilities. The authority, however, failed to evaluate the level of disability and the person's ability to understand the consequences of his actions.

In Case 57, the female applicant and children gave up secure accommodation because her husband had been posted to the Falklands and she required to be closer to her family in Scotland for support. In addition, it was noted that the nearest shopping facilities were several miles distant. Yet neither of these factors was taken into account in assessing intentional homelessness.

Finally, in Case 61, that involves a pregnant woman temporarily lodging with her mother, reasons for termination of a previous secure tenancy were not properly explored. Of particular concern in this case is the housing officer's failure to take into account a message received from the applicant's previous authority to the effect that the property was given up so that the applicant could "escape from local youths".[303] No assessment of the risk to the applicant, though, was carried out by the authority regarding the reasonableness of her remaining in her tenancy. Reasons for the apparent deficiencies in respect of intentionality were discussed with senior policy officers. According to the latter, discrepancies stemmed

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[302] In this case, the applicant was deemed to be intentionally homeless simply because of the breach without assessing the problem in the light of the intentionality criteria.

[303] In this Case rent arrears are cited as an additional factor of intentionality despite their irrelevance since the tenancy was not repossessed on the basis of rent lawfully due.

largely from ignorance. To cite one of these officers:

> "There is not enough investigation. There are not enough inquiries being made into cases. And to be perfectly frank there are a number of officers dealing with homeless cases who wouldn't know how to determine what an intentionally homeless applicant is".

Ignorance itself was attributed to lack of appropriate training and inadequate support. Decentralisation of service delivery was also deemed to be a critical factor:

> "I think Council A – can I speak off the cuff here – went too far too fast in decentralising the service without ensuring the back up was there and the training was on the level required by the staff. I really felt that the training given to staff was in no way comprehensive."

v) <u>Referral of Applications</u>

Local connection factors *may* be taken into account by local authorities in the determination of statutory re-housing obligations and, where no local connection exists, re-housing obligations to homeless persons can be transferred, in certain circumstances, to other council authorities.

In terms of the Council A sample, no applications were refused at the referral stage. It should be noted that, in respect of homelessness practice, housing officers did state that applicants who did not meet the local connection criteria would be referred back to the appropriate authority, although this was not necessarily applied in areas of low demand, applicants being offered a discretionary let in such circumstances.[304]

vi) <u>Notification</u>

Local authorities are legally required to notify applicants, on completion of

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[304] That is, the homelessness application is not accepted under statutory provisions, but re-housing takes place via the Waiting List.

inquiries, of their decision in writing. And, where the decision is unfavourable to the applicant, to give adequate reasons that are intelligible and address substantive matters raised by each case.[305] Thus, correspondence should illustrate that the council had considered all relevant matters and provide clear reasons as to why an application has been rejected, thus enabling the applicant to assess the challenge and raise a challenge if desired.[306]

Examination of Council A homelessness practice indicates, prima facie, compliance with legal requirements. Decision letters are both issued and retained in the appropriate homelessness file, for instance, and are issued timeously, that is, within the twenty eight day period recommended by the Code of Guidance.[307]

Again, notification letters comprise a variety of standard letters that cite both a) the appropriate hurdles stage at which the application is refused and b) provide a reason (or reasons) why the application has been refused.

Finally, notification letters contain appropriate information concerning a) the offer of temporary accommodation, for instance, in Case 73 involving a priority need applicant who is intentionally homeless, b) access to further advice by contacting an appropriate officer (eg Cases 65 & 77), and c) the applicant's right to appeal using the internal Council A appeal system (eg Cases 57 & 79).

Yet scrutiny of the content of specific notification letters suggests concerns regarding both the clarity and the adequacy of decision-making. Thus, in Cases 56 and 58 that are refused at priority need stage, the reason cited states simply:

"There are no circumstances evident within your application that could suggest

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[305] Housing (Scotland) Act 1987, s 30. *Westminster City Council v Great Portland Estates PLC [1985]* AC 661, CA; *R v Northampton Borough Council, ex p Carpenter (1992)* 25 HLR 349.

[306] *R v Islington Borough Council, ex p Hinds (1994)* 27 HLR 65; *R v Wandsworth Borough Council, ex p Oteng (1994)* 26 HLR 413, CA.

[307] Scottish Office (1997) paragraph 12.5.

vulnerability".

This is potentially problematic since failure to advise applicants of why they are not considered as being vulnerable may adversely affect their rights, for example, by not providing applicants with sufficient information to lodge an appeal.

Again, and with reference to the intentionality in Case 61, it is stated that intentional homelessness has occurred due to voluntary termination of tenancy and, to quote the officer's words verbatim, "the council considers it reasonable for you to continue to occupy that accommodation". Yet, this decision appears somewhat inadequate given the important issues involving the applicant having to leave her tenancy to "escape from local youths".

vii) Advice

Local authorities are legally required to provide applicants who fail to qualify for re-housing with appropriate advice to enable the person(s) to obtain accommodation.[308] Advice is not legally defined and thus regard should be had to the Code of Guidance that recommends that advice should be comprehensive, incorporating information that will help obtain housing and prevent future homelessness occurring.[309] Assessment of Council A practice, however, indicates discrepancies on occasion with Code of Practice recommendations, recommendations that council policy purportedly adheres to.

With regard to the extent and quality of advice provided, for example, current practices can be deficient.[310] Thus, in Case 59, the unsuccessful applicant is provided solely with a list of private rented sector accommodation, while in Case 83 the applicant (a rough sleeper) was advised to "call back at the counter". Again, and with reference to specific appeal

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[308] The Housing (Scotland) Act 1987, s 31 (3) & (4). Special provisions apply in the case of persons subject to immigration control. For details see the Scottish Office (1997), Chapter 14. The local authority is also empowered to provide general advice on other council services under the Local Government (Scotland) Act 1973, s 88.

[309] Scottish Office (1997), Chapter 11.

[310] Exceptions do exist, though, such as Case 87 in which the applicant is advised of a range of housing options, including housing associations, private rented sector, and the waiting list.

rights, whilst the standard documentation offers a point of contact to furnish advice, it fails to advise unsuccessful applicants of other possible remedies such as judicial review (legal) or the Ombudsman (non-legal). Case 75 is perhaps particularly revealing insofar as it involves an applicant who has apparently missed the internal appeals system timescale for hearing appeals and that an internal appeal is consequently time barred. Yet the letter from the housing manager to the applicant mentions only an invitation to discuss "re-housing options"; and there is no mention of either of the above remedies.

Inadequate advice also appears to be given in respect of a number of legal matters. In Case 89, for instance, the applicant is considered not to be homeless as he currently holds a joint secure tenancy with his father. It is the advice given in respect of the joint tenancy that is illuminating, indicative of lack of training when the housing officer advises that: "He could terminate his part of the tenancy and then pursue a house on the subtenants list". In law, however, a secure tenancy can only be ended in a prescribed number of ways and one joint tenant cannot end a secure tenancy on his/her own (Robson & Halliday (1998)), although this will not apply in the case of the new Scottish secure tenancy.[311]

The Code of Guidance stresses the importance of preventing homelessness, for example, by providing advice to applicants living in the private rented sector. Case 85 is of interest, then, since the housing officer has provided no advice about an apparently unlawful eviction that has occurred after the tenant left his house having received the following invalid Notice to Quit that lacks specified information.[312]

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[311] Housing (Scotland) Act 1987, s 46 in conjunction with s 82 (definition of tenant). The Housing (Scotland) Act 2001, s 13, will enable a joint Scottish secure tenant to terminate her/his interest in the tenancy without affecting the interest of the other joint tenant.

[312] A Notice to Quit to be valid must contain certain information and, in the case of Assured Tenancies, accord with the Assured Tenancies (Notices to Quit Prescribed Information) (Scotland) Regulations 1988, SI 1988/2067.

"Dear Sir/Madam

I am formally giving you notice of the termination of the leasing agreement between Mr .....(landlord) and Miss.....(tenant) for the property at the above address. Termination will be at 12.00 noon on 30 April 1999.

Yours sincerely

Mr...."

Finally, consideration of individual cases reveals major gaps in legal knowledge concerning various issues. With regard to Cases 79 and 92, for example, homelessness applications involving children are processed without any consideration of local authority obligations towards children in need under the Children (Scotland) Act 1995. While in Case 55, on the other hand, the officer has noted in the homelessness decision guide that a cohabitee has occupancy rights, whereas occupancy rights are not automatically conferred on cohabitees. In acknowledging knowledge gaps, it is worth concluding this section with two issues raised by one senior officer. The first issue is that no system exists for advising housing staff of important case law decisions, nor is there any mechanism in place to amend existing administrative practice in the light of judicial decisions. The second issue concerns the senior officer's perception of the ability of housing officers to process homeless applications. To quote this officer:

"Talking about housing officers. No disrespect but they are administrative grades only making decisions on homeless cases... I think these decisions should be made at a higher level."

c) *Rights of Repair*

A large number of repairs in Council A comprise repairs that fall under the category of the right-to-repair scheme. For the quarterly period April to June 1999, for instance, a total

of four thousand and forty three right-to-repair works were instructed (Council A Housing Service Performance Monitoring, June 1999)[313]; while in respect of one area housing office alone, a total of one thousand seven hundred and seventy four right-to-repair works were issued for the half-yearly period ending in December 1999.[314]

Given this volume, then, one might expect at least a number of claims for compensation to have been made, particularly in the light of Council A's repairs performance in respect of repairs for previous years which reveal a less than 100% completion within timescales. For example, first priority category repairs (including right-to-repair works) were completed successfully in 97% and 96.3% of the cases in respect of financial years ending 1997 and 1998 respectively.[315] In view of the not insignificant numbers of repairs this shortfall represents – and assuming that certain of the repairs are likely to be "qualifying repairs" – one might anticipate that a not insignificant number of tenants may have received compensation from Council A on account of its failure to meet legal timescales for completing such repairs. Indeed, one senior officer has confirmed that:

> "We issue thousands of emergencies in a week... and the majority of them will probably fall under the right-to-repair scheme."

Yet information provided reveals that for the period 1996 to 2000 only two cases have received compensation[316].

Statistics suggest, then, that rights may not be being implemented effectively and this point is now elaborated by reference to anomalies between current practice and legislative provisions. First, statutory provisions currently oblige councils to advise tenants of their

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[313] It should be noted that the Council monitors its right-to-repair works separately from other repair categories such as voids.

[314] Council A correspondence 18/1/2000.

[315] Accounts Commission for Scotland, Performance Information for Scottish Councils, 1997/98.

[316] The two payments in question amounting to £24 (October 1999) and £10 (February 2000 (Council A correspondence, March 2000).

legal rights whenever a qualifying repair arises. And the inadequacy of Council A advice to tenants of their legal right to compensation has already been explained. But existing Council A practices also fail to adhere to legal provisions in two other ways. Firstly, Council A fails to inform tenants annually in writing of the right-to-repair scheme, thereby contributing to ignorance of this right and, consequently, diminishing opportunities for the right being exercised.[317] As confirmed by a senior officer responsible for policy development:

> "No I certainly don't tell tenants. Whether it is within some other package I can't say."

Secondly, as confirmed by the same senior officer:

> "If an alternative contractor is not used then we don't give them the £10. We don't send them the £10 out because no contact has been made with us", i.e. by the alternative contractor.

Yet making compensation payments incumbent upon alternative contractors being utilised to carry out qualifying repairs is at odds with statutory provisions. Payment of the minimum compensation of £10 should, in accordance with legal provisions, be made automatically to the tenant where statutory timescales for completion of repairs are not met, *irrespective of whether or not the tenant actually claims compensation.* As Scottish Office Circular 12/1994 notes:

> "Payment of compensation should be made automatically to the secure tenant. The tenant should not be required to make a claim".[318]

It should be noted at this point, though, that the question of compensation may no longer be significant if right-to-repair works are effected timeously by Council A. Consideration of housing service performance monitoring, for example, shows that, for the quarterly

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[317] Secure Tenants (Right to Repair) (Scotland) Regulations, 1994, SI 1994/1046, Regulation 13.
[318] Paragraph 27.

period April to June 1999 all right-to-repair jobs were completed on time.[319] Indeed, Council A has set a target completion figure of 99% (within timescales) for all qualifying repairs under the right-to-repair scheme. Further research is required, therefore, to confirm whether compensation to tenants in respect of the right-to-repair scheme is of reduced significance, particularly as current levels of performance do indicate an improvement from previous levels (only 86% of emergency repairs completed within timescale for the period October to December 1998).[320]

Other Repair Obligations

Discussions with a senior officer in Council A highlighted that Schedule 10 repair obligations are not monitored separately. Statistical data is not, therefore, readily available to evaluate the effectiveness of the council's repair service in respect of the statutory repair obligations. Scrutiny of individual house records would be required to collate this information, a task outwith the scope of this research. Of interest though - and a point notified by senior officers in both councils – is that certain of the repairs covered under schedule 10 such as fabric repairs eg, rhone pipes, are deferred with repairs to be undertaken as part of cyclical maintenance programmes.

Discussions with interviewees also revealed that Council A failed to provide information to tenants concerning the tenant's right to withhold rent in the event of the landlord failing to fulfil repair obligations. This seems attributable in part to lack of knowledge. When asked about this particular right, one senior officer opined:

"I would say withholding rent is not a right that tenants have."

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[319] Six thousand two hundred and two jobs for the combined Council A areas.

[320] Council A Housing Department: "Quarterly Performance Review – 1 October to 31 December 1998". On the other hand, the large percentage of repairs indicated here that are not completed on time suggest compensation amounts unpaid to tenants, particularly if considered for the country as a whole, may be extensive, an interesting area of research still to be done.

d) *Security of Tenure*

Turning now to address the question of Council A practices in respect of actions raised to recover possession of secure tenancies, this is tackled by reference to rent arrears practice and anti-social practice.

i) Rent Arrears Practice

Prior to assessing Council A practice against legal rules, some general points are first noted. Firstly, rental income represents the prime source of revenue to the council's HRA and control of debt is, therefore, a key housing management function.

Secondly, a total of thirty four cases were selected for assessment and comprise cases in which some form of legal action has been initiated, either service of a Notice of Proceedings (NOP) or a summons to court. A secondary study of forty cases in respect of which eviction decrees have been granted was also carried out to assess issues of implementation.

Thirdly, the above figures represent only a small percentage of total cases (see Table 4 below). Conclusions drawn from such figures can, therefore, only be tentative in nature.

Table 4: Managing Rent Arrears (April 1998-March 1999)[321]

Type of Action	No of Cases
NOPs	10,446
Court Action	2,262
Eviction Decrees	1,557
Evictions Enforced	115

(Source: Council A Internal Report)

As the above Table shows, a large volume of cases involve some form of legal action, the NOP figure, for instance, crudely representing 21% of the total council stock. Of

[321] Council A has set the target for controlling rent arrears for 1999/2000 at 2.2.% of annual gross rental debit (Council A Housing Service Performance Monitoring, June 1999). Arrears are substantial with the total outstanding at 31 March 1998 being £1,992,811 or 2.3% of the annual debit (Council A Annual Report and Accounts, 1997/98).

significance, though, is the relatively large number of decrees for eviction granted, albeit few decrees for eviction appear to be implemented.

Turning now to the examination of Council A practice in respect of rent arrears, a number of concerns can be identified that involve both legal and good practice issues. With respect to legal issues, two key points are noted.

The first concern – and one already alluded to – relates to the fact that eviction decrees are generally not used by the date specified in the extract decree, a fact confirmed by assessment of the forty eviction cases studied. Indeed, holding decrees and using them for a period of up to one year from the specified date is common practice. At grassroots level this is perceived as being perfectly lawful, a part of custom and practice rather than a staff instruction. In the words of one housing officer:

> "It's just always been my understanding that you can hold a decree for a year. Is that not the case?"

While one senior officer is aware of the specific problem noting interestingly that:

> "Many authorities are sitting on a time bomb. I was at an Institute of Housing meeting the other day... and most of them do the same (withhold decrees)."

Yet as another senior officer states, this is also condoned by Sheriff Officers:

> "Our sheriff officers will act on them up to a year. We are all aware of the illegalities of that, but we have as yet not been questioned on that... according to our sheriff officers it is a grey area."

It is also interesting to note that thirty one out of the forty decrees granted are eviction decrees with the debt to be repaid by instalment, the term "instalment" arguably a major reason for the unlawful action since staff interviewed seemed unaware that, in raising court action via the service of a variable summons, Council A was both seeking decree to evict

and decree for repayment of debt. In short, a prevailing view seemed to be that decrees could be deferred provided tenants maintained repayment instalments agreed by the court. By way of digression, it is also interesting to note one senior officer's comments in terms of time allocated to each case by the court:

> "One Friday he (the sheriff) must have spent about 5 or 10 minutes on each case...wanting (to know) every aspect of the tenant's situation."

In explaining this point the officer confirmed that this sheriff was delving into personal circumstances to assess the reasonableness of granting eviction decrees in the case of households in rent arrears. This lends support to the theoretical appraisal of the role of the judiciary carried out in Chapter 2.

But by afternoon:

> "Eventually he gave up and decided asking only payments, when was the last payment made, how much was the sum sued, how much was owed now, and we got our decrees. But this is an exceptional thing to happen."

The second issue identified as a concern is the tendency on occasion to lump debt together, thus prejudicing the legality of court actions raised. As one senior officer noted:

> "We aren't always able to distinguish housing benefit overpayments from other Rent Account adjustments... it could be large amounts (ie housing benefit overpayments) slipping through."

In Case 42, for instance, court action is raised where debt totals £850. Yet most of this sum is attributable to overpayment of housing benefit which should not be counted as arrears of rent.[322] As McIntosh (1995) notes, although the landlord is entitled to recovery of

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[322] To quote the file "She was advised that she owed rent of £786.38 to the end of cycle 10 after an O/P of H/B of £642.26 at cycle 9" (Case 42, Arrears File Statement by housing officer).

overpayment through court proceedings for payment of money[323], the landlord cannot raise an action for eviction based on overpayment of housing benefit. This applies because the grant of benefit extinguishes liability for any rent element covered by benefit; and the council cannot lawfully regard the tenant as being in arrears for an extinguished liability to pay rent.

With respect to current arrears practice that may conflict with good practice, one issue identified as being potentially detrimental to tenants' rights concerns that of actions taken to prevent debt accruing. For example, legal actions appear to be initiated on occasion prior to full assessment of income and entitlement to benefit being established. Thus, in Case 33, the housing officer states in correspondence of January 1999:

> "Mrs M... interviewed regarding decree call letter. HB Form completed. Income Details supplied".

Again, it seems that tenants are often requested to adhere to unreasonable repayment requests, particularly where lump sums are being requested to stave off eviction actions. Yet the effect of such arrangements can propel tenants into greater levels of debt where money is borrowed at high rates of interest and, as a result of such debt, jeopardise their ability in future to sustain their tenancy. In Case 25, for instance, the tenant has been asked to pay £400 within 5 days despite the fact that the tenant is unemployed and likely to qualify for benefit.

ii) Anti-Social Behaviour Practice

Nineteen cases were assessed representing the majority of 'anti-social' behaviour cases dealt with by the two area housing offices in the relevant period. These cases cover the period 1998/1999 with twelve of the nineteen cases arising only in 1999 and constituting at

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[323] The Social Security Administration Act 1992 and Part XIII of the Housing Benefit (General) Regulations 1987, SI 1971, Regulations 102 and 105.

least 80% of outstanding cases. Prior to assessing Council A practice in the light of legal requirements, the following general points are noted. Firstly, the main problem reported concerns complaints abut noise levels; these complaints comprise fifteen cases (or 78% of all cases).[324]

Secondly, household composition details appear to be recorded in different locations and are not readily accessible from the tenancy files. Consequently household data is omitted from the examination.

Thirdly, and in line with good practice, Council A staff implement an inter-agency strategy for tackling incidents of anti-social behaviour and contact a range of agencies to resolve problems (eg social work, police, other council departments etc).

Examination of anti-social cases reveals that legal requirements are largely being met in practice, with court actions not being raised without having regard to the criteria of reasonableness, although occasionally NOP's may be issued as a deterrent. Thus, in Case 16, Council A's lawyer advises a housing manager:

> "... it may be that it would be worth serving a notice of proceedings even if at the end of the day the behaviour complained of is not severe enough for us to be successful in an eviction action. The mere fact that the notice has been served might have some effect."[325]

Indeed, statistics show that, prior to raising NOP's that are issued by council lawyers, a full range of management preventative actions are first attempted, including correspondence, home visits, inter-agency liaison and utilisation of specialist organisations, for example an

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[324] The other complaints noted include violence (1), access rights (1), neighbour disputes (1) and relatives (1). Some of the Cases, of course, involve more than one complaint eg Cases 6, 7 & 13.

[325] Council A Internal Memo 17/2/99.

investigating agency.[326]

Yet one element of practice that fails to comply with good practice guidelines, albeit that it is not unlawful, relates to the dearth and quality of advice provided by housing staff to tenants vis-à-vis their rights. Examination of the files highlights, for example, that tenants who are victims of anti-social behaviour are not generally advised of possible remedies they themselves might take, eg interdicts, or in the case of relationship breakdown, the possibility of seeking redress under the Matrimonial Homes (Family Protection) (Scotland) Act 1981. Nor for that matter does Council A advise of its powers to resolve such cases via housing legislation, for example, its power to seek recovery of possession and re-house the tenant thereby evicted.[327] And, with reference to quality of advice offered, information provided on file appears often to be misleading or legally inaccurate. In Case 2, for instance, a tenant who has allegedly dumped waste is warned:

> "We will take steps to prosecute the perpetrators under Environmental Health Regulations. This will affect your tenancy".

It is not clear, however, how this could, per se, adversely affect the person's secure tenancy status on the basis of legal action under environment law, for example, service of an abatement order to deal with a statutory nuisance.

Summary

Evaluation of rights implementation within Council A has revealed a number of concerns in respect of each of the individual rights under consideration. With regard to access to files,

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[326] It should also be noted that limited use of other remedies is evident in actions taken. In none of the nineteen cases, for instance, were actions raised involving interdict or implement; while the use of ASBO's was only just being considered, doubtless due to the recent introduction of ASBO's as a legal remedy. The Crime and Disorder Act 1998, s23, introduced ASBO's from 1/4/99. Circular 3/1999 provides detailed guidance. See Moore (2000) and Corbett (2001) for details of implementation.

[327] The Housing (Scotland) Act 1987, schedule 3, ground 16.

for instance, albeit that practice per se is not unlawful, the absence of any formal system for processing requests, coupled with dearth of publicity and lack of staff training, pose major barriers to effective rights take-up. And, with reference to homelessness procedures, examination of file data suggests practices that are both unlawful and inconsistent with good practice recommended by the Code of Guidance on which Council A Policy is allegedly based. Both deficiencies are of grave concern in view of their potential consequences for people's lives. Compliance with statutory requirements has, prima facie, occurred in respect of establishing a system that encapsulates the right-to-repair procedures. Yet detailed scrutiny of existing practice suggests that tenants are being misinformed about the effects of the right in repairs documentation, thereby exerting a negative impact on their ability to exercise their rights properly. This is especially important given Council A's failure to pay compensation automatically when statutory timescales for completion of repairs are not met. Finally, assessment of practice concerning security of tenure and recovery of possession indicates that current practice in respect of arrears actions may be contrary to law in a number of ways, particularly the practice of holding eviction decrees in force for lengthy periods after the date specified in the extract decree. And, albeit Council A is reluctant to enforce such decrees, their eventual implementation in specific cases represents a negative impact on tenants' rights in practice. With regard to court actions involving anti-social behaviour, on the other hand, current practice conforms essentially with legal requirements and good practice guidelines, although lack of advice by staff to tenants may on occasion be detrimental to rights implementation.

Other Factors in Rights Implementation

The systems theory model applied in this thesis to understand issues concerning rights

implementation entails that organisational strategy must synthesise a variety of elements if objectives are to be achieved. Failure to incorporate legal rights information into policy documentation in part explains performance deficiencies assessed in the previous sections. Yet, in accordance with systems theory, other elements must be considered if the implementation gap is to be explained.

This section of Chapter 3 now evaluates these factors identified from both interviewee responses and evaluation of council practices. The factors identified for detailed review are assessed under the following headings, albeit it is stressed that much overlap occurs: workload and methods of work; performance management; communications; and personnel matters. Prior to carrying out this assessment, though, it is important to bear in mind the following points.

Firstly, although most staff responses were provided openly and without hesitation, a minority of senior staff interviewed tended to answer rather guardedly.[328] Questions posed during the actual interviews, then, required to probe to tease out particular points. Appendix 2 contains the four main "topic guides" used.

Secondly, in order to gauge tenants' perspectives on rights implementation, a total of four tenants were interviewed, two from each of the councils under review. A summary of their views is provided in the final section of Chapter 4 under the heading 'Rights-Bearers Capacity to Enforce their Rights'.

a) *Workload And Methods of Work*

Previous research has suggested that staff workload in the field of housing management is extremely onerous (Lipski (1980); Legg et al (1981)). Yet research studies have also suggested that there is no simple correlation between workload and effective rights

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[328] This was aggravated by the fact that interviewees were taped and subsequently transcribed. Only one interviewee, however, refused to participate in the taping process, preferring simply to have answers recorded manually.

implementation. Indeed, as Loveland (1995) highlights in his major study implementation of homelessness law :

> "For officers in all three councils, the most problematic consequence of growing caseloads was a more general deterioration in the pleasantness of the work task" (p138).

A further issue identified in the literature review is that organisational structures of local authorities have dramatically changed since the 1970's when the typical housing department was "centralised and segmented into specialised divisions". (Warburton (1995) p181). Indeed, the majority of contemporary local authority organisational structures – Council A included – are based on a decentralised housing management approach with staff undertaking a range of tasks (ie genericism) rather than being specialist workers; decentralisation having also been accorded political support in many housing organisational cultures. As Clapham (1987) notes, decentralisation of service delivery has been a general trend in recent years,

> "...though the trend is strongest and most developed in public housing where it is being applied to both management and maintenance functions" (p150).

The objectives of decentralisation can be classified broadly under two headings, namely a) the managerial and b) the political. Clapham (1987) highlights that managerial objectives are concerned essentially with questions of effectiveness and efficiency of service delivery, for example, ensuring that services are provided as economically as possible. Political objectives, on the other hand, are diverse and "range from providing a 'friendlier' service to tenants to altering fundamentally the relationship between the local authority and residents" (Clapham (1987) p150). Such changes are aligned to broader Central Government strategic political objectives that envisage using "local government as a campaigning vehicle"

(Clapham (1987) p151).

Decentralisation of services, it should be noted, is often accompanied with a shift to generic as opposed to specialist officers. This is also advocated on grounds of efficiency. As Saunders (1993) emphasises "generic problems need generic solutions" (p7), in effect individual housing officers carrying out a variety of housing management activities to tackle problems holistically.

It is the purpose of this section, then, to evaluate the impact on rights implementation resulting from Council A's decentralised housing management service.[329] And this evaluation is now carried out by consideration of staff views concerning the effect of generic working practices upon service delivery. First, though, let us recap the theoretical pros and cons of the generic approach.

In his major theoretical study of generic housing working practices discussed in Chapter 2, Saunders (1993) highlights that generic working can result in improved service delivery, for instance, by enabling tenant queries to be dealt with by one officer. Yet the same author argues that generic working is likely to prove less effective where specific conditions remain unfavourable, for example, the management of patch sizes averaging over five hundred properties would generally represent an unfavourable work condition not conducive to generic working.[330] This latter point is itself subject to qualification, though, as the number of properties per se cannot determine management workload requirements. In the better quality housing estates of the late 1970's, for instance, large parts of which have now been sold, officers *could* manage larger housing stock levels given the socio-economic composition of tenant households and the fact that good estates had fewer management

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[329] With the exception of the maintenance function that remains a specialism in Council A.

[330] As advised by managerial staff, officers in Council A (and Council B) tended to manage patches in excess of five hundred properties, and occasionally more than a thousand. In certain difficult-to-let areas numbers occasionally a little below five hundred properties per patch.

problems, ie lower re-let rates, less repairs etc.

In deciding to structure services generically, Council A did not carry out a prior assessment as to how effective the generic approach might be in practice, in particular how this might impact on service delivery from a rights perspective. And staff opinions are somewhat mixed as regards the pros and cons of genericism. In support of specialist services issues, for instance, one senior officer argues:

> "I think homelessness is and should be a specialist role. I don't think a housing officer dealing with rent arrears and allocations and other fields should be dealing with homelessness as well."

Again, in this case a senior officer advocating preference for specialist services in respect of arrears control:

> "I think specialist staff dealing solely with arrears would perhaps be better because I think that the more you get involved with something the better you get at it. But I think in the current economic climate it would be very, very difficult within this authority for that to happen."

On the other hand, several individuals at area housing office level expressed the alternative view that the generic working method should remain the preferred form, that it is befitting of the "customer care" philosophy that underpins corporate council strategy. This perspective was supported by housing officers, for instance, in those situations where homelessness workload is less severe, that is, in specific geographical areas where few applications are received and/or where void or re-let levels remain sufficiently high to allow the swift rehousing of applicants. Indeed, this perspective echoes the theoretical criticism of the generic versus specialist debate in Chapter 2, namely that neither genericism nor specialism are ideal forms, that either approach is feasible dependent on a range of other

factors in addition to workload, such as staff ability, training provision, policy and procedural development and well-established IT systems.

Staff opinions on the severity of workload were unanimous, however, particularly problematic it would appear because of the developing Council A performance management culture discussed below. As one of the maintenance staff comments, for instance:

> "Workload is horrendous, it really is... I don't think we do the job right . Simple as that".

Again, and in respect of homelessness cases, a senior officer points out that homelessness cases have:

> "gone through the roof and people are not investigating cases properly", a point that was of course verified as part of the analysis of case files.[331]

b) Performance Management

Research has confirmed the major growth of performance management measures in respect of housing management (Boyne (1998); Jacobs and Manzi (2000)); this research has also indicated the inadequacy of current performance management systems (Lipski (1980)), as well as suggesting that these systems exert negative effects on service delivery (Harvey (1999)). This section now examines the effects of performance management systems upon administrative practice in Council A. Prior to carrying out this examination, though, Council A's performance management culture is briefly summarised.

Council A's performance management system aspires to fulfil the requirements of the local authority Best Value strategy. With regard to targets set within this strategy, these comply with statutory requirements and focus on quantitative as opposed to qualitative

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[331] The same officer also alludes, though, to the fact that occasionally lack of staff time appears to have worked in applicants' interests since staff may err on the side of caution and treat applicants as being statutorily homeless. This assertion has not been subject to empirical scrutiny, though, and therefore the occurrence of such practice cannot be quantified.

measures, for instance, the restriction of rent arrears debt to x% of the rental debit. In addition, Council A sets its own range of performance targets such as staff being required to answer correspondence in x number of days, or re-housing all statutory homeless applicants within three months. These indicators are intended to complement statutory targets and to take cognisance of corporate goals, for example, the provision of quality services to 'customers'. It should be noted that indicators are not prioritised relative to each other, whether statutory or non-statutory.

And, in considering interviewee feedback concerning such indicators, three principal concerns were raised.[332] The first concern is that compilation of statistical returns for monitoring purposes increases staff workload and diverts staff from carrying out service functions, for instance, estate management activities. The second concern is that subsequent analysis by management of statistical returns can lead to service provision becoming reactive in nature and delivered without adherence to clear prioritisation of duties. As one senior officer complains:

> "Staff are given hassle over the arrears figures, (then) their void levels, then told to concentrate on homelessness".

The final concern is that staff workload is slanted towards meeting those specific targets set at the expense of other housing duties not subject to monitoring.[333] One officer responded candidly, for instance, that repair returns are routinely falsified to meet targets and that managerial staff actively collude in this dissimulation process.[334]

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[332] All staff interviewed were aware of Council A's indicators, although the majority were unaware of their source ie Accounts Commission. Again, few staff had heard of the Chartered Institute of Housing performance standards.

[333] This point is tacitly acknowledged by an extremely senior officer who states: " I think one of the dangers with performance indicators is that you have to be focused and if you have too many, you really can't see the wood for the trees."

[334] An interesting aside by a senior officer at an informal meeting was especially revealing in referring to the quarterly statistical housing returns. He quipped: " the figures are garbage".

Turning now to assess these issues in terms of relevance to the rights implementation question, the following points are made. Firstly, it would appear from staff feedback that organisational problems do indeed exist within Council A, in particular lack of management support to address the issue of the heavy workload currently facing staff.[335] But failure to carry out duties as thoroughly or effectively as desired because of workload, although conflicting with good housing management practice guidance, is not synonymous with non-implementation of rights. In the case of access-to files and the right-to-repair scheme, for instance, non-implementation of legal rights has little, if any, connection with workload issues. In the case of homelessness, on the other hand, workload factors have been seen to play a negative role exemplified in those situations where applications are not assessed properly because of work pressures. Yet even this assumption has been countered by the suggestion that lack of time to assess applications thoroughly may actually benefit homeless applicants where staff consciously err on the side of caution.

Secondly, given that workload pressures are not sufficient to explain the deficiencies vis-à-vis rights implementation highlighted earlier in this Chapter, it is important to consider another set of factors that may clarify matters. To these issues the rest of Chapter 3 now turns.

c) *Communications*

Chapter 2 highlighted the importance of communication for effective rights implementation and, as Bean and Hussey (2000) emphasise, organisations "should have clear mechanisms in place for formal communication" (p12), formal communication comprising a number of elements such as implementation of detailed policies and procedures, training programmes, staff appraisal systems, the dissemination of newsletters or briefing notes and

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[335] Given that no system currently exists for monitoring workload, findings must remain largely conjectural.

holding regular meetings. Further, communication systems are increasingly vital in times of organisational flux if staff motivation and commitment to organisational aims (including rights) is to be sustained (Bean and Hussey (2000)).

Prior to assessing Council A communication systems both internally and externally, it is wise to note issues of a conceptual nature. Broadly speaking, organisational systems within local authorities involve three main groups that Mintzberg (1973) has labelled as comprising superiors, outsiders and subordinates. It should be noted, of course, that superiors may themselves be subordinates within the hierarchical echelons. And theoretical studies have revealed interesting trends as background information to the pending evaluation of Council A practices. Mintzberg (1973) points out, for instance, that contact between superior and subordinate tends to be infrequent; whereas Stewart (1985) highlights the fact that communications in British organisations are often inadequate due to communication barriers such as managerial failure to anticipate that subordinates may interpret information received in different ways.[336] Further, to be effective communication systems must ensure a two-way process, that is, feedback from those affected by the information communicated must be secured to gauge whether information disseminated has been implemented properly. Finally, communication must befit the organisational culture. As Handy (1993) notes, for example, cultures that are subject to regular change cannot rely solely on hierarchical dissemination of information systems based on 'a management by memo' approach. In situations of organisational flux, fluidity of information networks, ie the use of both formal and informal 'nets', is critical and, as Dutfield and Eling (1994) add: "... keep the linkages in the communication as few as possible. The greater the number of people in the chain the greater the chance of distortion" (p91).

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[336] As Stewart (1985) adds, such interpretative differences arise for a number of reasons, including people's different societal and professional backgrounds as well as experience.

i) Internal Communications

Internal communications systems within Council A comprise an array of formal mechanisms, including team briefings, staff newsletters, as well as informal methods such as staff meetings. In addition, an annual staff conference is in place that seeks to ensure staff feedback is obtained on departmental services and their effectiveness.[337] Prima facie, then, systems appear to meet Handy's criterion of using "more than one communications net", nets comprising hierarchical, expert, status and friendship groups (Handy (1985) p359).

Yet detailed scrutiny of existing practice is indicative of specific problems in respect of communications practice confirming concerns raised in the literature review about current standards of communication within local authorities. Information gleaned via the annual staff conference in 1999, for example, portrays high levels of staff dissatisfaction with existing communications, with 68% of staff of the opinion that senior management is not committed to effective staff communications. Again, the occurrence of team briefings appears to have ceased as a result of managerial workloads, this important 'net' of information sharing having been reduced to nothing more than a sham. Finally it appears that an upward:downward system of communication has broken down in practice, a primary factor being the failure by middle-management to inform senior management of problem issues, the former fearful of the latter's reaction. To quote one officer:

> "Communication from the bottom rung is not carried forward to senior management. It is distorted by middle management as to what higher management want to hear. Therefore, higher management is not being informed of the problems at lower levels."

And, with specific regard to the communication of legal rights information to staff within

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[337] The important issue of training is covered separately in the next section.

Council A, it is stressed that there is no clear procedural communication system in place for ensuring that important legal changes are notified to staff (e.g. legislative changes introduced by the Crime and Disorder Act 1998), nor is important case law automatically notified to staff. Indeed, reference by one senior officer to the supposed dissemination of legal information by staff briefing notes has been shown to be less than satisfactory. According to this officer, for instance, a detailed briefing note covering access to files regulations had been circulated to all area housing office staff. Yet none of the interviewees was aware of such a briefing note, a clear signal that existing communication strategy is flawed.[338]

Finally, communication is essential in organisations undergoing change, and thus is extremely important in respect of local authorities such as Council A in the throes of restructuring. Staff comments on change are vital to enable managers to "gauge the operational feasibility of their proposals" (Bichard (1994) p271). Yet again, though, current practices in Council A appear to be at odds with this position, a point confirmed by interviewees insofar as the development of policies tended to be carried out using hierarchical methods, that is, little consultation with staff occurred prior to the implementation of mainstream housing policies. Of particular note here is the fact that training on those policies did not focus on legal rights issues.

ii) External Communications

Communications to tenants and the general public assumes a variety of guises including leaflets, newsletters and Council A's tenancy agreement that is provided to all new tenants. Tenants are also notified of specific rights information such as the right-to-repair scheme in the tenancy agreement (albeit not wholly accurate), or the right to possible entitlement to compensation for improvement in Council A's termination of tenancy letter. In addition,

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[338] Interesting also is the fact that although staff are aware of policy and procedural manuals, they are generally unaware of the existence of policy and procedural manuals outwith their area of work.

although there is no tenant handbook yet developed, new tenants receive a copy of an Information Pack that contains limited information about service delivery, for instance, it alludes briefly to the right-to-repair scheme and also the timescales within which the various repair categories are to be completed.

Despite the above, however, information to tenants on the four rights under investigation remains minimal. There is no publicity on the right to access personal files, for instance, and homelessness services are not advertised broadly notwithstanding the alleged commitment by Council A to base their homelessness services on the Code of Guidance that stresses the importance of publicity. As advised by one senior officer, for example, leaflets are not available for applicants (young people excepted), the principal publicity comprising posters:

> "that should be on the area offices advising people who are homeless to seek our help".

In addition, such posters had been sent to CABx and social work offices, but it was not known to what extent they were publicly visible. Again, information provided on repairs fails to cover the landlord's statutory obligations in detail and omits any reference to the tenant's common law right to withhold rent in situations where landlords unreasonably fail to meet repairing obligations. Finally, none of the mainstream policies with the exception of allocations are publicised for public consumption. Tenants, therefore, are not provided with detailed information on their rights regarding security of tenure. As one senior officer interviewed as to whether council policies on eviction are publicised replied: "I don't think there is any publicity on that."[339] In consequence, Council A practice falls far short of Goodlad and Williams' (1994) vision when they note:

> "... advice and information can be seen as a right or entitlement which none should

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[339] The fact that mainstream policies were in place shortly after the inception of Council A (allocations excepted) suggests that lack of external documentation is indicative of lack of planning, or inadequacy of resources allocated to the production of external documentation.

be barred from receiving on the grounds of low income, location, tenure or need" (p30).

It may be countered at this point that provision of rights information through leaflets or handbooks has less significance from a rights perspective since rights information is included in Council A's tenancy agreement. Again, though, it is necessary to consider this objection in context. Two points will suffice to clarify matters. The first point is that – and as highlighted when Council A documentation was discussed – the Council A tenancy agreement omits relevant rights information so that, in the absence of this information being supplied elsewhere, tenants are likely to remain ignorant of their rights.

The second point is that tenants are not advised of their rights in detail by housing staff when tenants sign their tenancy agreement. This point is also significant insofar as the Council A document contains much legalese and is not readily accessible to tenants unaware of such terminology.

d) *Personnel Matters*

The major general housing management studies discussed in Chapter 2 have stressed that the provision of staff training and education is of fundamental importance for effective housing management service delivery, including carrying out administrative practice in line with legal requirements (Clarke (1981); Saunders (1993); Reid et al (2000)). Yet research studies have also confirmed that training provision for housing staff has – from a historical perspective – been extremely limited in the local authority housing sector (Darke and Darke (1979); Kay et al (1986); Centre for Housing Research (1989)). Indeed, Loveland (1995) emphasises that housing management legal training is grossly inadequate, a defect that arises partly from housing management being subject to "the proletarianization process (that) has long been visible in Britain's public sector" (p23).

More recently, however, research has suggested that "there appears to have been a growth in on-the-job training" (Cairncross et al (1997) p60), as well as "a great expansion in graduate and postgraduate and other (housing) vocational courses (Bayley (1997) p49). And such developments are important for two reasons. Firstly, as Buchanan and Huczynski (1997) point out, training programmes are important to bolster cultural organisational goals, such programmes signalling "visibly which goals (staff) should be striving for and how" (p528). Secondly, and as emphasised in Chapter 2, training is vital from a rights implementation perspective since untrained staff will lack the legal knowledge necessary to deliver services in accordance with legal principles.

It is important, therefore, to analyse training provision within Council A to evaluate how this might impact upon service delivery. It is also stressed that this evaluation will consider training provision, both quantitatively and qualitatively, thereby addressing in part a defect associated with the major research studies that have tended to focus mainly on levels of training provision.

e) Staff Training[340]

Prior to assessing training provision within Council A, information is given in terms of policy commitment to training and procedural arrangements within Council A concerning training delivery.

Policy Commitment

Policy commitment to training is integral to Council A. In the successful "Charter Mark" application in 1998, for example, it is stated that:

> "Staff receive training to enhance their customer service skills and attention is focused on the importance of putting customers first" (Council A Charter Mark

[340] This examination includes the assessment of the priority given to formal educational training programmes.

application (1998)).

Again, the housing department training plan states categorically that, through training and development programmes, Council A:

> "aims to ensure that staff are fully equipped with the skills and knowledge they need to carry out their responsibilities" (Council A Training Plan 1999/2000).

In this connection Council A has espoused its commitment to achieving Investors in People status.

Procedural Arrangements

With respect to procedural arrangements for carrying out training within Council A, a specialist training manager is in post who is responsible for the co-ordination of all departmental training, including both internal and external training courses, i.e. further education. In terms of provision of training, Council A strategy utilises a range of methods involving a) in-house providers such as senior managers (e.g. in respect of training for policy implementation), b) specialist staff (e.g. legal staff involved in training for homelessness or information technology staff for computer packages) and (occasionally) c) external agencies such as the Chartered Institute of Housing (e.g. running specialist training such as "Conducting a Homeless Interview"), as well as developing training via Legal Services Agency (e.g. "Tackling Eviction").

Turning to the assessment of training provision within Council A, this is carried out by reference to the following points: extent of training; quality of training; financial commitment to training; and general factors. This will then be followed by an evaluation of staff knowledge concerning both Council A policies and the legal rights under review.

i) Extent of Training

This section evaluates the levels of training provided by Council A in respect of external

and internal training. Statistical data is first highlighted prior to noting specific concerns gleaned from staff feedback.

External training comprises two main methods, namely attendance at seminars and participation in further educational course programmes. The former involves a large number of external courses that are attended by both senior and non-senior staff numbers. For 1998/99 the number of staff attending such courses was approximately ninety (Council A Training Plan 1999/2000).

Sponsorship of staff on further educational training courses is also integral to Council A training strategy and a total of thirty four staff were undertaking formal housing studies during financial year 1998/99[341]; while a further ten staff were participating in the modern apprenticeship vocational qualification scheme. Unfortunately, though, Council A does not yet hold data on total numbers of staff possessing housing qualifications. It is, therefore, not possible to affirm either a) levels of qualified staff within Council A or b) how these might compare to national trends.[342]

Council A's training plan also contains details of internal training provision.[343] Scrutiny of information provided indicates two principal concerns: firstly, there is no mention of time allocated to policy and procedural training, nor how many staff have received such training. Secondly, with the exception of a two day course concerning 'Conducting a Homeless Interview' involving thirty two staff, no other rights training seems to have been delivered.[344]

Interviews with staff on levels of training provided by Council A, however, assist,

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[341] Twenty –five of this number were undertaking studies at HNC level and the other nine constitute Diploma level students.

[342] Consideration of the data available concerning qualifications of staff by area housing office staff indicates, though, that most staff do not hold a housing qualification. Of the ten staff members interviewed, for instance, only two officers hold housing qualifications at HNC (or above), although three other staff members are studying for housing qualifications (two at HNC and one at Diploma level).

[343] Training is categorised under four main headings; corporate, core (i.e. policies and procedures); IT: and other (i.e. specialist).

[344] Training by a specialist organisation on security of tenure issues was, however, planned by the Council to take place in 2000 for a select number of supervisory staff.

though, in clarifying matters. With respect to access to files, for instance, all interviewees confirmed that no training had been received. Again, regarding legal training on repairs issues, maintenance staff advised that no formal training had been provided, indeed as one maintenance officer responded:

> "Basically when I started I felt as if I was dropped in at the deep end."[345]

Regarding training that was provided, on the other hand, three main concerns were stated by interviewees. The first concern was that training on Council A's policies and procedures was inadequate in terms of levels provided. The second concern was that training focuses on work processes rather than theoretical or conceptual principles, i.e. legal and good practice principles, a defect that is critical in explaining why work practices often fail to conform with statutory provisions. One senior officer noted in respect of lack of knowledge concerning homelessness, for example, the following concern:

> "I've written numerous times to (HQ) saying we need this... we are crying out for this". And later: "We're frightened of making a serious mistake with something".

The third concern is that training provided fails to take account of the systemic nature of housing functions and, consequently, specialist staff such as maintenance officers receive no training in areas of work perceived by supervisory staff as lying outwith their particular remit. Thus, for example, maintenance officers receive no training on mainstream housing policies, nor indeed do they receive any training on the council's tenancy agreement despite its important legal status as defining the contractual relationship between Council A and the tenants, in particular the landlord's repair obligations of which maintenance officers were essentially ignorant. Again, maintenance officers receive no training on other council policies such as arrears where repairs and rental issues may be closely linked from a rights

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[345] Lack of training in this instance is clearly reflected by the officer's response to a query concerning right-to-repair when it was replied: "If we fail to respond to a repair, I don't know of any right to compensation as yet."

perspective, for instance, the common law right of tenants to withhold rent in the event of the landlord failing to fulfil relevant repair obligations. This modularisation of training is exacerbated, of course, by lack of organisational commitment to the provision of regular ongoing training, a management perspective based apparently on the premise that training needs are met as a result of one-off training that is not repeated.

ii) Quality of Training

In addition to the inadequate levels of training provided, the effectiveness of that training was itself challenged in respect of its qualitative aspects, particularly the current method of using non-specialist training personnel to provide in-house training.[346] In response to the quality of in-house training provided in respect of policies and procedures, for instance, one officer dismissed it rather curtly as being "not very good".[347] Indeed, two of the primary disadvantages of on-the-job training noted by Farrant et al (1994), namely that internal trainers lack the required skill and that on-the-job training is kept free from interruptions, appear to be a feature of Council A training. The staff conference report (1999) notes, for example, that 61% of staff who completed the questionnaire do not believe they have been trained adequately to meet operational changes, as well as being critical of on-the-job training that is carried out "with constant interruptions".[348]

Yet criticism of training provision is not restricted to the province of staff at grassroots level. One senior officer acknowledged, for example, the inadequate time spent on training; while another senior officer was critical of on-the-job training carried out by unqualified

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[346] That is, housing professionals also competent in providing training and with the specialist remit to develop and organise training delivery.

[347] Another officer interestingly cited the case of tenants having more information than staff about issues arising from the Crime and Disorder Act 1998. This resulted in staff feeling embarrassed about not being able to answer queries because of lack of relevant information and the fact that no training had been provided.

[348] A total of three hundred and ninety nine housing staff completed the staff questionnaire; this represents just over 50% of all Council A housing employees.

personnel who were not well versed in both knowledge (of the law) and training competencies.[349] In addition, the same officer points out that staff:

> "spend a lot of time on training courses that are not relevant in any way to their daily workload... I think what we should do more is ask the staff what they need training on".[350]

Prior to assessing financial commitment to training within Council A, one interesting perspective as to why training provision is limited both quantitatively and qualitatively is that espoused by one of Council A's housing officers. In response to a query as to why little time has apparently been spent on specific legal rights training, this officer replied that:

> "training is mostly centred around either interpersonal or technological factors rather than theory (i.e. *legal* matters)... to save wasting money on the production-line operators that we are".

Questioned further, the officer opined that senior management want staff to have minimal knowledge sufficient only to give them the capability of carrying out basic administrative processes. This point is indeed redolent of Loveland's comments in Chapter 2 concerning the proletarianisation of the housing 'profession'. Indeed, it supports the general findings of the literature review that training for housing staff is extremely limited.

iii) <u>Financial Commitment</u>

As Farrant et al (1994) note, budgetary levels of training expenditure are attributable more to "historical levels of spending on training and the negotiating of training officers than it does to a carefully thought through policy decision" (p9). Although no fixed budgetary figure is agreed, research shows that percentages of salary costs that are set aside for

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[349] As noted by the latter, the "on-the-job" training option is a cheaper option, a strategy that is adopted to reduce financial costs to the organisation.

[350] A process that is apparently being addressed by Council A's planned development of an employee review process that links core job competencies to job descriptions/profiles that will determine subsequent training.

training range from 1% to 5% (LGTB (1990). With reference to Council A, the training plan reveals that budgetary provision is just under £85,000 for the housing department, a figure that includes all external and internal training provision.[351] As highlighted by one senior officer, this represents less than the above recommended percentage levels and equates roughly to £125 per staff member per annum. Prima facie, then, financial commitment to training by Council A falls below desired levels, although current budgetary allocation may be less problematic given a) the focus on internal as opposed to external training, and b) the fact that the current budget sum does not take into account salary costs associated with the provision of training by in-house personnel.

iv) General Factors

The previous sections have shown that training provision in Council A can be criticised on both quantitative and qualitative grounds. Council A training strategy is also open to criticism on theoretical grounds. This point is now clarified by reference to the training cycle model that was noted in Chapter 2 (p 143).

In accordance with this model the concept "training" encapsulates a number of key elements as follows: assessment of training needs; development of appropriate training; provision of training; validation and evaluation. And this model is extremely important from a rights perspective since failure to incorporate these elements into organisational training strategy will entail a) that housing staff training needs are not properly met and b) no systems are in place to evaluate whether training objectives have been realised. Each point is now explained in turn.

In the context of this thesis, assessment of staff training needs requires that staff be

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[351] The exact figure is withheld to preserve anonymity. Interestingly, though, the 1998/99 training plan refers to days spent by staff at training as a 'cost' rather than an investment, although this expression is deleted from the 1999/2000 training plan. This may reflect an internal reassessment of training provision, albeit discussions with one senior officer could not confirm this point.

equipped with knowledge to ensure that administrative service delivery conforms with legal requirements. Scrutiny of training practice within Council A, however, reveals that individual officers are simply instructed to attend ad hoc training events without the training needs of these officers being properly assessed, that is, the actual training required for officers to be competent in the full range of duties as determined by individual officers' job description. Where needs assessments are not undertaken in this systematic fashion, training is unlikely to equip officers with the requisite knowledge and skills to carry out their duties in a competent – and legally correct – manner. It is noted that this failure by senior management to implement the key elements of the training cycle is akin to their failure to implement organisational strategy and practice in a systemic manner. This finding is wholly consistent with the principles of systems theory that are applied in this study as the theoretical basis for understanding implementation issues.

Evaluation of the effects of training is critical if service delivery objectives are to be realised, for example, "to measure the impact of the (training) event on job performance, or on the profitability, performance, flexibility or survival of the organisation as a whole" (Harrison (1989) p271). Indeed, this perspective recognises that training is not self-justifying, that it "can be regarded as a point on a longer chain of intentions" (Pepper (1992) p71). In the case of local authorities, of course, this entails provision of training to enable staff to carry out administrative processes that satisfy legal requirements.

Yet analysis of Council A practice shows clearly that the effects of training upon service delivery are not monitored, including whether such training is ensuring service delivery complies with legal requirements. There are no systems in place to evaluate staff performance before and after training, for example, whether advice to homelessness applicants has improved as a result of training provided.

ii) Staff Knowledge

Staff were questioned about their knowledge of Council A policies and also their legal knowledge of the four rights under review.[352] Interviewees comprised ten area office housing staff and senior or specialist staff located elsewhere. Prior to summarising the results, two general points are mentioned. Firstly, it should be emphasised that there is no direct correlation between the data derived from interviews and rights inadequacies identified in the analysis of file documentation since this was completed mainly by other officers not interviewed. For example, four of the ten area office staff who were interviewed are senior staff not routinely involved in housing staff decisions. This point applies equally in the case of Council B.

Secondly, although legal knowledge is required by staff if they are to provide accurate information, it is not *sufficient* to ensure effective rights implementation. For example, as in the case of the right-to-repair scheme, knowledge cannot be applied by staff in the absence of a formal system, or where staff are reluctant to provide such information because of management perspectives. Further, greater levels of knowledge tend to exist at more senior organisational levels and, if such information is not communicated to grassroots level, this may inhibit rights implementation.

a) *Knowledge of Policies*

With respect to knowledge of Council A policies and procedures, staff were generally aware of the policies in existence that were directly relevant to their own areas of work, although awareness was limited regarding policies in respect of specialist issues such as the access to files right. For example, out of the ten area office interviewees, nine staff were uncertain whether an actual policy existed. But it should be noted that awareness of policies

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[352] Specialist staff such as maintenance officers, of course, were not questioned about legal issues such as homelessness which is wholly outwith their remit.

being in existence is not synonymous with knowledge of actual content. For example, all housing staff were aware that Council A's homelessness policy is purportedly based on the Code of Guidance. Yet detailed queries revealed ignorance by staff of the Code's provisions. In response to a query regarding whether or not the council can ignore the Code in decision-making, for instance, one officer replied: "I'm not sure"; while another officer - paradoxically perhaps insofar as this officer was aware of the requirement to consider the Code – believed that applicants fleeing domestic violence can be referred back to the local authority area in which the violence has occurred without consideration of risk.

And ignorance of policies has been highlighted by senior officers involved in monitoring, a defect that they attribute largely to workload pressures (hitherto discussed) and also to lack of training.[353] Referring to inconsistency of practice in homelessness, for example, the officer notes how recent training may lead staff to "do things by the book" but then after a period elapses:

> "...the staff has changed and maybe they've come from other offices and they've gone back into their old habits. They are screening people at the front counter."

Finally, and a factor that in part may explain the inadequate rights focus of policy documentation, the role of Council A lawyers in the development of policies is essentially advisory in nature. Lawyers do not have a proactive role, i.e. they participate in the policy development process at the request of senior housing managerial staff. With the exception of senior staff – and not surprising given the infrequent contact between grassroots housing staff and council lawyers – housing staff were not aware of the specific role of lawyers in the development of council policies and procedures, namely their advisory role in respect of policy documentation content concerning legal matters.

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[353] One senior officer heavily criticised in particular a senior management comment expressed at a meeting that "you can learn homelessness in half an hour", a comment that betrays ignorance of the complexities of this area of work.

b) *Knowledge of Rights*

i) Access to Files

The maintenance officers who hold a specialist remit had little or no knowledge of the legal provisions concerning the tenant's right to access personal manual files, a fact that is perhaps unsurprising given their specialist remit. Yet legal knowledge possessed by housing management staff, at both officer and managerial levels, was scant, particularly as regards details pertaining to this particular right, for example, there was marked ignorance of timescales for processing applications to access files or tenants' appeal rights. This situation, it should be emphasised, was frowned upon by interviewees who believed knowledge of the right was important irrespective of usage by tenants. To quote one officer:

> "...we're generic you know and if someone is asking you a question then you are expected to know it."[354]

It is also worth noting that none of the housing staff had been appraised of details of the new Data Protection Act 1998, for example, either individuals' rights of access or the main data protection principles themselves.[355] This is worth mentioning from a rights perspective for two reasons. Firstly, this is symptomatic of the inadequate internal communications in Council A that fail to promote dissemination of information about important legal matters. Secondly, staff ignorance is an important contributory factor to ineffective implementation of law.

ii) Homelessness

Council A housing officers carry out all mainstream housing management functions,

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[354] It was also stated by staff that tenants rarely make formal requests to access file information, a point confirmed by statistical data already noted and a point in no way surprising given the lack of publicity afforded to this right.

[355] The Data Protection Act 1998, s7 (1); and Schedule 1.

including homelessness. And initial discussion highlighted two positive points. Firstly, all of the housing officers seemed to be aware of the concept of the "four hurdles", with staff normally referring to these as the "four points" or the "four steps". Secondly, interviewees were generally aware of the existence of the Code of Guidance, although - as we have seen – detailed knowledge of this varied among staff.

Detailed questioning, though, indicated several concerns. For example, although staff were able to verbalise the key legal stages, their knowledge of specific legal provisions was often superficial. In respect of intentionality, for example, most staff were apparently unaware of the need to satisfy the three elements of intentionality before an intentionality decision could be taken. Again, in situations involving referral of applications considerations, some staff apparently believed that local connection could be taken into account even if someone was fleeing domestic violence. Lack of knowledge issues are discussed again shortly in the Case Study findings. It should be noted in passing that - although lack of knowledge is undoubtedly a factor in wrongful decision-taking - poor decisions stem from a range of factors, including inadequate time being spent on individual cases because of work pressures.

iii) Repairs

Interviewees appeared to have little knowledge of existing statutory repair obligations, although they possessed snippets of understanding, for example, having heard of terms such as "wind and watertight" and "right to repair". With respect to the housing officers interviewed, this is perhaps unsurprising given that repairs is not integral to their work duties. Of some concern, however, was the finding that this lack of knowledge extended to the two specialist maintenance officers interviewed, as well as their supervisory officers.[356]

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[356] The staff member most au fait with general legal repairs obligations – and the only one apparently aware of the legislative provisions under Schedule 10 – was the most senior staff member interviewed.

Examples of their dearth of knowledge included lack of awareness of sources of law, including ignorance of legal detail such as what constitutes "qualifying repair" under the statutory right-to-repair scheme, or the tenant's right to withhold rent. As one officer remarked:

> "If we fail to respond to a repair I don't know of any right to compensation as yet."

Clarification of staff ignorance was given by one senior officer. This officer confirmed that more training is required, although he affirmed that staff don't need to know the legal provisions regarding the right-to-repair scheme, simply that "qualifying repairs" are to be treated as emergencies that are targeted for completion within the statutory timescales. Yet such a perspective is clearly open to criticism from a rights perspective. Ignorance of legal provisions, for example, entails that staff will be unlikely to advise tenants of their legal rights such as right to compensation where repairs are not completed in accordance with the statutory timescales.[357]

iv) Security of Tenure

Interviewees tended to possess some awareness of legal requirements to establish relevant ground(s) for action and the need to show reasonableness if an eviction action was likely to succeed. Some understanding was shown also of other remedies available such as interdict and specific implement, although there was lack of detailed knowledge of their application in practice, indeed one staff member remarking that she thought a Notice of Proceedings had to be served "before any court action could be raised", for example, raising an action for specific implement.

It should also be noted that there was almost universal lack of knowledge about the changes to law introduced by the Crime and Disorder Act 1998. None of the interviewees

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[357] It is also worth noting that this senior officer appeared unaware of numerous legal provisions such as the legal amendments to Schedule 10 arising from the Housing (Scotland) Act 1988, the tenant's right to withhold rent, or the obligation to advise tenants annually in writing about the right-to-repair scheme.

was aware of the new legal definition of "anti-social behaviour", for instance, nor had they been familiarised with changes to the legal grounds for possession of secure tenancies under grounds 2 and 7. Similarly, although housing officers had heard of ASBO's, they had extremely limited knowledge of details concerning ASBO's, or their possible implications in terms of actions for recovery. Given that the changes to possession grounds serve to reduce tenants' rights, ignorance of the law by staff may, paradoxically, work in the interests of tenants. Ignorance of ASBO's, though, and of the Scottish Office Guidance to utilise these orders prior to taking eviction action could be detrimental to tenants' interests in situations where eviction is used by the landlord as the main remedy.

Another concern mooted by staff was that eviction decrees are held – and often used – for periods up to one year after the date specified in the extract decree issued by the sheriff court. Most staff were generally unaware of the illegality of this practice, though, undoubtedly confused by the terminology used and believing that eviction decrees granted allowing tenants to repay debt by instalment did not result in the secure tenancy being terminated.[358]

Case Study Findings

In addition to the interview proper, area office housing staff (twenty) were requested to complete specific case studies to assess their answers from a legal perspective. The case studies used are given in Appendix 3.[359] In assessing these case studies, the following general points are noted. Firstly, responses were gathered at the conclusion of individual

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[358] One senior officer freely divulged, though, that the issuing of NOP's, prior to raising action for decree, was carried out to give people a "wee bit of a fright". Staff were also generally unaware of the possibility of using small claims procedures to recover debt ie rent arrears as this was not incorporated into practice as a genuine option for recovery, the service of NOP's – indeed seeking eviction decrees- being used to obtain repayment agreements.

[359] One interviewee answered the case studies prior to interview but the opinion received to the effect that this seemed like an examination entailed that this did not recur to ensure good rapport between researcher and interviewee.

interviews that lasted a average of one hour. In view of limited time available, interviewees were requested to note the main legal issues arising, in their opinion, from the case study examples to gauge their overall understanding. Interviewees were not expected to provide legally "right answers" to the case studies.

Secondly, the findings summarise the main legal issues arising in respect of apparent staff knowledge of the four particular rights under review.

i) Access to Files

Interviewees confirmed that they knew very little about this particular right. This applied at both senior and housing officer levels. As one senior officer remarked:

> "This is done by support services. I do not know what information can be given out, or of any appeal rights or legal implications".

In addition, none of the staff had received any information on the implications of the Data Protection Act 1998.

ii) Homelessness

Referring to the case study in Appendix 3, the applicants appear to satisfy the first two 'Hurdles'. The applicants are homeless as there is no accommodation available for the family unit and a priority need exists because of dependent children. Intentionality is the next issue to consider in the statutory process.

In assessing whether the applicants are intentionally homeless, it is important to remember that local authorities must satisfy all three elements of the legal text. To recap: Was accommodation available? Was it reasonable for the applicants to continue to occupy this accommodation? Did the applicants deliberately do or fail to do anything as a result of which the applicants ceased to occupy the accommodation? It is also important to remember that where applicants give up settled accommodation or move to temporary

accommodation the "resulting homelessness will be intentional stemming from this deliberate act" (Robson and Poustie (1996) p181). Unless applicants make prior arrangements to secure settled accommodation before leaving available settled accommodation, then, they may be deemed to be intentionally homeless.[360] It should also be noted that tied accommodation may be settled accommodation, although this can be problematic insofar as it is linked to conditions of employment. Breach of contractual terms that result in accommodation being lost may constitute intentional homelessness.[361]

Given the limited time spent on completion of the case study, findings can be no more than conjectural. Consideration of the written interviewee responses suggests, though, that staff reasoning may diverge from legal principles (see below). It is emphasised, however, that this does not necessarily entail decisions are adverse to applicants' interests. In one case, for instance, the housing officer asks none of the intentionality questions. Instead, she argues simply that the applicants should be accepted for rehousing "because it would be unreasonable for the family to continue living apart". In the evaluation as to why staff responses may diverge from legal principles, it is important to note that, although an interview checklist does exist in Council A, examination of the case file applications reveals that this checklist is rarely completed. Reasons for this can only be conjectural but are likely to relate to issues already discussed, namely a) dearth of appropriate induction and b) lack of details (and regular) training programmes.

In what ways, then, does reasoning about intentionality diverge from law? In one instance a senior officer states that checks with the previous landlord would be initially carried out, in particular to affirm "whether the house in Sussex is available and whether or not it was reasonable for the family to return". Yet such checks would not be relevant if the

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[360] *De Falco v Crawly Borough Council* [1980] QB 460.
[361] *R v New Forest District Council ex p Barter* (30 June 1992 Unreported) QBD.

tied accommodation was settled, an issue not considered by this officer. Indeed, none of the officers considered investigating the nature of the contract to ascertain the status of the accommodation, that is, whether or not it was settled, although the need to assess reasons for dismissal featured in most responses. Finally, none of the interviewees considered all three elements of the legal test.

iii) Repairs

The case study covers the range of statutory and common law repair obligations examined earlier in this Chapter. In evaluating this case study only one senior officer could state accurately Council A's repair obligations under Schedule 10 and the statutory right-to-repair scheme. Of principal concern, though, was the apparent ignorance betrayed by the specialist maintenance officers in respect of the legal provisions. For example, neither of the two maintenance officers were aware of the tenant's right to compensation under the right-to-repair scheme, nor aware of the tenant's rights to seek damage for breach of contract in the event of landlord failure to comply with Schedule 10 requirements. In addition, neither officer was aware of the common law right to withhold rent.

iv) Security of Tenure

Two case studies were used that dealt with anti-social and arrears issues respectively. Interviewee responses of the eight housing offices suggested that knowledge levels were higher, although the level of knowledge was subject to variation depending on such factors as staff seniority or qualifications held by staff. For example, in addressing the anti-social behaviour, the following remedies were noted (number of staff in brackets): implement (4); interdict (5); ASBO (1); notice of proceedings (7).

None of the staff , on the other hand, examined the possibility of Council A using its powers to obtain a compulsory transfer under ground 16, or using other more specialist

legislation to resolve the particular problems, for instance, the provisions of the Matrimonial Homes (Family Protection) (Scotland) Act 1981. It should be noted, though, that one officer did refer to the Dangerous Dogs Act 1991 to address the 'dog problem'.

In considering the arrears case study, interviewees appeared to be aware of the need to satisfy both a) the ground and b) the reasonableness of the action in seeking an eviction decree. For instance, staff referred to the court's concern over factors such as vulnerability of children and family welfare, entitlement to benefit and whether the council had provided relevant advice. As one officer stressed:

> "The onus is on the council to prove that they are being reasonable."

Yet ignorance of legal provisions was also evident in their responses. All housing staff were of the opinion, for example, that taking court action under a variable summons to obtain an 'Instalment decree' was useful "to give tenants the opportunity to pay off the arrears balance, *whilst retaining their tenancy*." As highlighted earlier in this Chapter, staff were unaware that - if successful - the court action under the variable summons for eviction cum payment actually terminated the tenancy. It is also worth mention that none of the interviewees considered raising debt only actions to recover rent arrears, an option that could safeguard tenants' interests by preventing homelessness.

Having analysed Council A practice it is now apposite to refer to the issue raised in Chapter 2 concerning landlord avoidance techniques where it was highlighted that private sector landlord avoidance techniques have been varied and often deliberate. As argued, Council A organisational practice has not been developed in accordance with the principles of systems theory and, as a result, the core organisational values that imply commitment to rights implementation have failed to be transmitted into administrative practice. Failure to implement services holistically, however, is tantamount to neglect of rights implementation,

although such neglect is different in kind from conscious avoidance techniques used by private sector landlords to circumvent tenants' rights under the Rent Acts. It should be emphasised, of course, that this premise does not exclude the possibility of intention by individual managers to exclude relevant rights information from Council A documentation, for example, the exclusion of information concerning the right to repair scheme. In local authorities, then, ineffective rights implementation occurs, not through deliberate avoidance, but because of under-developed management strategy that neglects to deliver services systemically. This point again serves to consolidate Loveland's position that housing practice must be evaluated in context and – of particular importance from the perspective of rights implementation – from the context of "the (non)-professionalisation of housing administration" (Loveland (1995) p37).

Summary

Council A has implemented a fully decentralised organisational structure with housing staff carrying out their duties in a generic fashion. Interviews with staff suggests dissatisfaction with current levels of services provided, primarily as a result of heavy workload that has been exacerbated by the development in Council A of a performance management culture that requires staff to collate statistical data for organisational measurement purposes. But assessment of this issue from a rights perspective suggests that workload has little effect on rights implementation with the exception of homelessness where workload may prevent staff from carrying out sufficiently detailed inquiries.

Research has indicated, on the other hand, that effective implementation of rights in Council A has been affected by a variety of inter-connecting factors. Lack of management support and dearth of clear policy and procedural systems have been shown to be significant:

the absence of systems in the case of access-to-files, for instance, or the inadequacy of existing systems as in the right-to-repair scheme. But equally concerning from a rights perspective is the lack of information about legal rights that is provided to the public. Current Council A working practices have suggested deficiencies, too, notably in the area of homelessness, although deficiencies are less pronounced in security of tenure matters.

Lack of staff knowledge arising from inadequate training programmes appears to be a key element in ineffective rights implementation, although it is emphasised that levels of knowledge vary among individual staff members. Access to appropriate rights information may, therefore, hinge on accessing particular individuals within the organisation. Yet none of the aforementioned factors are by themselves sufficient to explain rights implementation. For effective rights implementation demands a systemic approach to management, an understanding that administrative processes can be successful only if strategic principles and objectives are applied coherently into practice. And analysis of Council A practice reveals a clear deficiency in the application of organisational systems theory.

Chapter 4: Legal Rights Implementation – Council B

"There is a commitment to staff development and improved performance through the Performance Development Programme and the Investors in People accreditation which is currently being sought."

(Accounts Commission Draft Report to Council B (2000))

(Regarding Management Style)

"It's based on fear rather than working together in partnership. Staff at lower levels are not valued at all (regarded as having) no contribution to make."

(Council B senior officer interviewee)

Introduction

This Chapter involves an assessment of the same range of legal rights issues as were evaluated in respect of Council A. This is done to enable a comparative assessment of the effectiveness of rights implementation in the two councils. As per the initial study, the Chapter comprises three key elements: the assessment of council documentation in respect of the four rights; the examination of Council B practice regarding these rights by scrutiny of file information and feedback from interviewees; and the identification of key factors affecting rights implementation.

Council B: A Profile

Council B was created as a result of Local Government re-organisation and involved the merger of a similar number of predecessor district councils as Council A. At this point Council B housing stock represented 35% of the total housing stock of which owner occupation was the dominant tenure form. As with Council A, the actual figure is omitted to ensure anonymity. With respect to the two area offices under review, one is primarily urban in nature, the other characterised by a mix of urban and rural settlements. The housing stock that is managed by the two offices comprises over eleven thousand, or over 25% of total Council B housing stock.[362] This stock is extremely varied by way of type and design, although flatted accommodation is the majority form.

The area offices have decentralised their housing management services with housing officers fulfilling a generic role save for rent arrears and maintenance functions that are dealt with by specialist staff. A total of twenty eight housing staff were interviewed. This represents c4% of all housing staff. A substantial proportion of senior officers were

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[362] Figures as at Local Government re-organisation. One of these offices divided into two offices as the research was nearing to its completion.

interviewed, as well as over 10% of area office housing staff in respect of the two area offices under review. The majority of area office staff interviewed were housing or maintenance officers, as opposed to senior officers. One Council B lawyer was also interviewed.

Organisational Culture

Organisational culture has been shown to be a potentially important influence on effective rights implementation. Yet if cultural values are to be achieved, every "organisation needs to understand its environment, its task, its workforce and its relationship with its users" (Flynn (1990) p151). In short, cultural values must be integrated through service management direction systemically throughout all organisational practices. Failure to do so, as Flynn aptly remarks, will create tension between senior management and housing officers, for instance, in those situations where "housing management offices are established as profit centres and are given targets relating to rent arrears, rather than providing help for tenants in difficulties" (Flynn (1990) p150).

With reference to Council B senior management support for a culture supportive of rights, this appears to be both explicit and implicit in council documentation. In one strategic document, for instance, Council B states that:

> "We will plan our services based on your needs and produce service development plans.... and we will improve your awareness of your rights and of the help which you can get from us to protect those rights."

Council B's Best Value strategy expresses commitment to making the council more responsive and accountable to its citizens. In another strategic document, Council B asserts that citizens should receive:

"detailed information about service standards, along with what can be expected from the council, and how services can be used, and redress if things go wrong."

Yet scrutiny of the corporate council strategy indicates that, albeit supportive of citizenship issues, the Best Value strategy that underpins all service activities does not *explicitly* provide for commitment to rights implementation. Indeed, far from focusing on rights issues, strategy concentrates heavily on fiscal and business objectives to ensure that council services are exercised efficiently and satisfy stringent audit requirements. This perspective, then, is wholly in accord with the developing NPM ethos discussed in Chapter 2 that permeates current Local Government service provision, as well as mirroring the Council A findings. Further, it highlights again the discrepancy that can occur between espoused organisational cultural values and actual practice that was discussed in Chapter 2 in the critique of ideal organisational typologies.

But it was during the fieldwork that senior interviewees alluded to other factors that - in their view - are influential in rights implementation, factors that stem primarily from senior staff motivations or personal characteristics. And, although further detailed research would be required to corroborate opinions aired, it is worth noting two specific factors, one personal the other organisational.

The personal factor that has been suggested as being detrimental to the development of policies in general and commitment to rights in particular is the lack of co-operation at senior management level. As one senior officer has remarked:

"I think there was a power struggle in (HQ)... they were playing games, point scoring off one another. There's no team spirit. They don't act as a team."

The principal reason cited in explanation concerns that of personal aggrandisement, professional motivations based on career advancement, as opposed to a focus on rights

development organisationally. To quote the same officer again:

> "I think it's down to personalities at senior management level having their own agendas. Wanting to be in control. … wanting to drive what is happening."

The organisational factor that has affected the development of a rights oriented culture can be partly attributed to the extensive changes that have occurred within Council B. The merging of four major councils at the point of Local Government re-structuring in 1996, for instance, was followed in 1997 by a further internal re-structuring that led to the amalgamation of the hitherto separate housing and technical services. This has been exacerbated by re-structuring at senior management levels that has resulted in the loss of key posts, for example, the removal of two senior officers from their policy-making role has arguably been detrimental to rights development.

In probing this matter senior staff were questioned further regarding a possible dichotomy existing between commitment to rights as implicit in corporate policy documentation and implementation of these rights. And the response of one officer in particular should be highlighted. In this officer's opinion, Council B documentation is essentially image-orientated, espousing strategic objectives and principles in glossy fashion while lacking substance.[363] To quote:

> "I have to say that we talk a damned good game. But we don't deliver on it. Underneath it's chaotic. For example, we say we get over 90% of our repairs done on time, but that's only the repairs that are processed".[364]

Yet failure to accord adequate support for rights at a senior level – albeit a primary causal factor in explaining deficiencies – is not a sufficient factor. Like the Council A study,

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[363] An external authority employee described Council B at a recent seminar as being the "cappuccino authority".

[364] An allusion to the process of not reporting on repairs outstanding that have been added to the council's cyclical repairs programme involving eg roofing works.

many factors are relevant. To these the thesis now turns.

Policies and Documentation[365]

In their major study concerning how effectively English councils manage their housing, Legg et al (1981) highlighted that:

> "... neither the tenancy agreement (or conditions of tenancy), nor even the 'internal' policy statements of housing departments define clearly enough the respective obligations of both landlord and tenant" (p51).

More recently, though, major Scottish research has suggested that information provided to tenants has improved. (Atkinson et al (2000); Scott et al (2001A)), although it should be reiterated that this research did not involve detailed analysis of all housing management policy documentation to ascertain if it was promotional of rights. The principal point to note, though, is that failure to integrate accurate legal rights information into policy documentation is likely to impact negatively on effective rights implementation because of staff ignorance resulting from such omission. Council B documentation is now assessed, then, to evaluate rights information concerning access to files, homelessness, rights of repair, and security of tenure. In carrying out this assessment reference will be made to the Model Mosta Tenancy Agreement that provides detailed coverage of tenants' rights to which Council B purportedly adheres. This commitment to the principles of Mosta was notified to housing staff at training seminars covering the introduction of the estate management policy and the Council B tenancy agreement in 1999. This comparison will, hopefully, shed light on Council B's commitment to rights implementation.

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[365] The preliminaries noted in respect of Council A policy development apply equally in the case of Council B.

a) *Access to Personal Files*

Information in relation to access to files is contained in a variety of Council B documents. At a corporate council level, for example, it is mentioned in the Employee's Code of Conduct.[366] And, with specific reference to housing documentation, the legal right is mentioned *sans détail* in the council's allocations policy where it is also noted succinctly:

> "Applicants wishing to exercise these rights should contact their local housing office to make appropriate arrangements".

Yet this last statement is misleading. For there is no formal Council B policy or procedure in place by which tenants might exercise their right.[367] Nor is any written information produced by way of leaflets or other publicity material to advise tenants of their right.[368] And consideration of Council B policy documentation highlights two further concerns. The first concern is that the right is not mentioned in any of the other main housing policies such as estate management, homelessness, or rent arrears. In view of the fact that such documentation is influential in providing staff with relevant knowledge of legal provisions, the omission of such information is likely to impact negatively on staff ability to advise tenants on their rights. Again, omitting reference to legal rights entails that publicity materials made available to tenants concerning housing management policies will not generally incorporate any information about such rights.

The second concern is the omission within the Council B tenancy agreement of the Mosta contractual provisions concerning the access to files rights, an omission that occurs despite

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[366] Albeit that this is a passing reference only to the Access to Personal Files Act 1987.

[367] One of the predecessor councils covered in the study did have a formal system in place but this had not been adopted by Council A. It is also a matter of concern in that staff interviewed (and who were former employees) were not aware of this system.

[368] This does not apply in the case of social work which has produced leaflets for clients as per their rights of access.

Council B's professed adherence to the principles of this Agreement.[369] Nor should it be forgotten that such rights deletion is at variance with the Mosta repudiation of "cherry picking", a repudiation derived from the perspective that:

> "... omission of paragraphs in Mosta, except to deal with such local variations or to properly respond to the local consultation process, will only obscure the true legal position to the detriment of both landlord and tenant" (CIoH (1998) p6)..

b) *Homelessness*

Unlike Council A, Council B has developed a written homelessness policy. Prior to examination of this document to assess to what extent it incorporates rights issues, the development of this policy is first explained. Council B's homelessness policy was one of the earliest policies to be developed by the council, its principles derived primarily from one of the predecessor councils.[370] And the main reasons for early policy development were threefold, namely a) the existence of a chief officer, supported by a working party, specialising in homelessness, b) the well-developed predecessor council policy, and c) the acceptance of most elements of that policy by the chief officer. Following acceptance by Council B of this policy, the same officer then embarked on the development of an established and coherent set of homelessness procedures that would encompass legal and good practice guidelines, culminating in late 1998 with the production of a comprehensive and detailed set of homelessness procedures.[371] These procedures, though, have not yet been introduced for two reasons. Firstly, the priority afforded to the development and introduction of other council policies. Secondly, examination of the overall homelessness

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[369] Mosta, section 8, clause 8.2 (CIoH (1998)). Council A adherence to the principles of Mosta was notified to housing staff at training sessions surrounding the introduction of the new Council B tenancy agreement in 1999.

[370] The other major policy that developed early in the life of Council B was rent arrears.

[371] In order to overcome workload pressures facing the working party charged with this task, the assistance of another specialist senior officer and a research student on placement from Heriot Watt University was sought to bring the document to fruition.

service by a Best Value working party that commenced from Autumn 1999.[372] A factor involving job re-organisation is also relevant and this will be discussed later.

Consideration of Council B's homelessness policy suggests that it does indeed comply with legal principles and good practice guidelines. With respect to legal matters, for example, the document clarifies in detail the legal process relating to the "four hurdles" and elucidates comprehensively the complexities and interpretative issues surrounding the concept of homelessness, priority need and intentionality. With regard to good practice, on the other hand, the council policy meets Code of Guidance recommendations by incorporating an internal appeal process for applicants aggrieved by adverse decisions.[373]

One concern regarding the new policy that should be highlighted at this point, though, relates to the absence of any publicity materials available to homeless applicants, an omission that conflicts with both corporate council policy and the Code of Guidance. Corporate policy points out; for instance, that: "We will publish information about the level of service you can expect to receive"[374]; while the latter recommends publicity of service provision to involve, not simply a wide variety of locations, but also to utilise a range of media systems, including both written (leaflets, posters etc) and oral (local radio).[375]

c) *Rights of Repair*

Council B's written documentation concerning repairs issues is contained in two principal documents, namely a) the tenancy agreement and b) the draft repairs policy. Each of these documents is now assessed in turn.

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[372] It should be noted that, at year ending 1999, homelessness procedures had still to be harmonised, the areas corresponding to the predecessor councils each operating their own homelessness procedures as governed by the new policy.

[373] The three stages involving two officer and one council member stage. Internal appeals systems are currently being reviewed by a human rights working party to assess how such practices are to be evaluated in the light of legislative provisions.

[374] Council B: "A Guide to Consultation".

[375] Code of Guidance, paragraph 3.7 (Scottish Office (1997)).

On a positive note the Council B tenancy agreement is consistent with the legislation insofar as Schedule 10 repair obligations are concerned. Yet again, though, scrutiny of the council's tenancy agreement reveals marked divergence from the Mosta document despite Council B's assertion that the former is based on Mosta. For example, the entire clause in Mosta relating to dampness (including condensation) that contractually obliges the council landlord to effect dampness repairs, as well as repairing or replacing heating systems that may be causing the dampness, has been omitted from Council B's tenancy agreement.[376] And a similar omission has occurred in respect of clause 5.14 of the Mosta document concerning compensation payable to the tenant where the council damages the house (or tenant's property) in connection with inspections. But, and most relevant for the current discussion, important information concerning the statutory right-to-repair has not been incorporated into the council's tenancy agreement. Thus, although the right to call in an alternative contractor is noted, the right to compensation has been omitted, as has the common law right (contractualised in the Mosta document) to carry out repairs and deduct costs from rent payments.[377]

And a second concern relates to the statement within Council B's tenancy agreement to the effect that: "Details of the regulations and approved contractors are available from any local area housing office", an assertion that seems to belie the fact that there is no formal system currently in place to regulate the right-to-repair scheme, nor for that matter are there any approved contractors in place.[378] Indeed, discussions with the officers responsible for

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[376] Mosta, clause 5.6

[377] Another significant discrepancy between the documents is the omission of the right to complain to the ombudsman. The extent of divergence is indicative of intent, an issue that is examined again in the section involving detailed assessment of rights implementation. Omission of specific rights is marked throughout other Council B Policy documents, for example, fleeting reference is made to assignation rights in the Tenancy Agreement, but omitted altogether from both the estate management and allocation policies.

[378] This refers to Council B as a whole. One predecessor council had partly implemented the scheme although not fully.

monitoring also confirms that the right-to-repair scheme is not audited despite Scottish Executive monitoring requirements. And the words of one senior officer involved in developing the new Council tenancy agreement are most revealing vis-à-vis possible reasons for the omissions:

> "I would say again it's been pragmatic and what you can sell politically ....it's not because we want to keep rights from them (i.e. tenants)."

But this assertion simply begs the question. For why are councillors reluctant to promote rights? Indeed, supposed reluctance by councillors is more likely to be a mask of senior officer reluctance since - to reiterate a point made in Chapter 2 (p 42) regarding the variability of councillor involvement in policy-making - the final policy *form* is often heavily dependent on officer persuasion. And, as was the case in Council A, discussion with senior officers revealed that councillor involvement in the policies under review in this study was extremely limited, the content of such policies essentially reflecting senior officer values.

Finally, the council has produced only one leaflet that advises tenants of the right-to-repair scheme, a leaflet that is examined in detail in the section concerning Council B practices.[379]

The initial draft repairs policy was issued for staff consultation on 13 January 2000. Reasons for the delay in developing such an important document are varied but include the following: lack of unified computer systems in respect of repairs; long-term absence of the senior officer on account of sickness and the person's non-replacement; priorities afforded to other housing activities; and – arguably as a corollary to the initial points – inadequate organisational preparation. As one senior officer points out, for instance:

> "One of the biggest mistakes we make is not getting all the skills and expertise at our

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[379] This leaflet suffices to meet the legal requirement that secure tenants are to be notified of this right annually in writing. It is 'hidden' at the back of rent increase information, however, and is not easily discernible.

disposal when developing a policy. The other big mistake is we don't involve our customers".

In explaining underlying reasons for lack of devolution, the officer clarified that policy development is controlled by a small group of staff who prefer not to devolve work for "purposes of control".

The final draft repairs policy was issued for senior staff consultation in February 2001. The section that deals with the right-to-repair scheme is summarised in six lines under miscellaneous provisions. The document omits any reference to compensation payable to tenants, although it does state that full details of the scheme are to be provided in a separate leaflets, although this leaflet has not yet been drafted.

d) *Security of Tenure*

Turning now to the question of rights concerning security of tenure issues, Council B's rent arrears and estate management policies are each assessed in turn.

i) <u>Rent Arrears Policy</u>

The rent arrears policy was the first major policy to be implemented, its main themes derived from one of the predecessor councils, although it has now developed greatly in terms of both functions and procedures, for instance, the expansion of the money matters service that strives to provide comprehensive financial advice to clients to prevent legal actions against their home, as well as the establishment of a "Q&A service intended as a "one-stop shop" to provide detailed advice and ensure clients are referred to the appropriate service.

And consideration of Council B's rent arrears policy shows that it appears to comply with both legislative and good practice guidelines in respect of rent arrears.[380] Key principles

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[380] Indeed, the Accounts Commission (2000) commends Council B as being to the forefront of good practice.

enshrined in the Policy Statement, for instance, include the following:

- preventative debt methods to be developed, including the provision of comprehensive benefit and welfare rights information;
- the utilisation of a variety of rent collection methods, tailored to individual circumstances;
- management actions, including letters and visits, to be comprehensive to ensure that subsequent legal actions satisfy the principle of "reasonableness";[381]
- arrears levels and trends to be monitored regularly through the implementation of a performance indicator framework that satisfies legal and Best Value requirements.[382]

With regard to information to tenants, on the other hand, a wide range of publicity is disseminated, including information concerning entitlement to housing and welfare benefits, thus providing tenants with information influential in safeguarding their legal rights to retain their tenancy should arrears accrue as a result of material hardship.

ii) Estate Management Policy

Council B' estate management policy was operationalised only from late 1999, the delay attributable to a number of factors: the complexity and breadth of issues under consideration, for instance, difficulties in policy unification because of the variety of individual policies existing prior to Local Government re-organisation; internal organisational restructuring that witnessed (as in the case of homelessness policy development) changes in senior personnel responsible for the development process; securing political agreement to the new policy and securing approval via the various tenants' fora.[383]

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[381] The word "reasonableness" itself, though, is omitted from the policy statement.

[382] The requirements of the Accounts Commission, for instance, to monitor total arrears as a percentage of total rental debit.

[383] The council's tenant participation policy contains details of consultation arrangements between the council and tenants.

As will be shown later, the relatively late introduction of the major policies of allocations and estate management at the same time indicate issues of strategic concern, as well as having resulted in a possible negative impact on rights implementation in view of the extent of the changes coupled – as we shall see – with inadequate training.[384] As one housing officer confirmed at interview:

> "Basically I think the general concern for housing staff – and I probably speak for a few people when I say this – is that basically things have just been brought in all at the same time."

While another in even more critical tone opines in respect of training:

> "It's ridiculous . One other major concern that I have as well is that it all happens at the same time. Within two or three weeks we had to have training on allocations, training on estate management... implement all the different changes. It's been far too much, too quick and I think we've only really touched the tip of the iceberg if you like as far as training goes. I think we need a lot more concentrating on one thing at a time, especially the legal sort of issues. I feel very, very lacking in that side of it."

With respect to tenants' rights issues in respect of legal actions implemented by the council to deal with anti-social behaviour, the following points are noted. Firstly, and in compliance with legal and good practice guidelines, anti-social behaviour is dealt with proactively by developing sound housing management practices to prevent problems occurring, for instance, avoiding the creation of difficult-to-let areas through unplanned or inappropriate allocations, or forging comprehensive inter-agency networks to tackle problems jointly.

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[384] As one senior officer noted in respect of the Estate Management Policy training for example: "Very poor. Very, very poor."

Secondly, Council B – and again in compliance with legal and good practice guidelines – utilises several legal remedies to tackle anti-social behaviour including interdict, implement, asbo's, as well as utilisation of other pertinent legislation, for instance, the Civic Government (Scotland) Act 1982.[385]

Finally, the development of the Council B policy is undoubtedly a positive development since it should encourage consistency of practice throughout operational activities, a factor itself to be monitored via the implementation of a number of performance indicators to assess both quantity and types of actions being raised and remedies utilised.

Prima facie, then, the Council B policy appears to encompass the main principles outlined in legal and good practice requirements, although one issue appears to be problematic, namely the inadequacy of information materials provided by Council B to tenants concerning eviction actions and remedies. No leaflets on ways of challenging eviction actions are publicised, for example, and lack of such information is arguably a major inhibiting factor in effective rights implementation.

Summary

Evaluation of Council B documentation in respect of the four rights under review suggests a number of concerns. With regard to access to files, for instance, no policy actually exists, nor is information about the right disseminated publicly. Homelessness policy, on the other hand, despite encapsulating legal principles and good practice guidelines, has neither been proceduralised nor publicised widely. The right-to-repair scheme is given scant regard by Council B in its existing policy and publicity documentation, although indications are that it may have a more prominent place within developing repairs

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[385] For example, dealing with pet problems such as fouling under the Civic Government (Scotland) Act 1982, s 48.

policy. Finally, and more positively, Council B's policy documentation concerning security of tenure issues has greater affinity with legal rights, although publicity materials concerning remedies to ward off eviction are under-developed.

Implementation of Rights

Evaluation of the major studies of housing management practice, particularly in the Scottish context, has revealed that issues concerning legal rights implementation at the administrative level have been the subject of limited scrutiny. And, as Hudson (1997) has emphasised:

> "In social sector agencies research studies have tended to see 'implementation deficit' as a problem of top-level policy makers" (p393).

This focus, however, represents a major gap in theory given the importance of administrative process in explaining rights implementation. This section, then, – coupled with the similar analysis carried out in Chapter 3 – serves in part to address this theoretical imbalance.

This section turns, then, to assess how effectively Council B implements the four specific rights under consideration. As with the Council A study, the focal point of research is to identify practices that may not satisfy legal requirements, albeit that practices contrary to good practice are also noted as appropriate. The main sources of information used to assess rights implementation involve assessment of one hundred and twenty six tenancy files, procedural documentation and feedback from interviewees.[386]

a) *Access to Files*

It has already been noted that Council B has no formal policy in place regarding this

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[386] A total that comprises twenty anti-social files, thirty five arrears files and seventy one files involving refused homelessness applications.

particular right. It is also emphasised that no formalised procedures exist either, the few requests that are actually received being processed in an ad hoc fashion. Further, there is no monitoring of requests received, nor do tenants receive any publicity materials from the council about this right. Clearly, then, Council B has failed to develop systems that facilitate effective rights implementation, albeit – as in the case of Council A – absence of such systems is not synonymous with unlawful practice. In explaining this deficiency, one senior officer provided the following explanation:

> "It's very complex and whilst I think there's a case for telling people what their rights are, in some areas you don't want to encourage them so you don't want to make it too easy for them then because it is so complicated and there is a lot of work involved in purifying a file to give people access to it."

While another perspective is offered by one senior officer who states:

> "I don't blame the council wholly. A lot of tenants aren't really interested (in rights)."

Assessment of Council B practice is also illuminating insofar as it sheds light on the issue as to how far current practice complies with Scottish Office guidelines vis-à-vis data recording and how failure to meet these guidelines may impact adversely on tenants' rights. This assessment is carried out below but first, though, two general points in respect of Council B filing systems are noted.[387]

The first point is that housing management data is mainly held in paper format within tenancy files and often in different locations because of the split in organisational functions between housing management officers and specialist rent arrears officers; this applies

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[387] Filing systems are, in effect, a manual data base. Clarity of order is, therefore, crucial for identification and retrieval of data. A witty, though poignant reminder of this is contained in the following critique. " I don't like clutter, at minimum it may say that the executive is disorganised, it may say something about lack of clarity and it may say he is not actually coping with the job" (Treacey (1991)).

despite the introduction of comprehensive computer systems throughout Council B. Reasons for the preponderance of paper documentation are complex and beyond the scope of this study but include , inter alia, the nature of housing management work, for example, recording conversations during face to face interviews, and retention of the many paper forms and standard letters used by housing staff.[388]

The second point is that no unified filing system operates in Council B with the result that there is no systematic recording of data, varying methods of data collation and actual data collated among offices. Indeed, no guidance is given to staff as to how best to collate information to meet possible requests from tenants for access to files, nor for that matter to ensure extraction of clear and understandable information for either report or audit purposes.

Scottish Office guidelines stress that information held by local authorities should be easily accessible and capable of dissemination with the minimum of attention should a tenant seek to access personal files. The haphazard filing systems of Council B where individual files contain a hodgepodge of information certainly fail to meet Scottish Office guidelines.

But current practice within Council B breaches not simply the guidelines; it also has serious implications for tenants' rights. For example, Council B rent arrears officers currently prepare cases for court action – and assess the reasonableness of such action – primarily on the information held on their particular file. Other tenancy information held by housing officers is not automatically considered when court actions are being considered for breach of tenancy on grounds of rent arrears. Yet failure to evaluate the reasonableness of pursuing court action based on assessment of all personal data held on file by the local authority may be detrimental to tenants' interests, particularly when considered in context.

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[388] One staff member also noted during the interview process that inadequate training on how to use computer systems created reluctance to log data and thus greater reliance on paperwork.

For instance, the fact that many tenants fail to defend eviction actions involving rent arrears (Mason et al (1995)), or are ignorant of their right to access personal file data in preparation of a defence against their landlord's claim (Mitchell (1995)).

Prior to consideration of homelessness practice, it is worth digressing to note that assessment of documentation to evaluate access to file issues has cast light on other unlawful practices that seem to be occurring within Council B and one situation in particular is worthy of mention. In Case 7, for instance, a notice of abandonment has been served on the tenant despite the fact that the house is still occupied, an action that clearly breaches statutory provisions.[389] Again – and arguably in breach of the legal requirements of being reasonably satisfied that a house has been abandoned prior to service of notice – the housing officer has noted:

> "called back N/A (no access) – spoke to neighbour who said she thinks she's still there but hasn't seen her for a while. Served an aband just in case. App (appeared) Monday 16.12.96 AM" (at which point the notice was cancelled).

b) *Homelessness*

This section of the thesis evaluates Council B homelessness practice in the light of legal requirements. As with the Council A study, reference is made to good practice issues as appropriate. Prior to carrying out this evaluation a statistical overview of the data to be assessed is given.

Quantitative Data

With reference to numbers and types of applications a total of seventy one homelessness applications have been assessed for the period January 1999 to October 1999; this figure comprises twenty six and forty five applications from each of the two area housing offices

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[389] The Housing (Scotland) Act 1987, s 49.

under review. Applications assessed are those where the decision involved refusals in order to ascertain what concerns (if any) are discernible.[390] Reasons for this method were explained in Chapter 3.

Household Profiles

Household data in respect of applications received is often incomplete, although research has provided some general information about household composition shown in Table 5 below.

Table 5: Household Profiles of Refused Homelessness Applicants

Category of Household						
Single Female (%)	Single Male (%)	Partners (%)	Female & Child (%)	Male & Child (%)	Partners & Child (%)	Total
9 (12.6)	32 (45)	2 (2.8)	16 (22.5)	5 (7)	7 (9.8)	71

(Source: Council B Area Housing Office Files)

General Patterns

Consideration of file data reveals the following patterns. Firstly, almost half of all applicants refused comprise single males. Secondly, examination of the seventy one cases indicates that only a small percentage of cases reach either the intentionality or possible referral stage. Information gleaned from the data suggests, for instance, that only ten, or 14% of cases, involved intentionality considerations. Thirdly, all inquiries were dealt with by housing officers who interviewed applicants thus satisfying Code of Guidance recommendations in this respect.

Council B's homelessness policy states categorically that its primary aim is to meet legal provisions, as well as endorse the principles contained in the Code of Guidance. This section

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[390] These figures represent 40% and 39% respectively of refused applications in respect of the two offices (one hundred and fourteen and forty five). Total homelessness applications lodged for the year 1998/99 were one thousand nine hundred and seventy four, of which number one thousand two hundred and seventy applications were accepted as being statutorily homeless. In 1999/00, the corresponding figures are one thousand nine hundred and sixty and one thousand two hundred and nine.

now addresses this matter by assessing what actually occurs in service delivery, that is, whether the objectives of Policy are being met in practice. In carrying out this assessment, the same range of issues examined in the Council A study are evaluated.

i) Inquiries

Inquiries are an integral part of the legal process involving homelessness applications. Despite the dearth of insight provided by primary legislation into the extent of inquiries necessary, the Code of Guidance recommends a fairly broad range of issues to be considered, with the onus of assessing whether an applicant is homeless (or threatened with homelessness) resting with the local authority. Clarification regarding the extent of inquiries to be made has in part been given following *Bayani* where it was noted that inquiries must be necessary to enable a local authority to make a decision.[391] In addition, although inquiries should not be too elaborate (nor of CID-type level), inquiries should be sufficiently detailed to enable a lawful decision to be taken (Robson & Poustie (1996)). Finally, in conducting inquiries, it seems to be necessary to ask questions that are correct, asking wrong questions liable to render decisions unlawful.[392]

The salient point to note in respect of inquiries carried out in the Council B sample is that inquiries tend to be minimal and, it would appear, often fail to comply with legal provisions. In Case 72, for instance, the decision letter refusing the application is dated exactly the same date as the received application, the latter mostly incomplete and unsigned by the applicant, clear indications that few (if any) inquiries were conducted to assess the applicant's homelessness.[393] Again, in Case 121, the applicant was simply referred back to her previous council authority in Manchester without any checks apparently being made as to why the

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[391] *R v Royal Borough of Kensington and Chelsea, ex p Bayani, (1990)*, 22 HLR 406, CA.

[392] *Wilson v Nithsdale District Council. 1992*, SLT 1131.

[393] Possibly because of the perceived status of this applicant, ie a single 31 year old male. Other examples of the numerous Cases with inadequate inquiries include Cases 73, 76, 79, 82, 85, 92, 94, 101, 106, 109, 115, 121.

applicant left Manchester, thus the power to exercise discretion in terms of referrals was not exercised. As in the Case above, the decision letter was again issued on the same date that the application was received and assessment of the data available reveals no checks were recorded.

ii) Homelessness

As clarified in Chapter 3, homelessness has a specific statutory definition. Consideration of Council B's homelessness procedures suggests two concerns that might impact adversely on rights implementation.[394] The first concern is that no systematic administrative system is currently in place to ensure that homelessness applications are assessed procedurally in line with legal definitions and requirements. Indeed, an internal report has noted[395]:

> "The arrangements for the provision of homelessness issues vary across Council B in line with practice under the preceding authorities. This has resulted in services being provided in a range of different ways and to different standards".

And, with reference to specific standards of service delivery, an interim report highlighted that:

> "external advice organisations indicated that they felt staff were not conversant with relevant legislation... and it appears that usual practice frequently replaces homeless legislation to the detriment of the applicant". [396]

The second concern relates to the fact that, at least occasionally, inadequate checks seem to be carried out to assess reasonableness of occupying accommodation, or whether occupation of that accommodation may lead to violence. Three examples will suffice to

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[394] Although staff attitudes are not being assessed as a factor in rights implementation, research undertaken by a student placement raises concerns. In one area office, for example, a senior officer is quoted as saying: "I find offering temporary accommodation in Glasgow to be the most effective deterrent that we have" (McKeating (1998)).

[395] Council B Best Value Service Review – Homelessness Services (Final Report).

[396] Council B Best Value Service Review – Homelessness Services (Interim Report). This statement stems from a criticism raised by Shelter.

illustrate this point. In respect of Case 61, for instance, the applicant is advised to obtain proof of separation before homelessness can be assessed and no checks are carried out in terms of reasonableness to occupy. It should also be noted that this advice by the officer concerned runs counter to both the Council B policy and the Code of Guidance that recommend statements of separation should be regarded as sufficient. In Case 70, on the other hand, the housing officer advised the applicant (a single female) to present at her former council area office in Prestwick despite the fact that she was apparently fleeing violence. Finally, in Case 95, a pregnant woman (aged twenty) is advised that accommodation in the private sector is still available for her occupation since an invalid notice to quit has been served and, therefore, she doesn't require to leave. No consideration was given, though, to the reasonableness of remaining in the property, for example, the effects on her mental health of threatened eviction action, not to mention whether the eviction action itself was legally justifiable.

iii) Priority Need

Priority need, as clarified in Chapter 3, has a distinct legal meaning and includes five specific categories. Evaluation of Council B practices in relation to priority needs assessment is problematic, however, because of the fact that data is limited.[397] One concern identified though – and one analogous to that in connection with homelessness – is the lack of standardised procedures to ensure that possible priority need cases are assessed in the light of legal definitions and requirements. In Case 66, for instance, it is stated by the housing officer that an applicant (aged twenty one) has no priority because of her age. There was, however, no assessment as to whether the applicant might be covered by any of the other categories, for example, a young person at risk of sexual exploitation. It should be

[397] Applicants often failing to get beyond homelessness stage, lack of information recorded, lack of inquiries, inadequacies of the notification process etc.

noted that such decisions are due to inadequate recording of data on the application form, particularly where applicants are left to complete the form without assistance resulting in possible relevant data being omitted. Again, in Case 75, a single male (aged nineteen) was advised by the housing officer in the refusal notification letter simply that: "You are not vulnerable". No checks were carried out, though, to assess if priority may have existed due to "looked after" status at school-leaving age, or issues of vulnerability. Indeed, this Case reflects a coterie of "wrongs" insofar as it contains defects such as no inquiries being made and the application form remaining unsigned and incomplete. In such Cases the housing officers are failing to follow the relevant legal and good practice assessment criteria.[398]

iv) Intentionality

Establishing intentional homelessness, as we have seen, involves a complex legal test comprising three distinct matters. As indicated, few of the Council B cases appear to have been refused on the basis of intentionality. Table 6 below provides a summary of intentionality cases gleaned from the empirical study.

Table 6: Area Office Intentionality Refusals

Case No	Applicant Status	Reason for Intentionality
57	Single Parent	Offer Declined
60	Single	Evicted from Temporary Accommodation
65	Single	Behaviour
67	Single	Eviction from Bed & Breakfast
69	Single	Breaking Hostel Rules
97	Single	Eviction from Hostel (Blue Triangle)
98	Couple	Gave up Private Let
100	Single	Evicted from Hostel (Blue Triangle)
123	Single	Rent Arrears & Refusal of Temp Accomm
126	Single	Evicted from Supported Accommodation

(Source: Council B Housing Office Files)

[398] For example, Cases 20, 86, 90, 92, 96.

Three points are noted in respect of Table 6. Firstly, in assessing the individual cases, lack of recorded data makes it impossible to ascertain conclusively whether housing staff have applied the legal test in the determination of intentionality. Indications are, however, that certain staff may not be doing so. In Case 98, for instance, the fact that a couple gave up a private tenancy was deemed to constitute intentionality. Yet no checks were carried out as to the reasonableness of continuing to occupy the property in question, for example, to assess whether there was any form of landlord harassment. In case 69, on the other hand, a single male was treated as intentionally homeless for having stayed away from the hostel for two nights. In explaining this, the person stated that he had been on holiday in Millport. No consideration was given by the authority, however, as to whether the person had acted in good faith, or was ignorant of a relevant fact.[399] Reasons for failure to apply legal principles are considered in greater detail later in this Chapter, for example, lack of training provided to housing officers. A major factor, however, is the dearth of formal homelessness procedures that encapsulate the legal principles and would serve to guide staff through the "four hurdles".

Secondly, the main reasons for intentionality involve behavioural problems and eviction from supported or hostel accommodation.[400] Assessment of the applicants concerned reveals, perhaps unsurprisingly, a preponderance of young single persons who might be deemed as potentially vulnerable and therefore requiring much support. Table 7 below provides a profile of applicants by household size and age.

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[399] Analysis of the data also reveals procedural inconsistencies – albeit in one office only – in terms of processing homelessness applications. For example, information available suggests that officers are refusing applications on the basis of intentionality without first going through the necessary initial inquiries to assess whether homelessness and priority need actually exists.

[400] As per *R v Rugby Borough Council ex p Hunt* (1992) 26 HLR1, QBD, where temporary accommodation is lost as part of an authority's staged re-housing performance, there may be intentionality where the applicant loses the accommodation because of behaviour or non-payment of rent (Robson & Poustie (1996)).

Table 7: Household Profiles of Intentionality Refusals

Household Profiles				
Age Band	**Single Female**	**Single Male**	**Couple[401]**	**Single Parent**
16-19	2	4		
20-25		1	1	
25+		1		
Not Known				1

(Source: Council Housing Office Files)

Finally, possible reasons for intentionality findings are numerous and no definitive list exists. Indeed, each case must be assessed individually and what may constitute intentionality in one set of circumstances may not do so in another. For example, failure to pay rent due because of ignorance of housing benefit entitlement would not constitute intentionality, whereas deliberate failure to pay rent might. Consideration of the Council B cases, however, throws up one concern regarding the decision-making process. In Cases 65 and 123, for example, refusal of temporary accommodation is deemed to constitute intentionality. Yet, refusing offers of temporary accommodation should not lead to applicants being deemed intentionally homeless. As Robson & Poustie (1996) note: "... ceasing to have a right to occupy accommodation is distinct from refusing an offer of accommodation" (p227).

v) Referral of Applications

Where applicants succeed in satisfying the housing authority that they are homeless, in priority need, and that they are not homeless intentionally, the authority is entitled to assess whether conditions for referral to another authority are satisfied.[402] The discretionary aspect

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[401] The couple comprised two adults of 18 and 22 respectively; the age of the single parent ie female was not stated on the application form.

[402] Pending such checks the authority is required to ensure that accommodation remains available to the applicant, a point discussed in Chapter 3.

of this entitlement is stressed, though, as authorities are not legally obliged to do so.[403]

Turning now to the Council B decisions in respect of local connection issues, assessment of the seven cases identified reveal several points of interest. Firstly, certain applicants are being "referred" to their previous local authority for housing assistance, although this is not being done as a formal transfer of rehousing liability. Cases 68, 82 and 112 exemplify this, for instance, as well as exemplifying other areas of bad practice already alluded to – applications forms left incomplete, unsigned and undated. It is important to note that this is occurring even though the application has not been assessed formally via the "four hurdles". In effect it is "quasi-advice giving" rather than making formal referrals.

Secondly, and largely attributable to the formal defects in the current Council B administrative process for dealing with homelessness applications, failure to assess applicants using the "four hurdles" affects other legal obligations, for example, in Case 82, the applicant was told simply to present at her own authority (single parent with four children) without any formal assessment. If the first three "hurdles" had been successfully negotiated, however, temporary accommodation should have been offered pending inquiries into local connection status.

Finally, Case 120 is most illuminating. In this instance, the applicants were simply advised to approach a local housing association for re-housing assistance, without consideration of the "four hurdles" elements.[404] This decision was later revoked by the officer who notes in the file:

"Phoned Mrs Q...back after checking Code of Guidance – has local connection –

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[403] Local authorities normally do take local connection into account, primarily because of housing stock shortages. This is not normally applied, though, in areas that are difficult to let where homeless applicants are willing to accept such areas.

[404] This case is even more interesting because the original decision was taken by a temporarily upgraded clerical officer who had received only a two hour induction on homelessness the Friday preceding her new post as housing officer responsible for homelessness.

work...Advised her to keep in touch."

vi) Notification

The thesis now addresses the issue of duties and procedures imposed statutorily on authorities on completion of inquiries in respect of notification to applicants. To recap, notification must be in writing and inform the applicant as to whether the applicant is thought to be homeless (or threatened), has a priority need and, if the latter, whether homelessness is intentional and whether a referral to another authority has been made or is intended. Statutory rules do not prescribe timescales for notification of decisions, although the Code of Guidance specifies a period of twenty eight days as being reasonable. In addition, notification and – if appropriate – a reason for a decision should be retained by the local authority for collection either by the applicant or the applicant's representative (Robson & Poustie (1996)).

With regard to adverse decisions the local authority – in addition to notification as above – must also provide reasons, the rationale behind this to enable applicants to lodge an appropriate challenge. It is emphasised that intentionally homeless decisions cannot be made unless the applicant meets the legal definition of actually being homeless.[405] The statute does not give specific guidance on the adequacy of reasons, but the Code of Guidance does state, however, that "Notification letters should give full and clear reasons for a decision (whether positive or negative)" (p63).[406]

Reasons, therefore, should be intelligible, factually relevant, and clear, as well as sufficient to enable a dissatisfied applicant to raise a challenge. Brief reasons may be sufficient, although failure to provide any reason is unlawful.[407] Bearing these points in

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[405] *Hunt*, op cit

[406] Code of Guidance (1997), par 12.5

[407] *R v Westminster City Council ex P Augustin, (1993)* 25 HLR 281, CA. This case demonstrated that brief reasons may be sufficient.

mind, then, let us consider the Council B notification process by reference to a) decisions made and b) adequacy of those decisions.

With respect to the decisions made, it would appear that Council B has failed to meet legal requirements on numerous occasions. In twenty eight cases, for instance, (40.8%) of the cases under review, no notification letter appeared on file and, given that these cases relate to adverse decisions, adequate reasons for refusal should also have been provided. In examining this issue further to ascertain whether letters may have been sent but copies not retained in file, a senior officer confirmed that in most cases a letter had probably not been issued, although housing officers might have provided verbal confirmation of the refusal.

vii) Advice

Turning now, then, to consider Council B practices vis-à-vis advice, two points are made.[408] The first point is that advice offered often fails to meet recommended good practice contained within the Code of Guidance to which the council's homelessness policy allegedly adheres. In Case 63, for instance, the application is refused because "You have no local connection under the terms of the Act"; and is then advised to contact another council's homelessness centre and given a list of hostels. Yet most of the application form is incomplete and no checks appear to have been done to ascertain priority need, intentionality, or local factors that might exist within Council B areas. This case is even more concerning, though, since the applicant states that he is "deaf and dumb" and counselling in terms of advice has neglected this matter altogether.[409] Nor was the applicant advised of the internal council appeals system that allows all dissatisfied applicants to have a hearing before a members' panel preceded by a hearing before senior housing staff. Another example of

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[408] As we have seen no advice appears to have been given at all in many cases, for example, those cases where no decision letter was issued. The comments here focus on those Cases where advice has been given.

[409] Possibly the person's status had an effect upon the decision. A single male (thirty three) of no fixed abode. In addition, the notification letter did not cover the other hurdles.

inadequate advice involves Case 66 in which a single female (twenty one) is advised simply about council housing options and no mention is made about housing association or private rented options.

The second point is that advice is, on occasion, legally inaccurate. In Case 120 as already noted, for example, the applicant was told she had no local connection and to present at her own authority, the officer concerned later realising that she did in fact have a local connection, ie work.

In evaluating current inadequacies, senior officer responses suggested two principal reasons. The first reason relates to non-implementation of comprehensive homelessness procedures that guide staff through the legislative and good practice provisions. Such procedures, as noted earlier, have in fact been developed, reasons for non-implementation attributed by one senior officer to a change of personnel, the new senior manager responsible for homelessness having delayed implementation of the procedures. As this officer stated:

> "I understand that the draft (policy) was amended at the request of the new manager. But I do not know why no progress was made thereafter. This person did not communicate whether he was unhappy with the contents to the working group and almost two years on, I am not aware of a procedure in operation at present."

The second reason concerns grossly inadequate training provision, as well as lack of information. With regard to training, for instance, many staff have received little or no training. As one senior officer confirmed:

> "They would only receive the training that had been developed, and given that there's no corporate remit for developing homelessness training, I am unaware of any resource driven training."

With respect to information on the other hand - and analogous to Council A practice –

there is no system in place for advising staff of case law decisions, nor procedures to amend administrative practice in the light of such decisions.

c) *Rights of Repair*

As emphasised in a preceding section, policy documentation contains little information on the right-to-repair scheme. And examination of existing practice reveals similar findings. There is no formal system in place to regulate the scheme, for example, advising tenants of their rights when qualifying repairs are reported, nor is a system in place for recording repairs carried out within/without statutory timescales and levels of compensation paid to tenants. In short, systems to promote the implementation of legal rights have not been established.

Yet initial consideration of statistics available suggests that apprehension may be misplaced as Council B repairs data shows that 99.3% of all emergency and urgent repairs – within which categories qualifying repairs are included – were carried out within timescales.[410] Consideration of earlier data, though, suggests that fewer repairs were completed within timescales, with only 91.6% of emergency repairs being completed on time for 1998/99, and only 75.4% for year 1997/98; while urgent repairs completions stood at only 75.5% and 51.48%. Assuming a sizeable proportion of these repairs may have been qualifying repairs, it seems reasonable to argue that many tenants had an entitlement to compensation. Again, emergency repairs totalled thirty six thousand one hundred and seventy one in 1997/98 and yet only 75.4% were completed on time, that is, almost nine thousand repairs failed to be completed. In compensation terms this could entail sums approaching £90,000 pa based on the minimum legal entitlement of £10 for each qualifying

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[410] Unfortunately the total number of repairs by category is not given, and thus it cannot be assessed how many repairs the 0.7% figure represents. Previous years' figures for emergency jobs issued are thirty six thousand one hundred and seventy one (1997/8) and forty two thousand six hundred and seventy nine (1998/9).

repair not completed on time. Indeed, one senior officer interviewed involved in repair programmes indicated that a lot of money has gone "unclaimed" primarily "because tenants weren't told of the existence(of the right)".

Despite these figures, however, senior staff confirmed that few claims for compensation have been made, although no exact figures were available as payments made are not monitored. This may be due in part to deficiencies in the information leaflets on the right-to-repair scheme that is appended to the annual rent increase notification letter.[411] In accordance with this leaflet tenants are correctly advised of the salient legal elements of the right-to-repair scheme, including their right to compensation where repairs are not effected within statutory timescales Yet, it is the advice contained within the leaflet that suggests why compensation may be less than anticipated. For the leaflet affirms that "claims must be submitted in writing to your local housing officer" for compensation to become payable, advice that is contrary to legal provisions in accordance with which payment is to be made automatically wherever statutory timescales are not met, unless one of the exceptions apply.

Reasons for such an omission of rights information are varied, but a senior officer's informal comments provide initial insight. According to this officer, Council B has not publicised or developed the scheme because a) tenants themselves appear to have little interest as reflected by the low number of claims, and b) from the perspective of the council, operation of the scheme as legally required is not cost effective, for example, the costs involved in establishing and running the administrative systems associated with the right-to-repair scheme. The senior officer also noted that even issuing of cheques to tenants costs more than the minimum compensation payment itself. Yet the words of another senior officer are perhaps more illuminating:

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[411] Information provided informally by Council A's accounts manager in the absence of official monitoring data.

"The council is frightened in case they open a can of worms, in case they cannot deliver their service in line with the right-to-repair scheme. Which is wrong! I take the opposite view. I think it should be used as a management tool to ensure that services are getting done properly."

Other Repair Obligations

As per the Council A study, Council B does not monitor Schedule 10 repair obligations separately, nor does it provide tenants with information concerning the right to withhold rent where the landlord fails to fulfil repair obligations. Further research is required, therefore, to evaluate whether current practice in Council B conforms with legal requirements.

d) *Security of Tenure*

The issue of Council B practice concerning recovery of possession actions is now evaluated by consideration of rent arrears practice and anti-social practice.

i) Rent Arrears Practice

Three general points are noted prior to carrying out an evaluation of actual practice in the light of legal requirements, with comments being provided on associated good practice issues as appropriate. The first point is that rental income constitutes the main income to Council B's housing revenue account. The second point is that the sample of cases analysed represent a total of thirty five cases in respect of which an NOP has been issued. These cases have been selected from the two area offices under review and represent cases "live" as at 1999.[412] The third point relates to the nature of work carried out by housing officers concerned with rent arrears.

Unlike council housing officers involved in estate management activities, staff dealing

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[412] NOP's were not being monitored quantitatively by Council B until late 1999. Information provided orally by staff, though, suggests that large numbers of NOP's are served and, thus, the sample selected can only be conjectural, offering some insight into matters for review. Cases in which a decree for possession was granted have not been assessed since, unlike Council A, decrees are enforced by the date specified in the extract decree.

with arrears are specialist workers, involved primarily in arrears collection, albeit that within this role they carry out a broad range of duties, for example, housing benefit reviews, collation of data for statistical monitoring purposes, training of temporary (and junior staff). In addition, their duties are not directed at specific levels of arrears but include minor amounts as well as serious amounts of over £500 (cases 21, 25, 31, 36, 42, 53), culminating in a substantial workload that can result in mechanisation of activity such as issuing of NOP's that may not be in accordance with principles of reasonableness. Indeed, one officer interviewed in January heavily criticised both excessive workload and lack of management planning as follows:

> "I last did any true arrears work in August last year. We did the revisions (Housing Benefit) and we were instructed to stop doing the arrears work because we'd got the revisions to do;" and again:
>
> "I mean that it's all reactive rather than proactive. They haven't actually sat down and thought about what we actually need to do. (Senior officers) start doing something and then, oh my God, 'we forgot about this!' So you stop this and you go and do this and then, oh my God……it drives us crazy!"

Assessment of current staff practice appears to confirm that procedural actions generally conform with policy principles, thus fulfilling the legal requirements of ensuring that a ground for recovery exists and that repossession actions are reasonable.[413] Yet, current practice indicates a potential tension developing between satisfying the legal requirements of reasonableness and the business needs of the council to maximise income and meet organisational targets, a point supported by one senior officer who affirms the view that:

> "I think it's becoming more essential to minimise debt than having to be seen to be

[413] That is, enacting a process of letters, interviews, home visits prior to issuing NOP's.

reasonable"

As a consequence of financial concerns, housing officers are increasingly under pressure to issue NOP's as a threat. In the words of the same officer:

> "I think a lot of Notices are maybe issued to people who have undertaken an arrangement and are keeping to it, but to keep the council on the safe side, they issue a Notice in case they should default on that arrangement so that they can be booked in immediately."[414]

And priority afforded to business objectives is evidenced further in recent organisational change, as well as staff practice. Organisational procedures altered in 1999, for instance, to "fast track" arrears actions by reducing the number of home visits. And, although there is no automatic level of debt specified at which point an NOP is issued, staff appear to adhere to the practice of issuing NOP's in liaison with supervisors where arrears reach £100, while in one office - as advised by an interviewee – the figure is apparently £80 (Cases 22, 32, 39). It appears, therefore, that staff practice is increasingly regulated by debt targets that may conflict with criteria of reasonableness. Thus, in Case 30, the tenant was issued with a Notice of Proceedings despite the fact that the housing officer was advised by the tenant during a home visit two days before the service of Notice that she was recovering from a stroke and would agree a repayment plan to clear the arrears Again, in Case 52 involving a single parent with two daughters and debt of c £400, the housing officer notes the following:

> "Tenant states she is on anti-depressants. I advised her if she could not pay the shortfall of £352, court action will be taken. Tenant advised she could maybe pay £200 at the beginning of month. I advised her case was now being passed to team leader for court action. To pay as much as she could...".

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[414] Indeed, a practice that only ceased in late 1999 as a result of a tenant complaint to the director of housing that induced senior rent control officers to memo staff to discontinue this practice (Council B Internal Memorandum).

This case is of particular interest insofar as the tenant apparently fell into arrears due to late application for Family Credit and also owes an income support overpayment of £2,558 (Council B money matters advice service memo, 10/12/98)). It should also be noted that business driven goals are tending to result in arrears practices becoming increasingly threatening in nature, for example, threats to evict unless full payment is received (Cases 24, 41, 52 for example). Yet such threats are clearly unrealistic given the relative poverty of tenants such as Case 33 that involves single parent with two teenage children earning a low wage being requested to pay a lump sum of £577. Again, in Case 34, the tenant is threatened with possible eviction because of continued failure to clear arrears, arrears in this case being only £115 when Notice of Proceedings was issued. It is difficult to understand, though, how payment might be made without the tenant incurring hardship (and further debt through borrowing, say, to stop the eviction). In the words of the housing officer:

> "Will proceed with court action (C/A) – although (tenant) on a low income, arrears have accrued when tenant was under 25."

Council B practice indicates that variable summons for eviction are being sought rather than seeking payment actions. This practice has serious potential implications for rights issues since, unlike Council A, Council B implements decrees obtained. In the words of a senior officer regarding decrees:

> "We don't stop a lot. We honestly don't stop a lot because we try to ensure that when we get the decree we progress it."

It should be mentioned in support of council practice, though, that decrees are purportedly applied for only after legal grounds have been met, a position supported by an interviewee solicitor employed by an organisation supportive of tenants rights who believes that: "Council B do take (action based on) eviction as a last resort". The solicitor also

added, however, that much would depend on the particular sheriff in question. To quote:

> "Depends on who you get basically. I mean (x) sheriff court has a number of different sheriffs with different views... I think the polite way of putting it (is)... some are very clued in and some frankly are not."

Table 8 below shows the profile of court cases for the period April 1999 – July 1999 and the dearth of payment actions is evident. It should be stressed that Council B promotes take-up of benefits to maximise income and prevent debt accruing, court action to repossess in general taken as an action of last resort. One officer has confirmed, though, that the focus by Council B on debt reduction may occasionally be contrary to satisfying reasonableness criteria. To quote:

> "I had huge concerns about this case because it was a short circuited one, but I was instructed it had to go ahead. If it had gone ahead, we would have ended up with massive amounts of egg on our face and it would have damaged the council a lot because we hadn't done anything at all that was reasonable. It was very, very lucky on the day that the solicitor representing the other party consented to the decree. But that was good luck rather than good management. We flew very close to the wind. I was angry about that... angry because what we and the legal department were saying wasn't being taken into account."

In teasing out this latter point a Council B legal interviewee confirmed that:

> "I think sometimes there's a lack of understanding among housing officers of the constraints that exist in connection with court actions."

Table 8: Court Action Outcomes April 1999 - July 1999.

Court Action Outcomes	Number	% of Total
Decree for Eviction	87	91.6
Decree for Payment	8	8.4
Total	**95**	**100**

(Source: Council B Monthly Arrears Report, Court Team)

Reasons for the apparent dearth of payment actions were noted by staff during interview as follows: administrative and time consuming problems associated with wage-arrestment procedures; ignorance of payment action options, including small claims procedures; the effectiveness (or perceived effectiveness) of using NOP's to secure early payment of debt, particularly in view of staff workload pressures.

With regard to the question of organisational procedures, Council B practice indicates that functional specialisation of housing management activities may potentially conflict with either the reasonableness criteria or good practice guidelines regarding rent arrears control. For consideration of existing practice shows that housing staff involved in estate management or rent arrears control may serve separate NOP's in respect of the same household; whereas more efficient practice would incorporate the grounds for action within the same Notice. Cases 9 and 21, for instance, relate to the same household against whom actions are raised separately for both rent arrears and anti-social behaviour. This implies lack of co-ordination and may well inhibit the effectiveness of actions raised given that establishing breach of two separate conditions of tenancy may enhance the reasonableness of an action and thus persuade a particular sheriff to grant an eviction order, although it should be emphasised, of course, that lack of co-ordination by Council B may paradoxically protect tenants' rights.

ii) Anti-Social Practice

In terms of background statistical information, the first point to note is the extremely low number of cases that can be classed as serious and in respect of which some form of legal action has been initiated.[415] A total of twenty cases for the period 1998/99 has been selected for analysis, a figure that represents a clear majority of all current serious cases.[416]

In respect of types of problems being dealt with as anti-social behaviour, analysis of the twenty cases shows that the main problem is noise (fifteen) with other complaints concerning cleaning (one), gardens (one), neighbour disputes between two households (two) and unlawful use of property (one). Some cases, it should also be noted, involve more than one complaint (eg Case 7 – noise and cleaning). In general terms, then, these figures reflect national trends which indicate that noise complaints constitute the prime cause of anti-social behaviour.

As highlighted in the preceding section, Council B's estate management policy and procedures manual on estate management is extremely comprehensive and involves a wide variety of both management and legal actions that can be taken to deal with anti-social behaviour. Consideration of the twenty cases under review, however, suggests two possible concerns, though such concerns are tempered by the fact that the cases under consideration were in progress *prior* to the development of the new Council B policy that came into force in late 1999.[417]

The first concern is that legal remedies applied are limited in scope, for example, the use of non-housing legal remedies such as interdict or implement are rarely considered

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[415] Although court statistics have not been monitored until recently Council B's legal department has advised that, since the inception of Council B, court actions to evict tenants average only about 3 to 5 cases per annum.

[416] Given the small number of cases, these figures include cases where NOP's have been threatened as well as actually served. The sample represents approximately 80% of current area office cases.

[417] It should be noted, however, that the previous councils had their own policies and, in some cases, these were on par with the new Policy regarding breadth of possible remedial actions.

(exceptions being Cases 16 and 19); nor are alternative housing legal remedies such as compulsory transfer a common practice.[418] Indeed, the common approach is to issue an NOP when management tactics aimed at curtailing problem behaviour have failed. In none of the twenty cases was consideration given to application for an asbo, although this is mainly explained because of the recent introduction of the latter (ie 1/4/99) and the fact that most of the cases originated prior to the introduction of asbo's. Indeed, subsequent discussions with senior officers have confirmed that a limited number of asbo applications have since been made.

The second concern is that the correspondence generally fails to provide advice to tenants, omitting any reference either to advice agencies or remedies available. Case 14 offers an interesting perspective on this latter point, for instance, where the tenant replies:

> "We had no idea that there was a local government ombudsman until a few months ago. We have given our local council plenty of time to act. But to no avail."[419]

Summary

Evaluation of Council B practices in respect of the rights under review suggests a number of concerns. Council B has not established a formal system in respect of the access to files regulations, for instance, nor is detailed information about this right provided to tenants or housing list applicants. Again, Council B has failed to establish a formal repairs system that incorporates the legal requirements in respect of the right-to-repair scheme. With regard to homelessness, on the other hand, Council B has developed a policy that espouses commitment to all legal provisions and good practice requirements as per the Code of Guidance. Yet assessment of existing staff practice highlights that legal rights are not being

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[418] The Housing (Scotland) Act 1987, Schedule 3, ground 8.

[419] This was the tenant's response to Q10 on the Ombudsman's Form in relation to why a complaint had not been lodged if the period exceeds 12 months.

met in a variety of ways, for instance, certain decisions concerning intentionality. Finally, Council B practice involving security of tenure matters tends to satisfy existing legal and good practice requirements, although consideration of reasonableness issues may be diminishing because of organisational, fiscal and business priorities.

Other Factors in Rights Implementation

The theoretical systems model developed in this thesis to analyse rights implementation issues is extremely important for three reasons: firstly, it enables us to identify the broad range of factors pertinent to issues of implementation and – more important – to select factors critical to effective rights implementation. Secondly, it provides for a theoretical explanation of *why* rights implementation is ineffective, for example, through organisational failure to implement a holistic strategy that encompasses these key factors. Thirdly, and through identification of these factors, it unveils organisational discrepancies, for instance, the gap between espoused policy objectives and actual practice, thereby facilitating detailed theoretical understanding of why *appearance* differs from *reality*. In short, this approach enables us to analyse whether housing policies, despite their commitments to rights may be primarily symbolic in nature, their objective being "to demonstrate that action is being taken, rather than that the issue or problem is being addressed seriously" (Marsh (1998) p9).

The gap already identified between corporate policy aims and actual council documentation suggests that policies may be symbolic in part. To this issue the thesis will return in the concluding Chapter after evaluating other factors deemed critical to rights implementation. These issues are similar to those identified in Chapter 3, although information gathered provides additional insight because of the exceptionally candid responses provided by both grassroots and senior officers. Issues are now assessed under

the following headings: workload and methods of work; performance management; communications; and personnel matters.

a) *Workload and Methods of Work*

In their major study of housing management post local government re-organisation, Scott et al (2001) highlight that:

> "The lack of stability in key organisational features such as structure, senior management, front-line service delivery, staffing levels, location of functions, and decision-making levels is clearly not conducive to either the consolidation or development of good practice behaviour" (p17).

Scott et al (2001) also suggest that research is specifically required to focus on "alternative ways of managing the housing service" (p113). It is the purpose of this section, then, to evaluate how Council B has developed its organisational structure and working methods.

Council B has decentralised all mainstream housing services. It has also adopted the generic approach to service provision, although this was introduced only in 1999. As with Council A, however, there has been no systematic assessment of workload levels or how workload might impact on service delivery in general or rights implementation in particular. As one senior officer remarks:

> "One thing we've never done as an authority is any empirical analysis on volumes and measures... and one of the things I've always argued particularly in estate management and allocations and homelessness if they're generic based, your staffing levels have to reflect the volume of work generated within a particular community and that will vary".

It should be stressed that Council B has not yet developed employee job profiles that

incorporate clear performance targets that are objectively aligned to both departmental and corporate council objectives.[420] Indeed, the decision taken at senior level to implement staff working practices based on a generic as opposed to a specialist approach was taken without *prior* evaluation of potential impact on work effectiveness generally. Nor was adequate training provided as part of the transitional process towards genericism. To quote the same officer again:

> "I don't think any training has been done to prepare (staff) for generic working and I think that's the sad thing about it".

Before assessing how generic working might impact on rights implementation, it is also worth noting that managerial staff do not monitor many areas of staff performance despite the fact that effective monitoring of staff practice is important in scrutinising whether working standards comply with legislative criteria. Collation of data through performance measurement is essentially quantitative in nature and fails to provide detailed feedback on rights implementation. But another factor that has been identified as being potentially detrimental to effective rights implementation in Council B is the dearth of organisational systems to provide checks and balances. In the case of homelessness decisions in one of the offices under scrutiny, for example, it was affirmed by a senior officer that the quality of homelessness decisions was not monitored on a regular basis, indeed that the validity of decisions was not generally audited unless a case was referred through the internal homelessness appeal system.[421] Indeed, those senior staff interviewed tended to assume that tasks were being done, for example, the assumption that decision letters in respect of

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[420] It has been advised that such profiles are in the process of development, but this has been the case since 1997.

[421] A point, it should be noted, that has been discussed by an internal working party considering homelessness services in respect of Best Value. Thus, housing managers will be expected to vet a sample number of cases to assess the quality of decisions. It is also interesting to note that evaluation of the cases that reached the tertiary councillors appeal stage reveals that most applicants won their appeals.

homelessness were being retained on file; or the assumption that staff would be implementing policies and procedures, particularly after training had been provided, for instance, spending sufficient time with tenants to explain the latter's rights during the signing of Council B's tenancy agreement. Yet neither assumption had ever been corroborated through any formal assessment of file documentation or staff performance in respect of the contractual process. Indeed, informal discussion with housing officers has since identified that the signing and explanation of tenancy agreement details, including rights information, has now been delegated to more junior housing staff who are untrained in rights matters. Of particular concern from a rights perspective is the comment of one housing officer to the effect that interviews last only "about a quarter of an hour", as opposed to the period of "between 45 minutes and one hour" originally recommended to staff by the internal staff who provided the tenancy agreement training.

It should be emphasised in passing that managerial staff are themselves under extreme pressures as far as workload is concerned, their remit covering a wide variety of duties that have never been quantified in terms of feasibility of effective implementation. In addition, existing organisational structures where housing officers report not directly to the manager, but via a team leader, entail that the former are often 'removed' from day-to-day practices, a removal exacerbated by a dearth of meaningful performance indicators that takes cognisance of both qualitative and quantitative matters.[422]

All staff interviewed indicated that current workload levels impact negatively on service delivery, emphasising that quality of service was adversely affected by heavy workload. As one senior officer noted:

"The amount of work that I've got is almost impossible... I see it becoming impossible".

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[422] Managers interviewed, indeed, expressed support for possible innovations such as consideration being given to the appointment of a court officer to deal with breach of tenancy matters akin to the rent arrears court officer who deals with court actions for the specialist arrears component of the housing service.

b) *Performance Management*

Analysis of Council B organisational practice confirms that performance management measures have increased, thus reflecting the growth of housing management performance measurement systems generally, systems that the literature review suggests are "placing increasing emphasis on meeting objectives rather than the interests of providers" (Mullins (1998) p252). With reference to the indicators currently in place, for example, Council B – in addition to the statutory measures – collects a large volume of data, including number of interviews with clients and number of garden and close inspections.[423]

In discussing the establishment of the new performance management systems with staff, interviewees affirmed that existing workload stress had been exacerbated by the establishment within Council B of a performance management culture; this is reminiscent of the criticism of performance indicators raised by Jacobs & Manzi (2000) in Chapter 2 to the effect that performance indicators can damage staff morale, thereby affecting service delivery including effective implementation of rights. Indeed, staff complained without exception that ability to fulfil work requirements was adversely affected by the collation of statistical data to enable targets set to be monitored and that quality of service had been downgraded by demands on their time to collate the mainly quantitative performance standards data. There is no monitoring at present, for example, of quality of advice provided to homelessness applicants, say, nor is the effectiveness of training provided assessed, for example, by assessing performance both prior to and after training. Yet dearth of measurement affects not just qualitative issues, but quantitative areas too, for example, active monitoring of the important area of NOPs issued in respect of rent arrears did not commence until Autumn 1999.

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[423] In one particular quarter, for example, a total of 4,722 gardens were inspected.

The possibility that such target setting may affect rights implementation is implied in the words of one senior officer who acknowledges:

> "It seems to take up a long time... and people's time can be diverted to doing paperwork rather than going out and doing the actual job."

As highlighted in Chapter 3, however, excessive workload is not synonymous with ineffective rights implementation. In the area of homelessness, for instance, workload factors arguably impact negatively on staff time allocated to the assessment of homelessness applications and this may contribute to rights not being protected. Yet, workload factors are not directly relevant to the non-implementation of other rights such as access to files where non-implementation links directly to the absence of any formal council policy and procedural system. This is also true in respect of the right-to-repair scheme.

c) *Communications*

Effective rights implementation, as highlighted in the literature review, is heavily dependent on appropriate communication systems being in place. Indeed, as Handy (1985) acknowledges: "Good communications imply a well-designed healthy organisation" (p360). Failure to advise tenants of their rights, for instance, was shown to be one of the critical factors affecting the rights-bearer's capacity to exercise her/his rights; and failure to communicate legal rights information to housing staff, whether through written documentation or formal training, has a negative impact on implementation of rights.

Yet establishing effective communication networks is far from easy. For example, public sector housing organisations are responsible to a variety of audiences (the public, councillors and staff) and communications require to be tailored accordingly to ensure that:

> "the message which the organisation wishes to transmit should be sent consistently through all the communication channels to all the audiences" (Flynn (1990) p147).

And analysis of communications systems in Council B vis-à-vis the dissemination of relevant information reveals a number of concerns.[424] In an MBA thesis published in 1999 concerning housing departmental communication systems in Council B, the researcher affirms that:

> "... there was little consideration given to system wide impacts and there was evidence of poor communication, little joint work across functional boundaries, extreme caution and blaming others, unsupportive reward systems, dominating procedures and central systems" (p3)

In evaluating why communication systems had been poorly developed, the researcher cited one managerial opinion to the effect that:

> "... such is the organisation that power rests with a small conclave who are isolated from the thoughts and experience of those delivering services... those eventually accessing this elite status have a vested interest in retaining that power"(p65).

Council B communication systems are now evaluated under the headings of internal and external communications.

i) Internal Communications

Although an organisational team briefing system is in place through which staff are notified of specific organisational developments, this notification process does not necessarily incorporate changes of a legal nature. The council's legal department does, however, produce briefing notes on a range of legal issues, although these are not housing related, nor is any procedure currently in place for ensuring that this information reaches area office housing staff.

The lack of a formal system for ensuring comprehensive dissemination of legal

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[424] The thesis and researcher are unnamed to preserve confidentiality as requested.

information is illustrated well by the fact that legal changes to grounds for possession that resulted from the Crime and Disorder Act 1998 were not referred to housing staff until several months after the changes had occurred, although these had allegedly been referred to area housing officers by a senior officer.[425] As one senior officer has stated:

> "Communication is poor. It is something that needs to be improved. You tend to pick up (legal changes) if you're lucky through the 'Inside Housing'."

The fact that important legislative change is not adequately notified is symptomatic of a major communication barrier.[426] But another barrier to effective communication stems from the specialisation of individual housing functions such as arrears and maintenance, and the tendency to restrict staff access to information concerning those specific functions, a process that tends to modularise staff awareness of legal issues instead of enabling comprehension of their inherent systemic relationship, for instance, the close links among supposedly different areas of law.[427]

It is worth noting in passing that other internal council research has indicated general concerns in respect of inadequate communication. For example, an internal report to Council B in 1997 indicated that:

> "two thirds of staff do not believe that they are kept up to date with what is going on elsewhere in the housing department".[428]

And further council research into staff attitudes concerning communications was carried

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[425] Confirmed by this officer at a separate interview.

[426] For example, in addition to the Crime and Disorder Act 1998, staff have received no information on the important legislative provisions contained within the Data Protection Act 1998 and the Protection from Harassment Act 1997 respectively.

[427] A point that will be assessed in greater detail when current training provision is evaluated.

[428] The overall value of the research prepared by independent consultants is, however, arguably limited in view of questions asked and the format of questions. For example, 93% of staff express the view that they do their job well. This is not surprising, though, and tells us little in the absence of effective quantitative and qualitative monitoring techniques. Again, findings depend on staff assessment based on answering vague questions based on a checklist of the following criteria; 'Strongly Agree', 'Mostly Agree', 'Neutral', 'Mostly Disagree', Strongly Disagree'. Interestingly, this Report has not been disseminated to staff, although feedback is a critical element of effective change theory.

out by central personnel which implemented two attitude surveys in 1998 and 1999 respectively. Although digressing, of interest here is the way in which statistical data can be used to illustrate something that may be untrue. For example, the 1998 survey suggests council-wide improvement in terms of communications based on employee responses and notes that:

> "the majority of our employees feel that their comments and suggestions are taken seriously and that they are kept well briefed of issues that relate to their job."

Yet consideration of the overall staff returns shows that only 40% of housing staff returned their questionnaires. In fact the total number of responses received (one thousand and ninety eight) represents only about 6% of total Council B employees.

ii) <u>External Communications</u>

Communications to tenants comprise a large variety of formats and include leaflets, information sheets, newsletters and weightier documentation such as the new Council B tenancy agreement which is provided to all *new* tenants.[429]

With respect to information concerning the rights examined, however, information provided appears to be extremely limited, a point now highlighted by reference to specific examples prior to providing commentary on reasons.

It has been noted already, for instance, that tenants are not notified of their right to access personal files[430]; nor are they provided with detailed information regarding the right to repair scheme, for example, rights to compensation. In the words of one senior officer when queried regarding repairs information being passed to tenants at point of tenancy agreement signing:

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[429] It is also noted here that no council Tenants' Handbook yet exists, although one is currently being drafted.

[430] Interestingly, though, social work department issue leaflets regarding this right throughout their area offices.

"They are supposed to do that at the missive signing, but they don't go into repairs. It would tend to be things like, you know, you'll have to do your garden, you'll have to make sure you clean the close."[431]

Information provided about homelessness and security of tenure, too, is scant. In respect of homelessness, for example, the Code of Guidance outlines a wide variety of locations and methods for the promotion of homelessness services. Yet as one housing officer replied in response to a query regarding homelessness policy being widely disseminated:

"I don't think so at all, no." (housing officer).

And, again, in respect of the provision of leaflets.

"Do you know if leaflets are given to applicants?" (Researcher).

"Not at all, no." (housing officer).

Documentation provided regarding security of tenure issues is also inadequate. Tenants are not provided with written information on either the rent arrears or estate management policies, for instance, a position presently at odds with the allocations policy in respect of which applicants for housing receive summary copies. It is emphasised, though, that in the case of clients seeking advice about housing benefit or welfare benefits, a large volume of written documentation is available, for instance, via the council's office networks and money advice services.[432]

Reasons for lack of information provided to applicants and tenants are as follows. Firstly, the development of documentation is normally an organisational by-product of policy development, indeed it follows logically from the implementation of specific policies. Given the fact that major Council B housing management policies have only recently been

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[431] This officer was of the opinion that 'technical repairs information' would not be discussed at sign-up stage despite the original management directive that the new tenancy agreement should be explored point by point. This will be considered again under the discussions on training.

[432] Personal advice, it should be noted, is also available through this route.

implemented, then, it is partly understandable why detailed documentation for tenants is not yet available. On the other hand, though, this delay cannot solely be attributed to this factor since, in the case of allocation policy, leaflets were issued at the same time as policy implementation. Possible reasons for the delay in producing documentation could include awaiting the introduction of the proposed new Council B Tenants' Handbook. However, given that the latter is not yet in place,[433] other factors suggested include a) insufficient resources applied to develop relevant documentation, b) inadequate planning, and c) lack of managerial direction, namely collective failure to apply the principles of systems theory to organisational development.

b) *Personnel Matters*[434]

The issue of lack of staff training and resultant poor knowledge has been a major theme in research studies. To quote Bines et al (1993):

> "The quality of staff, their attitudes, their motivation and the way in which they are managed will affect the efficiency and effectiveness of the organisation" (p33).

This will also include effective implementation of legal rights. Such studies have generally failed, however, to analyse contextual matters such as quality of training provided by individual councils and how this might impact on rights implementation. This section of the thesis now examines these issues under the headings of a) training and b) staff knowledge.

a) <u>Training</u>

Prior to assessing how training within Council B may impact on the implementation of tenants' rights, general information is provided in respect of policy commitments and

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[433] The policies came out in November 1999, but at end of March 2000 the Tenant's Handbook has still not been provided. Indeed the tenant participation officer remitted to undertake this task is currently involved in other policy duties.

[434] As with Council A, the examination includes assessment of priority afforded to formal educational training programmes by Council B.

procedural arrangements concerning training delivery.

Policy Commitments

Council B corporate strategy encapsulates the perspective that employee development, i.e. staff training, represents one of the most important organisational functions, the council's policy statement stressing that :

> "We will give employees the training and development which they need to play a full part in our work and to develop as individuals."

As part of this strategy, the council has implemented an employee development programme in accordance with which staff training needs are assessed against job competencies contained in relevant job profiles.[435] This represents the first stage as noted in Chapter 2 of what can be termed the 'training cycle', but it should be stressed that no systems have as yet been inaugurated for the formal evaluation of training needs in practice, nor for that matter are evaluation systems in place to assess whether training provided results in enhanced job performance in the workplace. Indeed, one senior officer has claimed:

> "Our individual needs assessment and employee development interview process I think, not putting too fine a point, is a shambles".

Until Autumn 1999 a specialist training section with two officers existed, with one senior officer employed to co-ordinate training provision in respect of housing matters. This post was 'lost', however, as a result of the internal organisational re-structuring process to be replaced by a system of training delivery involving utilisation of policy working party representatives or supervisory staff employed at area office level, that is, managers or

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[435] In truth, the programme is still in its embryonic stages and has not been implemented properly in respect of housing management services, for example, many staff, including housing officers, do not have job profiles. The data gleaned from the first assessment carried out in 1998 provided mainly general information on training to be given to housing officers on the pending Council B Policies. No specific needs assessment relating to individual staff needs has yet been developed.

officers responsible for area office housing teams. This is known as 'cascade' training. As will be highlighted below, this had important ramifications from a rights perspective given that the professional knowledge of the specialist training personnel was no longer available to Council B.

Turning now to the examination of current training practices, this is dealt with by reference to the following issues: extent of training; quality of training; financial commitment to training; and general factors.

i) Extent of Training

The extent of training is assessed in respect of both external provision i.e. further educational and internal provision.[436] With regard to the question of external provision, it is interesting to note that sponsorship of staff to attend recognised further educational housing courses that enhance staff knowledge of rights issues has fallen drastically within Council B.[437] This decline has been attributed to a desire to replace further education by the introduction of a vocational qualification framework for housing staff, although this has not yet materialised.[438]

Consideration of current staff records reveals that Council B follows national trends with few staff being professionally qualified in housing. Table 9 below highlights the present situation.

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[436] Staff occasionally attend seminars provided by external organisations . Given that these staff are mainly senior managerial staff, this type of 'training' has been omitted from the evaluation.

[437] From over fifty students in the inaugural year of the 'new' Council to less than five in the financial year 2000/2001.

[438] With the exception of the introduction of four students under the modern apprenticeship scheme.

Table 9: Council Staff with Housing Qualifications

Qualification[439]	No of Staff	% of Total Staff (608)
Postgrad/Diploma	37	6
HNC	13	2
Modules	44	7

(Source: Council B Training Section Data, 1998)

In assessing the above data the following points are noted: firstly, the thirty seven staff holding at least Diploma level qualification represents just 6% of the departmental total of four hundred and thirty six housing management and one hundred and seventy two housing benefit staff (i.e. six hundred and eight). Staff holding this level of qualification are mostly located in senior positions and the relatively low level of qualified personnel should, of course, be considered in this context, that is, the fact that such a qualification is arguably not appropriate for many positions within the organisational hierarchy.

Secondly, and the above point notwithstanding, the number of staff holding some other relevant housing qualification i.e. fifty seven still represents a small percentage of total staff (under 10%)[440], although it should be noted that a further nineteen staff were studying for either a diploma (thirteen) or HNC qualification (six) at the date figures were collated. Further increases in levels of qualified staff within Council B are unlikely, however, given that few staff are now offered further educational opportunities.

Turning now to the area offices under consideration, Table 10 below illustrates the qualifications held by staff interviewed, as well as an additional assessment that included all staff at housing officer or housing assistant levels.

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[439] This includes a small number of staff with postgraduate qualifications in housing 'higher' than diploma (or professional qualification) standard. It should also be noted that staff with qualifications other than housing are omitted, for instance, those staff possessing degrees in accountancy, or qualifications in information technology.

[440] The scotvec modules comprise essentially the housing administration modules carried out at Scottish colleges of further education.

Table 10: Area Office Staff with Housing Qualifications

Postgrad/Diploma	HNC	Scotvec Modules	Total
4	2	-	22

(Source: Council B Personnel Records, 2000)

Three main points should be noted in respect of Table 10. The first point is that the four staff possessing either a postgraduate or diploma level qualification hold either managerial or supervisory posts. If these are excluded from the figures, only two staff from the remaining eighteen housing officers/assistants hold a relevant housing qualification.

The second point is that staff employed often occupy relatively important posts yet possess no recognised qualification, nor indeed have they received appropriate training. In one case involving a senior officer, for instance, the officer appointed was previously employed as a lift inspector and had no direct experience of housing management. Yet, this same officer is now responsible at area office level - without appropriate induction training having been provided - for the important (and legally complex) functions of homelessness, allocations and estate management.

The lack of priority afforded to formal education within Council B is not intrinsically problematic from a rights perspective, however, particularly if organisational training provided ensures awareness and knowledge of rights issues. Information gleaned from both internal training records and staff interviews indicate major concerns, though, in respect of levels of internal training provided. In terms of homelessness training, for instance, examination of homelessness data shows that a large number of staff have received little training on either a) homelessness law or b) the range of issues recommended in the Code of Guidance, for instance, awareness of private sector housing law or c) Council B Policy itself. This is shown in Table 11 below.

Table 11: Homelessness Training Needs Assessment: 1997/98[441]

Training Course Attended	No of Staff	% of Total Staff
Law	9	21
Policy	17	40
Code of Guidance	35	58
Private Sector	13	30
Children's Act	18	42
Matrimonial Homes	10	23
Procedures	-	-
Specialist[442]	-	-

(Source: Council B Training Report, 1998)

Interviewee responses highlighted other concerns regarding the paucity of training received. None of the housing staff interviewed, for example, had received specific training on either the access to files or right-to-repair regulations, an omission that has serious implications for rights implementation given that policy training did not incorporate such training.[443] Indeed, one maintenance officer confirmed that he had received only 1.5 training days in thirty three years, thirty of which had been spent with one of the predecessor councils.

Training concerning security of tenure issues, on the other hand, did take place as part of the general training staff received on the council's policies. But in this connection, too, the level of training provided was considered by most interviewees to be inadequate in terms of lack of detail being provided as regards tenants' rights. To quote one officer referring to the estate management policy training that focused on policy and procedural matters, as opposed to legal principles and good practice guidelines that should underpin organisational policies and procedures:

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[441] These figures are based on the forty three staff involved in homelessness duties at April 1998. The situation is likely worsen if proposed plans to extend homelessness duties to housing officers are agreed i.e. c one hundred and seventy eight staff.

[442] Conducting a homeless interview; mental health awareness training etc. Some staff participated in an event concerning mental health awareness issues in 1999.

[443] In one office, though, a team leader had provided maintenance officers with an overview of the right-to-repair scheme.

"In order to do our job properly you've got to be kept up to date with relevant changes in legislation. But I know from my point of view I've felt as if I've been chucked in at the deep end, especially coming from an allocations and homeless background."

Indeed, the writer of this research personally attended one of the training sessions concerning the new Council B tenancy agreement. Many pertinent rights issues were either ignored or discussed only in passing (e.g. right-to-repair, schedule 10 statutory repair obligations), perhaps unsurprising given that training lasted – to quote one interviewee – "about half an hour". One senior officer, questioned about this practice in his interview, commented that it was part of a broader organisational "dumbing down" framework, that organisational learning now focused more on a process rather than a knowledge based approach;[444] while a supervisor working in the field provided a more practical explanation:

"I think training is a difficult issue because a lot of the time you can't afford to send staff on training because you don't have enough cover. That's a major part of it".

Yet criticism raised by interviewees concerned not only the inadequate quantity; equally scathing was feedback received on quality of training provision.

ii) Quality of Training

Organisational restructuring within Council B, as we have seen, has eschewed training delivery by specialist training staff in favour of delivery by grassroots managerial and supervisory staff. But this particular approach has been criticised by staff as it can involve using personnel to carry out training who may be ill equipped for the task, whether through lack of knowledge, aptitude, time restrictions that affect preparation of learning materials, or

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[444] Timescales allocated to the policy training were similarly inadequate. The Tenancy Agreement training, for example, took place in less than two hours, albeit the document is fairly extensive in terms of content.

a combination of these factors.[445]

Adopting this method of training has been criticised by one senior officer personally, for instance, on the grounds that:

> "It provides training but not effective training because the internal staff have got other commitments and they've got to try and deal with them and deal with the training at the same time."

While another senior officer is even more blunt in his criticism when, in commenting about supervisors as trainers, this officer states:

> "I mean team leaders are not trainers. Training is a specialist skill."

It is important to note that quality of training delivery has also been adversely affected by quantitative issues, for instance, the fact that a swathe of policy and procedural documentation was introduced simultaneously thereby engendering a learning process based on 'cramming'. To quote one officer:

> "It was in-house. They tried to cram so much into the one day that is was flying over the staff's head. No-one benefited from it at all."

And, in terms of improvements to training provision, another officer remarked:

> "Personally I would go through one module at a time and concentrate on this and have an expert in that field who can answer your questions so that when you go away from your training session you feel that you've had your questions answered and you're confident before you move in the next one without leaving all the open areas (*about rights*) that still have to be answered."

Finally, one senior officer with direct reference to the inadequacy of current legal rights

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[445] Council B sent most supervisory staff on an internal 'Training the Trainer Course' in 1996/97. Yet such courses do not, per se, convert personnel into quality trainers for which a broad range of attributes is required, for instance, relevant legal knowledge and practical experience, ability to communicate effectively, possession of interpersonal skills such as managing both individuals and groups, and psychological skills in 'reading body language' etc to provide effective training.

training has affirmed:

> "I don't think they (*trainers*) go into depth about the legal issues that they should go into".

The final criticism raised by staff from a qualitative perspective concerned consistency of training and how an approach based on "cascading" of training meant there was little consistency in the training provided to staff. For, although supervisors utilised standard documentation to advise staff of the new policies, information provided about rights (and other aspects of policy) varied depending on a variety of factors such as (the trainer's) interpretation of materials, actual time devoted to training and knowledge of relevant rights provisions that might have counteracted deficiencies identified in the council's policy documentation.

iii) <u>Financial Commitment</u>

Council B financial commitment to staff training is reflected in the budgetary allocation contained within the council's housing revenue account. For the financial years 1998/99 this figure stood at just under £90,000 of which sum less than £15,000 had been spent by November 1999, the lack of expenditure attributable largely to the focus on in-house as opposed to external training provision. It was notified by one senior officer at interview, however, that commitment had since increased as a result of a corporate council directive to the effect that funds allocated to training would constitute 1% of the departmental payroll; this figure is estimated as being c £900,000 (or c £200 per staff member pa). Yet, albeit financial allocation represents *apparent* commitment to training, the comment of the same senior officer indicated that the putative financial commitment is not synonymous with commitment to spending sums in *actual* training, particularly as in-house training is the preferred mode of provision To quote:

"It could be a figure to give the impression that there is a commitment to training, but it is one of those figures that's plundered."[446]

iv) General Factors

Evaluation of the current training methods employed by Council B indicates three general concerns that are potentially antithetical to rights implementation. These findings are consistent both with the earlier research highlighted in Chapter 2, as well as systems organisational theory: the findings that training for housing staff is limited in the Scottish context and delivered in an ad hoc fashion without providing training in accordance with training cycle theoretical requirements. The first concern relates to the fact that training tends to be restricted to the specific functions carried out by individual officers so that learning is "modularised", thereby preventing a broader understanding of relevant issues. For example, maintenance officers receive no training on the tenancy agreement despite the importance of the latter in highlighting repair obligations of Council B, information that is critical in terms of the duties carried out by maintenance officers. Again, housing officers dealing with arrears receive little training on the Council B policies "unconnected" with their job, a defect that can adversely affect rights implementation. For instance, arrears staff tend to consider issues of reasonableness with specific reference to actual arrears without considering all the possible elements that can affect reasonableness, for instance, family and social considerations, tenancy compliance with other contractual obligations other then rent payment etc.

The second concern alluded to by staff relates to the need for regular and ongoing training, a point often ignored on the assumption that people who have been on training or educational courses are now "trained"; and a point emphasised even in earlier housing

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[446] A reference to the fact that training budgets are frequently subject to cuts in the light of other organisational and fiscal needs.

research studies (Stanforth et al (1986)). Yet, like buildings subject to obsolescence, the value of training received diminishes through time, particularly where knowledge learned is not routinely applied. In the words of one senior officer regarding repairs legal knowledge:

> "Yes I did a bit at University ... a long time ago. I don't remember any of it to tell you the truth."

The final concern involves the focus by Council B on the notion that staff should learn "on the job", in preference to receiving formal training delivered by specialists. Yet learning on the job is potentially problematic, its effectiveness often marred by factors such as supervisory staff lacking time (or knowledge) to develop practices based on legal principles. Thus, staff learning "on the job" often assimilates existing bad or unlawful practices, a situation exacerbated in the case of Council B by the dearth of systematic induction for new employees.

ii) <u>Staff Knowledge</u>

Interviewees were questioned regarding their knowledge of council policies and also their legal knowledge of the four rights under review.

a) *Knowledge of Policies*

With regard to knowledge of council policies and procedures, interviewees were generally aware of the existence of policies and procedures applicable in their particular sphere of work, although knowledge levels varied depending on a) training received and b) their involvement with particular policies. For example, there was a clear gap in staff knowledge regarding what policies and procedures were currently being developed outwith their particular job remit. In the case of one maintenance officer, for example, - and despite showing awareness of the council repairs categories - the officer remained unaware that a new repairs policy document was being developed by Council B. In fact, he perceived these

categories as constituting the policy as opposed to being merely elements within it. Again, and with reference to the new allocations policy one arrears officer believed that if tenants are "in arrears", (they) don't get put on Transfer List", nor do they receive offers, whereas tenants in arrears can actually qualify for re-housing provided suitable arrangements are in place.[447] This also represents a clear indication of the fact that staff fail to receive detailed training on actual policy provisions, including the important issue of both how and when to apply discretion.

b) *Knowledge of Rights*

Legal knowledge was "tested" in respect of the four rights issues of access to files, homelessness, repairs, and matters concerning security of tenure.

i) Access to Files

The specialist staff interviewed i.e. arrears and maintenance officers were not aware of any of the main legal provisions, a finding that is perhaps unsurprising given their particular remit. Yet knowledge held by housing management staff was extremely limited too, although supervisory and managerial staff were aware of some of the provisions, such as there being a timescale requirement for processing applications.[448] For example, as one housing officer stated: "I'm not aware of any 'law'." Interviewees also acknowledged that tenants rarely request to see their files, but felt that this point was irrelevant and that staff ignorance was potentially problematic.[449] In the words of one officer:

> "I think that it is something that doesn't happen very often, but when it does happen it could have major implications."

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[447] As indicated in Chapter 2, the Housing (Scotland) Act 2001, s10 (4) (a) will have important implications by amending urgent allocation law so that less than one month's arrears must be disregarded in the allocation process.

[448] Interestingly, though, none of the staff had heard of the new Data Protection Act 1998.

[449] The main reason cited for this related to tenants' lack of awareness of their right to access files, as well as problems tenants might experience in working through the bureaucratic process, e.g. delays, efforts required.

Indeed so, for by providing someone with information to which access should not be given might be detrimental to a person's physical or mental wellbeing, as well as affecting their ability to protect their rights to reiterate a point made earlier.

ii) Homelessness

Only one of the officers interviewed dealt with homelessness specifically as part of her duties, although managerial staff had input at appeals stage. The research suggests, though, that other staff may possess only limited legal knowledge of homelessness principles as may be inferred from the range of unlawful practices occurring in the homelessness function. And with regard to the housing officer who was interviewed, this officer showed little awareness of the "four hurdles" and had no knowledge of the specific remedy of judicial review.[450] Of some concern, particularly in view of the above points, was her comment that she rarely referred to the Code of Guidance as she felt this to be unnecessary.

iii) Repairs

From the three specialist maintenance officers interviewed, two were almost wholly ignorant of the law relating to the right-to-repair scheme.[451] For example, in response to a query regarding whether certain repairs had to be effected within specific statutory timescales, with compensation payable where such timescales were not adhered to, came the response: "No. I didn't know that". And similar feedback was received in respect of the statutory obligation on landlords to ensure that properties let were "tenantable and habitable", as well as lack of knowledge about Schedule 10 repair obligations generally. In discussing this point with one maintenance officer, it was affirmed that:

> "We have never seen the tenancy agreement".

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[450] This officer also commented that notification letters were always retained on file, a point clearly at odds with empirical findings.

[451] The exception being a senior officer who had recently completed specialist research on repairs law at Glasgow University.

And the principal factor suggested by one senior officer questioned about lack of repairs knowledge possessed by specialist maintenance officers sums up matters concisely:

"There's not been a lot of training in all honesty for maintenance inspectors at all."

iv) Security of Tenure

Knowledge levels of the issues varied dependent on two key factors, namely a) officer seniority and b) the officer's particular job remit. In general terms housing officers displayed some knowledge of the legal provisions relating to repossession of secure tenancies i.e. establishing relevant ground(s) for action *and* the requirement to show reasonableness for raising the action. Knowledge of other remedies such as interdict and specific implement was limited, though, as was knowledge of the provisions introduced by the Crime and Disorder Act 1998. For example, staff had not been appraised of the legal changes to the effect that there was now a statutory definition of anti-social behaviour, extremely important in that actions raised should now conform with *that* definition and not be raised solely at the whim of staff, i.e. based simply on their perception of what constitutes anti-social behaviour. Staff were aware, however, of the old ground used to evict tenants guilty of anti-social behaviour.[452] It is emphasised, of course, that the new grounds are broader than the old grounds so this *per se* is not a problem or denial of rights. It is indicative, though, of inadequate communication systems being in place to ensure that staff are updated on all relevant legal changes, an omission that could place tenants at a concrete disadvantage. Indeed, assessment of tenancy files in respect of changes to the law regarding grounds for taking action in respect of anti-social behaviour, the new grounds effective from 1 December 1998, showed that NOP's were still being served using the 'old grounds' until the Spring of 1999 and, in one instance (Case 10), Council B lawyers did not advise housing staff until 17

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[452] The Housing (Scotland) Act 1987, Schedule 3, ground 7.

June 1999, that:

> "... that it might be appropriate to issue a fresh Notice of Proceedings based on the new grounds contained in the Crime and Disorder Act 1998, s 21 (2) and (3)."

Case Study Findings[453]

As per the Council A case study ten area housing office staff were requested to complete the case studies, their responses correlating generally with feedback gleaned from the interviews proper. Again, responses were assessed to gauge staff understanding of the legal issues and not to be regarded as providing legally "correct answers". The main points of interest are now briefly summarised.

i) Access to Files

Interviewee responses revealed an almost complete lack of knowledge about this right, particularly at housing officer level. In response to the case study concerning what personal information a tenant (or housing list applicant) can access, for instance, one officer stated:

> "I don't think he should see it (ie file), but I don't; know what his appeal rights are."

Again one of the senior officers believed that a person "may only see information that would not incriminate other people", though this officer lacked knowledge of appeal rights conferred by the scheme. Indeed, this officer believed (wrongly) that Council B had established a formal policy that governed access rights to personal files.

iii) Homelessness

Only one of the interviewees dealt with homelessness on a routine basis, while one of the senior staff participated occasionally in the council's internal homelessness appeals process. In addressing the case study, the housing officer appears not to have evaluated the issues in accordance with legal requirements in respect of intentionality. Although the housing officer

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[453] This involved area office staff interviewees only.

states that she sees "the big problem as being intentionality", for example, she fails to consider this in terms of the legal test. Indeed, the officer's focus is on the voluntary termination of the secure tenancy in Sussex and the officer intimates that she would:

> "...speak to the previous council to see if the tenancy held there was still available ... that if they could get the tenancy back, they could then go through a HOMES nomination (to Council B's area)".

The senior officer alluded in his response to the need to investigate whether a "bone fide offer of employment" had been made before the applicants terminated the secure tenancy in Sussex. Intentionality was thus being considered in respect of the previous tenancy *prior* to consideration of intentionality issues in respect of the tied accommodation. Indeed, in this instance, there was no consideration of whether the tied accommodation was settled. And, in the event of the tied accommodation being settled accommodation, intentionality considerations concerning the previous tenancy are not relevant.

iii) <u>Repairs</u>

Consideration of interviewee responses offered a stark contrast between knowledge held by senior (and professionally qualified) personnel and specialist (and unqualified) maintenance officers. One senior officer, recently qualified from Glasgow University's Housing Studies Programme, outlined concisely both Schedule 10 and right-to-repair obligations, as well as the common law right of withholding rent. In addition, he was aware of legal remedies adding that:

> "the tenant may also be eligible for compensation for inconvenience as the council has failed to fulfil the statutory obligations contained within the contract of lease."

Feedback from two maintenance officers, on the other hand, provided a rather different picture. Neither of these officers was aware of the statutory provisions, or of remedies

available to tenants. For example, in explaining how Council B would meet its repair obligations, one officer simply stated:

> "Tenants would have had their complaint/letter acknowledged by the Assistant Manager and Direct Works would be called and asked to hurry on."

iv) Security of Tenure

Five of the interviewees dealt with anti-social behaviour and two with rent arrears. The following remedies were suggested by staff as a way of resolving the anti-social behaviour: implement (3); interdict (3); ASBO (1); Ground 16 (1); notice of proceedings (5). Assessment of the five staff members reveals that the three senior staff had greater awareness of legal remedies than both housing officers who cited only implement and notice of proceedings. It is also interesting to note that all three officers are professionally qualified in housing. Only one officer examined the possibility of a homelessness application being lodged to resolve the relationship problem.

Staff feedback concerning the arrears case study was fairly minimal, neither officer explicitly commenting on the need to establish the ground and reasonableness of eviction action. Examples provided by staff of the types of issues the court might consider suggested, though, that both officers were at least partially aware of reasonableness issues. For example, one officer added that the court might consider the following factors:

> "Whether both joint tenants knew that arrears existed... whether tenants were aware that benefits might be available... and vulnerability of the children."

Summary

Factors identified as being pertinent to rights implementation in Council B have been shown to be broadly analogous to those highlighted in the Council A study. Inadequate

direction at senior level to develop and implement organisational practice systemically is critical in explaining non-implementation of legal rights. As with Council A, inadequate direction stems largely from collective failure by senior management to synthesise organisational practice to ensure that key elements actually translate corporate policy commitments into practice. Thus, policy documentation will remain largely symbolic in nature unless commitment to rights are enshrined or 'mainstreamed' into administrative practice. And critical to this process as highlighted by Council B staff, is the need to implement clear and comprehensive organisational communication and training strategies that deliver rights information.

Tenants' Capacity to Enforce their Rights[454]

In Chapter 2 a variety of factors that can adversely affect tenants' capacity to exercise their rights were examined. Two factors shown to be of major significance included a) the need to ensure accessibility by tenants to comprehensive and detailed rights information and b) the provision of training for tenants. Although this thesis is primarily concerned with organisational administrative processes that determine legal housing rights implementation within local authorities, it is important to highlight feedback from a small number of tenants who were interviewed to assess their opinions of practice within Council A and Council B.

Prior to assessing the tenant responses, the following points are noted. The first point is that the data presented is necessarily limited given the small sample of interviewees (a total of four tenants, two from either council). Given that the tenants interviewed are activists in local tenant/resident groups, however, their views are worthy of note and potentially indicative of issues for more detailed scrutiny. The second point is that the tenants

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[454] The specialist Topic Guide used for the four tenant interviews is contained in Appendix 2.

interviewed have been council tenants for a lengthy period and have had a long-teerm association with their respective councils. Issues are now assessed under the following headings: accessing advice; tenants' perceptions of council staff; council documentation; policy consultation and tenant training.

i) Accessing Advice

As highlighted in Chapter 2, an important factor in empowering tenants to exercise their rights is the opportunity to access housing legal advice. As confirmed by both tenants and staff, though, advice options are extremely limited in both Council A and Council B. No specialist housing law centres exists in either area, or example, and the main advice agency is the Citizens Advice Bureau. Both councils are also developing a network of 'one stop shops' that deal with general housing inquiries, but don't at this stage provide specialist legal rights advice. Given that the councils represent the principal source of advice to tenants, it is worth noting the latter's perceptions of housing staff in respect of the provision of information about rights.

ii) Tenants' Perceptions of Council Staff

Tenants' perceptions of council staff ability to advise about legal rights varied considerably with individual comments made as follows:

- "I don't know if they're informed about tenants' rights" (Council A)
- "Very poorly... a lot of people go in and feel they're being fobbed off' (Council A)
- "Well I can only talk from my own experience and I've found them okay" (Council B)
- "But to be quite honest with you ... if you were to haul the staff here and ask what they know of tenants' rights... They wouldn't know any more than what I

know" (Council B)

In explaining the current situation, one Council B tenant noted that staff were kept in ignorance to protect the council's interests; while one Council A tenant stated explicitly that staff cannot keep abreast of legal developments because of work pressures. Given the limited knowledge tenant interviewees possessed about rights (see below), such comments should be treated with caution. Their comments, however, do appear to reflect general concerns noted throughout this thesis concerning lack of staff knowledge concerning legal housing rights.

iii) Council Documentation

Housing management documentation has been the subject of detailed scrutiny in this thesis and can often be criticised from a rights perspective. The examination of interviewee feedback in respect of both Council A and Council B documentation suggests similar concerns. None of the tenants had received detailed guidance about rights contained in their tenancy agreement, for example, a point that consolidates earlier discussion regarding the limited time housing staff spend in explaining the tenancy agreement to tenants. Again, neither council provides a tenants' handbook that covers tenants' rights in detail, although both councils have produced various leaflets. Leaflets produced, however, were criticised by tenants from both councils. One Council B tenant criticised information provided on the grounds that:

"I mean the information that you get is in leaflet form which only, if you like, glosses over (rights). It doesn't go into any fine detail".

While another Council A tenant was more direct when questioned about lack of information about the right-to-repair scheme:

"It would cost them a fortune with repairs not being done if tenants could claim

compensation."

iv) Policy Consultation

Support for public consultation is a central theme of corporate council policy documentation in respect of both councils. And, given the major housing management policy development occurring as a result of Local Government re-organisation, consultation with tenants should, therefore, be paramount. Yet analysis of tenant responses reveals that commitment to consultation appears to be largely rhetorical in practice. None of the interviewees had received copies of the councils' new housing management policies, although one Council B tenant had received a summary of the draft allocations policy through his attendance at a council meeting. Interestingly, though, this tenant was unaware of the fact that the policy had been ratified some six months before. To quote this tenant:

"As far as I'm still led to believe, the full document isn't finalised yet. Is it?"

Further, and to corroborate a point made by Clapham and Satsangi (1992) earlier in the thesis, none of the tenants interviewed had played any role in the development of performance indicators used to measure policy effectiveness, including information concerning meeting legal obligations. To cite the words of disgruntlement expressed by one of the Council A tenant interviewees:

"They tell us nothing!"

v) Tenant Training

Tenant training was identified in Chapter 2 as an essential element of empowering tenants to exercise their rights. Yet discussions with the interviewees reveals that neither council had been supportive of detailed tenant training programmes. None of the interviewees had received any legal housing rights training, although one specifically mentioned attendance at the TPAS Conference. Explanations proferred by the tenants varied, for instance, that

tenant knowledge could threaten council hegemony, that information is withheld because – in the words of one tenant – the council "wants to control things". But dissatisfaction with current council practice was uniform. In the words of one tenant regarding training and information provision:

> "Really at the end of the day if you analyse it you would probably find that a lot of tenants know even less than I do".

While another tenant, rather more vociferously on realising how little the council had advised him of rights issues;

> "I think (tenants) should have a deeper insight into what's going on. That may raise their awareness and make them get off their backsides and wee bit."

Lack of information and training provided was clearly reflected in tenant responses concerning knowledge of secure tenants' rights. None of the tenants interviewed possessed detailed knowledge of the four rights under consideration. This was attributed to the paucity of rights information disseminated to the public by both councils. For instance, with reference to the tenant's right to access personal files, one tenant opined:

> "They can't actually at this moment in time. You can't access your files as far as I'm led to believe."

Again, and with reference to the right to security of tenure, the same tenant affirmed: "Their rights are very little actually".

The final concern gleaned from the survey was the lack of information tenants held of either legal or non-judicial remedies. As highlighted in Chapter 2, knowledge of remedies can be important as a means of ensuring effective rights implementation. Yet none of the tenants interviewed had detailed knowledge of sheriff court remedies, while awareness of the Ombudsman and the internal council complaints systems was minimal. One tenant seemed

unconcerned about this, however, citing councillor support as a satisfactory alternative:

> "Well, I mean the honest truth... tenants in this area don't tend to exercise their rights because if they have a problem, the first recourse is to come to the office. If they don't get satisfaction, they just automatically go to their councillor."

None of the other interviewees shared this sentiment, however, and expressed their concerns about lack of appropriate information regarding possible remedies.

Summary

Given the limited number of tenant interviews, nothing definitive can be stated. Tenant feedback does suggest, however, that current council practices in terms of rights information and training provision may deviate from policy commitments concerning promotion of citizenship principles, including promotion of rights. This summary is useful, then, in identifying issues for future detailed empirical analysis.

Chapter 5: Conclusions

"He who considers things in their first growth and again, whether a state or anything else, will obtain the clearest view of them."

(Aristotle in Mckeon (1973) p596)

"As in private life one differentiates between what a man thinks and says of himself and what he really is and does, so in historical struggles one must still more distinguish the language and the imaginary aspirations of parties from their real organism and their real interests, their conception of themselves from their reality."

(Marx (1942) pp344/5)

Two principal themes now have been analysed in this thesis: firstly, a detailed analysis of the range of factors that affect legal housing rights implementation derived from a detailed literature review. Secondly, a case study analysis of specific factors deemed to be critical in understanding the implementation of tenants' rights within two Scottish councils. This analysis has involved innovative research in respect of socio-legal theory, of particular relevance being the application of organisational systems theory to understand the implementation of legal rights within the local authority housing sector. The thesis, therefore, contains important theoretical implications detailed below. Chapter 5 now draws together a set of conclusions in respect of these themes.

Despite the proliferation of legal rights in recent years, rights that new housing legislation will enhance[455], statutory provisions by themselves are of little benefit to tenants and others unless effective methods for the implementation of such rights exist. It was critical, therefore, that the thesis identify those key factors likely to affect the rights implementation process, factors that analysis showed to embrace a plethora of themes including political, legal, individual and organisational matters. Critically, it was shown that such factors are overlapping and interlinked rather than discrete and separate.

Political and ideological factors were shown to be pertinent to the implementation process, although political influence was marked by its variability. Central Government support for the right-to-buy provisions was extremely prominent, for instance, support that – as in the case of Norwich Council – involved the use of legal sanctions to quash local authority opposition to Government strategic objectives. With hindsight, this reveals the strength of Government commitment to its overall strategy of privatisation that was to be a central feature of much policy and legislative change from 1980 onwards.

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[455] The Housing (Scotland) Act 2001.

Government enthusiasm for the right-to-buy proposals was made more prominent still by the dearth of support for the raft of other tenants' rights introduced in 1980. Publicity for these new rights was minimal, to say the least, and rights promotion depended crucially on local authorities and/or other agencies representative of tenants' interests. Lack of resources available to organisations explained in part the subsequent low levels of publicity afforded to rights issues. But it would be naive to explain such inactivity on resources alone. For rights that are deemed to be potentially antithetical to local authorities' interests such as security of tenure received little support in general, while support for other rights that were less controversial was often lukewarm.

Legal theory concerning rights issues has focussed historically on the practice of the judiciary in the interpretation, determination and application of legal doctrine into practice. And assessment of judicial practice has indicated two salient points vis-à-vis rights issues. Firstly, case law judgements by the judiciary have varied greatly, judicial decisions shaped by the determinations of individual sheriffs utilising discretion, whether in the law making sense of the term or in the exercise of legally conferred discretion. Secondly, there is little evidence to substantiate whether or not sheriffs have utilised their discretionary powers unlawfully, for example, failing to take reasonableness criteria into account when deciding eviction actions.

Judicial practice is, then, germane to the question of rights implementation. But detailed examination of factors relevant to rights implementation has suggested that the judicial role is, comparatively speaking, less critical to this process than other matters. For, although court decisions *may* impact on rights implementation by causing organisational practice to change, the enforcement of housing legislative provisions rests largely on the actions taken by others, namely a) the "rights-bearers" themselves and b) those organisations possessing

the legally conferred powers and duties to implement housing law.

Law provides the means whereby legal rights can be enforced, but it cannot by itself compel individuals to exercise their legal rights. And detailed examination has revealed a number of key factors that might inhibit "rights-bearers" from exercising their rights. For example, the increasing penury facing many council tenants, coupled with the negative impact this can exert upon people's lives, was considered to be an important factor in explaining why take-up of rights is often minimal. Certain rights such as subletting or assignation rights, on the other hand, may have little meaning for tenants in the practical sense that the latter are generally unwilling to exercise such rights outwith narrowly defined circumstances, for instance, in those situations where tenants are pursuing employment opportunities at locations distant from their principal residence.

Other factors, too, have been shown to be extremely influential in affecting the capacity of tenants to exercise their rights. Dearth of publicity about rights is most pertinent, for instance, as is lack of advice about remedies available to enforce one's rights; further, the enforcement of rights through the use of either legal or non-judicial remedies has itself been shown to be problematic since remedies may be inapplicable in specific circumstances or costly to use, whether financially or otherwise. Again, lack of legal training for tenants has been shown to be a key issue, their ability to exercise rights effectively heavily dependent on possessing the relevant legal knowledge.

Yet primary responsibility for effective rights implementation cannot lie with tenants. For, as the agencies charged by Central Government to administer housing laws, *that* responsibility must logically rest with local authorities. And detailed assessment of local authority administrative practices proved to be extremely fruitful in the quest to identify those factors most critical to effective rights implementation. Indeed, the practices identified

as being pertinent to the analysis were extremely varied in scope and highly complex in nature. For ease of clarification these were assessed under a number of broad headings.

External influences were first assessed to elucidate particular factors that mould local authority practice. Legislative and fiscal controls were shown to be major influences. Legal developments that have precipitated the residualisation of the council housing sector, for instance, have undoubtedly created barriers to effective rights implementation within the administrative process, as exemplified by the heavy uptake of tenants of the right-to-buy option that, particularly in the current climate of housing shortage, can adversely affect local authority attempts to meet re-housing obligations under homelessness provisions. Ideological pressures, too, have had a significant impact on local authority practices, the development of the New Public Management (NPM) culture and the focus by organisations upon market-orientated Best Value strategies clear examples of these pressures. And consideration of these organisational changes suggested that, contrary to being proactive in rights development, organisational cultures embedded upon and permeated with private sector business philosophy were potentially antithetical to the promotion of rights into practice. Indeed, prioritisation of fiscal measures and business objectives within the NPM culture appeared to make the commitment to rights espoused in organisational documentation even more rhetorical.

Organisational typologies were assessed to gauge whether these were supportive of a rights culture. And scrutiny of the expected role of local authorities as motivated by citizenship ideals highlighted that, as conceptualised within Central Government ideological strategy, local authority policies and practices should encapsulate a clear commitment to rights promotion, a matter considered in greater detail within the Case Studies.

Organisational practice was then evaluated to ascertain specific factors that could

adversely affect rights implementation. The development of a performance management culture, coupled with staff perceptions of increasing workload, was assessed in depth but no simple correlation between these factors and rights implementation was identified. The focus of contemporary performance indicators on quantitative elements, however, could be regarded as a potential barrier to the promotion of rights. Of more relevance, though, appeared to be the connection between ineffective rights implementation and the existence (or non-existence) of clear and concise policy and procedural documentation incorporating commitment to rights issues. This was of particular importance since it is this documentation that governs the administrative process.

Yet policy and procedural developments, too, were shown to be insufficient to guarantee effective rights implementation. For well-developed communication systems, both internal and external, were proven to be central to the dissemination of relevant legal knowledge to both tenants and staff alike. And consideration of this last issue based on the literature review suggested that local authorities have low levels of professionally qualified housing staff, a fact that partly reflects the status of the housing profession historically. Of particular concern, however, was the finding that housing staff appear to receive very little training on legal issues, despite the fact that the implementation of legal rights is a core feature of the local authority administrative process.

Staff attitude seemed, prima facie, to be a strong contender as a critical element in promoting or inhibiting the exercise of rights. Yet consideration of relevant empirical studies could not substantiate this premise, indeed such studies suggesting that attitude issues were peripheral to other factors such as inadequate policies and procedures being in place, or low levels of staff knowledge, the latter arising as a result of lack of appropriate training.

The Case Studies analysed a range of key factors that affect the implementation of legal

housing rights in respect of two Scottish councils. These factors were identified through the literature review. The theoretical model that was used to select these key factors was the systems theory of organisational development. In accordance with this theory all aspects of organisational practice inter-relate, a dependency that entails service administration is likely to prove ineffective where administrative processes are not implemented systemically. In brief: effective rights implementation hinges critically on an organisational strategy that ensures the integration of key organisational elements into administrative practice. The key elements selected for detailed analysis were as follows: organisational culture and structure; policy and procedures documentation; implementation of four specific legal rights; workload and methods of work; performance management; communications and personnel matters. Although not a focal point of the thesis, comment was also made on factors that impact on the ability of tenants within both councils to access their rights; this suggested that the councils performed badly in terms of advice made available to tenants concerning their legal housing rights whether through publicity or training. This issue is highlighted as an area worthy of more detailed research from a rights perspective.

Organisational culture professed commitment to rights as espoused in the corporate and departmental policy documentation of both councils that stress adherence to the principles of citizenship. Yet scrutiny of actual policy documentation indicated that, in respect of the legal rights under review, professed commitment was not translated clearly into policy documentation, indeed such documentation was often either inadequate in terms of rights information provided or in omitting relevant information altogether. This latter point was particularly noticeable in the case of Council B. This indicated that the commitment to rights expressed by both councils might lack substance in fact, an assumption that was scrutinised further in discussions with employees of both councils.

Reasons for the inadequacy (and inconsistency) of policy development in respect of rights information were found to be extremely complex. The harmonisation and integration of a number of predecessor council policies was considered to be extremely pertinent, for instance, especially when coupled with lack of resources to develop and implement a range of new policies and procedures within limited timescales. In this connection policy development was perceived as being evolutionary in nature, deficiencies within policy documentation to be addressed by senior personnel over time. Again, the development of policy documentation by a variety of different personnel, often operating in comparative isolation, was seen to be a causal factor in explaining inadequate and inconsistent policy development, particularly if such officers were not au fait with the contents of corporate council documentation and/or relevant legal provisions.

But it would be naïve in the extreme to arrogate policy deficiency to such criteria alone. For senior personnel - independently of councillors - played both a conscious and proactive role in policy development, a role that included the decision to either delete or dilute relevant rights information from council documentation, for instance, the deletion of access-to-files information or right-to-repair details from the Councils' tenancy agreements that were intended to follow the Mosta Agreement. This last point, in particular, elucidates clearly the 'conscious' elements of senior officer decision-making since the Mosta Agreement – of which such officers were familiar – covers the particular rights under review comprehensively.

As the quote which prefaces this Chapter suggests, then, in assessing strategic policy commitments, we must be careful to distinguish rhetoric from reality, policy statements that espouse commitment to a rights-based ethos often merely an ideological embodiment to provide the *appearance* of conformity to such an ethos. And further scrutiny of council

activities revealed that professed commitment to rights did not always extend to actual work practices either, an observation that again reveals the importance of context in the analysis of rights implementation. For example, neither council had established a system that fulfilled the legal and good practice requirements in respect of access-to-files or right-to-repair obligations. Again, the discrepancy between corporate council commitments to the provision of quality services that comply with legal requirements was exemplified in the council homelessness service where consideration of the administrative practices of both councils revealed an array of illegalities, illegalities that have their root cause in other organisational deficiencies primarily informational in essence. Somewhat paradoxically, however, it was also shown how unlawful practice was not synonymous with failure to protect tenant' rights. Specific council practices, on the other hand, such as security of tenure issues were shown to conform more closely to legal requirements with the primary exception of the Council A practice of holding decrees for lengthy periods after the eviction date specified in the extract decree. This last point reflects to some extent literature review findings that revealed local authority practices to vary both in consistency and quality.

Work practices of both councils were shown to be based on the generic model of service provision. Yet neither council had assessed the effectiveness of this form of working, in particular how it might affect the implementation of legal housing rights. Work methods were also criticised by housing staff on account of their current workload, in part attributable to the generic work practices adopted by both councils. Yet detailed scrutiny of this matter suggested that it was less pertinent to issues of implementation than the failure by senior management to implement a comprehensive policy and procedural framework supportive of rights. And this particular deficiency was exacerbated by inadequate performance management systems that focus on qualitative issues while failing to address

issues of rights implementation. And failure to link performance management indicators to espoused organisational commitments to rights exemplifies again the failure by senior management to implement service delivery in a systemic fashion. Further, it is indicative of the rhetorical nature of strategic policy commitment to rights.

Evaluation of information systems established by the two councils under review highlighted notable deficiencies inhibiting, if not actually stymieing, effective rights implementation. Legal rights information provided by the councils to tenants and staff was shown to be extremely limited, for instance, both quantitatively and qualitatively, as well as being inaccurate as in the case of right-to-repair information. And dearth of clear advice to tenants, particularly problematic given the lack of advice available from other sources, was arguably reflected in the general levels of ignorance of their rights shown by tenants interviewed, albeit this supposition must be conjectural in view of the small sample. Further, staff training and education needs in particular have been sorely neglected in both councils resulting in a situation whereby staff are not equipped with the appropriate legal knowledge that may be required if the corporate policy commitment of providing services that meet both tenants and client needs are to be met. This was of particular relevance in the case of Council B that had ceased to sponsor staff on further educational courses, but had failed to 'plug this gap' through the introduction of either vocational qualifications, or detailed staff training programmes.

In Chapter 2 avoidance techniques used by landlords in the private rented housing sector were explored, such techniques having been developed by landlords historically to evade their legal obligations under the Rent Acts. It was also noted how avoidance of legal obligations was perceived as involving actions of a deliberate nature. In considering local authority practice it was shown that failure to implement rights effectively does not, in

general, stem from deliberate avoidance techniques chosen by senior management. Rather, where rights are not implemented effectively, this results from failure by senior management to implement an organisational service strategy that satisfies the principles of systems theory.

As indicated in the introduction, the implications of these findings are extremely important from a socio-legal perspective for three principal reasons. Firstly, this is the first major Scottish study to a) analyse in detail the broad range of factors pertinent to the implementation of housing rights and b) evaluate the relative importance of individual factors to the implementation process. The identification and analysis of key organisational elements is of particular interest for implementation theory given that previous studies have neglected the important area of rights implementation within the administrative process.

Secondly, this study is innovative insofar as it represents the first study to examine the implementation of housing rights from a theoretical perspective based on organisational systems theory. Application of systems theory to evaluate organisational practice elucidates that effective rights implementation depends on a holistic approach to service delivery involving the harmonisation of a number of key organisational activities.

Finally, the theoretical model developed in this thesis is important from the perspective of improving rights implementation within the public housing sector. Through identification of the specific elements necessary for the effective implementation of housing rights, this study provides organisations with theoretical insight required for developing organisational strategies that are conducive to service administration, including the effective implementation of housing rights.

What, then, is to be said in summing up? The quest to identify the key factors that inhibit or promote effective rights implementation has, undoubtedly proven to be extremely complex in nature, effective implementation essentially dependent upon a number of inter-

connecting elements. Political, ideological and fiscal policies influence organisational cultures and policies, for instance, the latter in particular of significance in the context of the NPM culture, a culture that is in essence cost and performance management driven. The substantial impact upon local authorities of Local Government re-organisation has been critical, too, requiring both councils under review to initiate major policy and procedural changes within extremely limited timescales.

Yet the organisational deficiencies examined in respect of both councils cannot be apportioned to extraneous influences alone. For senior managers, responsible for organisational development in practice, retain autonomy either to promote or disregard a rights culture, albeit such choice is affected by fiscal constraints. Indeed, it is with such personnel that responsibility lies for synthesising the various elements that are critical in developing an effective rights culture: the establishment of clear and consistent policies imbued with rights; the incorporation within the workplace of clearly detailed written procedures that incorporate all relevant legal provisions; the establishment of work practices and audit systems that link to organisational objectives; the provision of comprehensive communication networks to ensure that legal rights information passes freely, not merely internally between the organisational echelons, but externally to tenants and clients alike; the establishment of detailed training programmes for staff that focus on housing law and the practical application of that law to the administrative process and monitoring staff attitudes to ensure that they reflect organisational commitment to rights. And failure by senior management responsible for organisational strategy to implement services in a systemic fashion is likely to result in ineffective implementation of legal housing rights. The thesis ends, then, on a note of caution! No matter the organisational policy statements that express commitment to rights, the celebrated Latin aphorism remains apposite when analysis of such

policies, and related work practices, takes place: "Cum grano salis".

LIST OF REFERENCES*

Council A:	Allocation Policy
Council A:	Best Value
Council A:	Community Plan
Council A:	Customer Charter
Council A:	Housing Estate Management Procedures
Council A:	Housing Facts
Council A:	Housing Pack
Council A:	Housing Plan
Council A:	Housing Rent Arrears Procedures
Council A:	Housing Service Plan
Council A:	Repairs and Maintenance Policies
Council A:	Secure Tenancy Agreement
Council A:	Tenants' Pack
Council B:	Allocations Policy
Council B:	Code of Conduct
Council B:	Community Project
Council B:	Draft Repairs Policy
Council B:	Equal Opportunities Policy
Council B:	Estate Management Policy Manual
Council B:	Homelessness Policy
Council B:	Homelessness Service
Council B Joint Working Group:	Housing Management Database

*Specific titles have been amended and dates deleted to preserve anonymity

Council B:	Housing Plan
Council B Working Group:	Housing Report
Council B:	Manager's Handbook
Council B:	Rent Control Policy
Council B:	Secure Tenancy Agreement
Council B Strategy Unit:	Statistics
Council B:	Tenant Participation Policy
Council B:	Void Policy

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Appendix 1: Interviewees

Council A Interviewees

A total of nineteen housing staff, or c 3% of all housing staff were interviewed. This figure comprises a substantial proportion of senior officers and over 10% of area office staff in respect of the two offices surveyed. Although precise details of postholders are withheld for reasons of confidentiality, the total is made up as follows:

Senior Officers	Thirteen
Officers:	Six
Other:	Three (two tenants, one lawyer)

Council B Interviewees

A total of twenty eight housing staff, over c4% of all housing staff were interviewed. Like Council A, this figure comprises a substantial proportion of senior officers and over 10% of area office staff in respect of the two offices surveyed. Again, details of postholders are withheld to preserve confidentiality:

Senior Officers	Fifteen
Officers:	Thirteen
Other:	Three (two tenants, one lawyer)

Appendix 2: Topic Guides

Organisation .....

Officer's Name .....

Job Title .....

Length of Service ..... (Date Started Employment .....)

Qualifications:

Reason(s) for Choosing Housing as a Career

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INTERVIEW SHEET: ACCESS TO FILES ISSUES

1.

(a) What measures are taken to protect applicants'/tenants' confidential information?

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(b) What legal obligations are there?

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2.

(a) Is there a Council policy on Access to files?

Yes ☐

No ☐

Don't Know ☐

(b) Could you identify 4 main aspects of the policy?

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.....

(a) What is the role of the Council's lawyers in developing this policy?

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3.

(a) Who of the following have the right to access their personal files?

Tenants ☐

Housing List Applicants ☐

Homelessness Applicants ☐

Former Tenants ☐

(b) In what ways can tenants request access to their files?

In Writing ☐

Verbally ☐

Tenant Representation ☐

4.

(a) Can the Council charge for providing information requested?

Yes ☐

No ☐

Don't Know ☐

(b) What is this fee?

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5. What is the legal timescale by which the Council must process requests for information?

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6. In what situations would the tenant be refused access to personal information held by the Council?

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7. What appeal rights exist for a tenant unhappy with what personal information is held by the Council on file?

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8.

(a) What access to file training have you had in respect of the following?

Law ☐

Council Policies ☐

Council Procedures ☐

Other ☐

None ☐

(b) What were your views on this training?

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9. Any other comments?

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Organisation .....

Officer's Name .....

Job Title .....

Length of Service ..... (Date Started Employment .....)

Qualifications:

Reason(s) for Choosing Housing as a Career

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INTERVIEW SHEET: HOMELESSNESS ISSUES

1.

(a) Does the Council have a policy on homelessness?

Yes ☐

No ☐

Don't Know ☐

(b) Do you know what the main points of the policy are?

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(c) What do you see as the difficulties in implementing this policy? (size of stock etc)

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(d) How are tenants/the public informed of the policy?

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(e) What is the role of lawyers in respect of this policy?

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(f) Are lawyers involved in decision making? If so, how?

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2.

(a) How do you process homeless applications?

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(b) What are the main legal obligations in processing such applications?

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3.

(a) What is the Code of Guidance?

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(b) Do you know what the Council's view of the Code is?

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4.

(a) What is the Council's policy on priority need?

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(b) What is the Council's policy on intentionality?

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(c) What is the Council's policy on local connection?

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(d) When do you refer an applicant to another authority?

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5.

(a) What performance targets do you have to meet in relation to homelessness?

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(b) Have you heard of the Accounts Commission/Institute of Housing performance targets?

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.....

6.

(a) What homelessness training have you had in respect of the following?

Law ☐

Code of Guidance ☐

Council Policies ☐

Council Procedures ☐

Other ☐

None ☐

(b) What were your views on this training?

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7. Any other comments?

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Organisation .....

Officer's Name .....

Job Title .....

Length of Service ..... (Date Started Employment .....)

Qualifications:

Reason(s) for Choosing Housing as a Career

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INTERVIEW SHEET: REPAIRS

1.

(a) Does the Council have a repairs policy?

Yes ☐

No ☐

Don't Know ☐

(b) Could you identify 4 main aspects of the policy?

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(c) How are tenants/the public informed of the policy?

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(d) What is the role of lawyers in respect of this policy?

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2.

(a) Does the Council have legal repairs obligations?

Yes ☐

No ☐

Don't Know ☐

(b) Can you name these legal obligations?

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.....

(c) Do legal obligations cause the Council practical difficulties?

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(d) Can tenants waive their protections in the lease?

Yes ☐

No ☐

Don't Know ☐

3.

(a) What do you know of the Right-to-Repair Scheme?

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(b) Tell me how it works here.

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(c) Do you ever have to give tenants compensation?

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4.

(a) Do tenants have a right to withhold rent if the Council fails to carry out its repair obligations?

Yes ☐

No ☐

Don't Know ☐

(b) If yes, what should the tenants do?

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(c) Does this ever happen?

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(d) Do tenants know about it?

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(e) What does the Council do if this happens?

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5.

(a) What performance targets do you have to meet in relation to repairs?

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(b) Have you heard of the Accounts Commission/Institute of Housing performance targets?

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6.

(a) What repairs training have you had in respect of the following?

Law ☐

Council Policies ☐

Council Procedures ☐

Other ☐

None ☐

(b) What were your views on this training?

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7. Any other comments?

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Organisation .....

Officer's Name .....

Job Title .....

Length of Service ..... (Date Started Employment .....)

Qualifications:

Reason(s) for Choosing Housing as a Career

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INTERVIEW SHEET: SECURITY OF TENURE ISSUES

1.

(a) Does the Council have a policy regarding the eviction of tenants?

Yes ☐

No ☐

Don't Know ☐

(b) Could you identify 4 main aspects of the policy?

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(c) How are tenants/the public informed of the policy?

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(d) What is the role of lawyers in respect of this policy?

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2.

(a) What steps do you take before taking legal action to evict, and while the legal action is going on?

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(b) How do you think the Courts decide whether to grant an Eviction Order?

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(c) In what circumstances do you enforce eviction decrees?

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(d) What influences your decision to enforce or not?

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3.

(a) When would you consider compulsory transfers as opposed to evictions?

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(b) What would you need to do to get
i) An eviction?
ii) A compulsory transfer?

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(c) Would you always expect an Eviction Order to be granted where rent arrears exist?

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(d) Would reasonableness come into this?

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(e) What is the role of the Council's lawyers in this process?

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4. Have you heard about the changes to the grounds for possession of secure tenancies that were recently introduced?

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5.

(a) What performance targets do you have to meet in relation to eviction actions?

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(b) Have you heard of the Accounts Commission/Institute of Housing performance targets?

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6.

(a) What security of tenure training have you had in respect of the following?

Law ☐

Council Policies ☐

Council Procedures ☐

Other ☐

None ☐

(b) What were your views on this training?

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7. What are your views on eviction as a remedy

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8. Any other comments?

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Tenants' Questionnaire

1. Do you know what rights secure tenants have?

2. Do you know what's the main Act in Scotland for tenants' rights?

3. Have you ever been on training courses for rights issues?

4. Do you know what rights a tenant has to access his/her file in the Office?

5. Do you know what rights exist in terms of Right-to-Repair?

6. Do you think the council promotes rights sufficiently in terms of giving tenants information? (Protecting rights.)

7. What do you know about homeless persons' rights?

8. Do you know what tenants' rights are regarding evictions?

9. Do you now hat other remedies might be available to tenants?

10. Do tenants ever have the right to withhold rent?

11. Do you find policy documentation informative about rights?

12. What consultation took place with tenants in developing new policies?

13. Are tenants advised of Council performance?

14. Do you think housing staff are well informed of tenants rights?

15. Do you think housing staff receive enough training?

16. What training do tenants receive on rights?

Appendix 3: Case Studies

a) What would normally be done to resolve this situation?

b) What information from the file can Mr Dodds see?

c) What appeal rights, if any, does Mr Dodds have should access be refused?

(d) What legal implications arise in respect of this situation?

Case Study : Access to Files

Jamie Dodds has approached your council requesting to have access to his whole tenancy file. Initially the temporary Receptionist tells him that he cannot see his records without filling in an application form. Mr Dodds has now sent in this form and has also written to the local councillor complaining about the fee request of £15.

As Housing Officer you check his file and find the following documentation:-

- his original application form for the tenancy;
- A letter from Mr Dodds' GP stating that he suffers periodically from serious clinical depression; this is attached to a letter provided by Mrs Dodds asking for separate housing because of his behaviour;
- three signed letters of complaint received from neighbours who want action taken because of Mr Dodds' 'bad behaviour' as a result of playing music loudly and 'at all hours of the day and night';
- An interview from a staff member stating that Mr Dodds' house is not merely untidy, but 'really dirty and pretty smelly.... really a bit of a pigsty'.

a) How would your Council process this application? Use relevant legal and good practice guidelines as part of this assessment.

b) Have you any additional comments? eg What factors might influence your final decision?

Case Study : Homelessness

Mr and Mrs Bingham have approached the council for rehousing, claming that they are now homeless. Mrs Bingham has pointed out in support of her application that she spent most of her life in the Council's area until her marriage and the family's subsequent move to Sussex; it is also pointed out that Mr Bingham came originally from Sussex.

The couple have three children; Colin, Gemma and Samuel - aged 11, 6 and 1 respectively. Colin and Gemma are Mrs Bingham's children from a previous marriage. At present the family is living apart, Mr Bingham and Colin staying with Mrs Bingham's parents, while Mrs Bingham and the other two children are staying with her sister. Both houses are now overcrowded and this is adversely affecting Gemma's health who suffers from asthma. Mrs Bingham's parents live in the same council area, while Mrs Bingham's sister stays in the neighbouring council area of Glasgow.

The family have now returned to Scotland from Sussex where they stayed for five years. living in a secure tenancy provided by Sussex Council. They came back to Scotland a little over five weeks before, giving up their tenancy on the basis of an offer of work in the area that offered tied accommodation. Mrs Bingham has also explained that she has been increasingly feeling homesick and was keen for her husband to take up the new appointment

The couple have explained (and a point corroborated in writing by a local Church Minister) that the new job has been given up because of its unsatisfactory nature and the Minister alleges that constructive dismissal has occurred given both working and living conditions offered.

The Binghams have now been passed to you as Housing Officer to assess and, just before the interview begins, Mrs Bingham explains that the Receptionist who carried out the initial interview had advised that 4 apartment houses were in short supply and that they should possibly try to get their 'old house back'.

a) What would normally be done to resolve this situation?

b) What legal implications arise in respect of this situation?

Case Study : Repairs

Mrs Smith calls at the council office just before noon on Friday 21 May 1999 and complains to the staff member on reception as follows:-

- the leaking roof has still not been repaired despite having been reported already, orally about five weeks before and in writing one week before. The Receptionist confirms the written complaint from her records, but states that there is no note of her verbal complaint. The Receptionist apologises for the delay which she says is due to a backlog of this type of repair:

- the window broken by vandals on Friday 14 May 1999 has still not been fixed. The Receptionist confirms that she has a note of Mrs Smith's telephone complaint, but advises that the council does not carry out such repairs unless the tenant first notifies the incident to the police. In response to Mrs Smith's retort that 'she didn't know this', the Receptionist explains that the Insurance Company won't pay for damage without a Police Report.

Mrs Smith is now extremely upset and the Receptionist has called the Housing Officer to assist. While she is waiting Mrs Smith hands over a letter previously written by her son. This letter is opened by the Housing Officer who sees that it is a request for compensation and that the local councillor has already been contacted 'to get repairs done'.

a) What would normally be done to resolve this situation?

b) What sorts of legal remedies might be used?

Case Study : Security of Tenure

(a) David Bryce and his partner Sally Meikle have been cohabiting for six months as tenants of your council. They hold a joint secure tenancy in a tenement flat and Ms Meikle has recently approached you to see if she can get another house because of her partner's increasingly volatile and violent behaviour. Her comments would appear to be in line with verbal reports received only last week from neighbours concerning his drunken and rowdy behaviour.

Complaints were also received from neighbours shortly after he took up residence about his refusal to take his turn to clean the common stairwell; this was despite warning letters from the council. Just this morning you - as Housing Officer - have received another anonymous complaint stating that Mr Bryce now has a dog - a rotweiler - and all the children in the close are frightened to play in the backcourt where the dog roams unattended.

The Housing Manager is extremely concerned about matters, particularly as a councillor complaint has been received and three neighbours have registered an application for transfer. One of these applications criticises the council for dumping 'undesirables' in their area, particularly those with (according to rumour) a history of mental illness.

(b) Brian Jones has been a secure tenant of your council since 1988. He was granted a sole tenancy which was changed to a joint tenancy after he married. He still lives with his wife and their recently-born twins, Michael and Douglas. About three months ago Mr Jones lost his job and he has now fallen into arrears with his rent, the total sum currently owed standing at almost £300. Mr Jones spent his little redundancy money on a holiday for his family as his wife had been feeling 'low' after the birth of the boys.

To try and ease matters Mrs Jones has taken on a part-time job that involves 12 hours per week. Wages are low, however, and the money soon goes on things for the babies. Mr Jones' situation has now led to him becoming depressed and he has been too tired to deal with the mail. Not to worry his wife, he has destroyed the two reminders received from the Housing Department and didn't answer the door when the postman shouted that there was a Recorded Delivery letter for him. This morning his wife has opened a document from court and has been extremely shocked to find that it is a Summons to court; that the council is seeking an eviction.