

Section E: Housing benefit

E1: Benefit administration

Vulnerable claimant – backdating – timing of appeal

1. Ms Y was a housing officer employed by a housing association. She complained on behalf of a tenant, Mr Davey, about the way a council dealt with his housing benefit claim.
2. This was a claim for renewal of benefit. Ms Y said that she sent it to the council in May 1997 and kept a copy. The council had no record that it received Mr Davey's claim form before December 1997. The council also said it had no record of any letters from Ms Y about the claim in the meantime. The Ombudsman's investigator, however, found a letter from her of October 1997 on Mr Davey's file.
5. When the appeal was received, different council officers had different views about what the time limit for the appeal was. According to one calculation the appeal was received in time, and according to a different calculation it was not. But the Ombudsman said that, in any event, even if the council decided that the appeal was out of time, there was no evidence that it considered at that stage whether there were nonetheless special reasons for considering it. The council had already been told that Mr Davey was a vulnerable person and was at risk of losing his home.

6. When Mr Davey then submitted his own appeal, it took the council two months to consider it.

Backdating

3. When Ms Y wrote in December 1997 she stated that Mr Davey was vulnerable and that the association might have to start possession proceedings against him. If the council's officers believed that Ms Y had not submitted Mr Davey's benefit form earlier, the Ombudsman said, they should have gone on to consider whether he had good personal cause for a late claim, or whether he had done all that could reasonably be expected of him. There was no evidence that they did so.
4. It took the council more than 16 weeks to deal with Mr Davey's request for backdating. It was only determined after Ms Y complained to the Ombudsman. Ms Y appealed on Mr Davey's behalf against the council's decision not to backdate his claim. The council did not realise at the time that Mr Davey himself had to sign his appeal, and Ms Y could not do it on his behalf.

Outcome

7. In March 1999 the council agreed to backdate the benefit.
8. The Ombudsman considered that, if it had not been for the council's faults, it would have decided the backdating request and subsequent appeal about a year sooner. The delay caused Mr Davey, a vulnerable person, much anxiety about whether he might lose his home. The housing association lost revenue and was put to considerable time and trouble trying to sort the matter out with the council and pursuing the complaint with the Ombudsman.
9. The Ombudsman recommended the council should pay £150 to Mr Davey and £300 to the housing association.

(Report 97/A/4425)

E2: Benefit administration

Underpayment – error by council – limited reimbursement given

1. Mrs Best complained that a council underpaid benefit to her late mother for six years, and refused to reimburse her.

form that would have alerted Mrs Best's mother or her carers to the fact there was an error in the determination against which they could appeal.

Wrongful deductions

2. In the period concerned, Mrs Best's mother lived with Mrs Best and her husband, and was in receipt of attendance allowance. The council wrongly made non-dependant deductions from her mother's benefit payments. But such deductions should not be made from benefit payments of a person in receipt of attendance allowance.
3. Throughout the period Mrs Best, on her mother's behalf, gave the council all the information which should have enabled it to make the correct payments. The council sent notifications of how the benefit was worked out. The explanatory notes included a reference to deduction of benefit in respect of non-dependants living with the claimant. But there was no reference to circumstances when non-dependant deductions would not be made.
4. The Ombudsman said that the determination notices were not in a

Backdating

5. The Housing Benefit Regulations allowed backdating of a revised benefit calculation for one year. If the council wished to make a payment for which there was no statutory provision it could seek a sanction from the Secretary of State.
6. After the death of Mrs Best's mother, the council discovered the error. The council reimbursed arrears of benefit in respect of one year.

Outcome

7. Following the Ombudsman's investigation, the council agreed to pay the remainder of the underpaid benefit, which amounted to just over £5,650.

(Report 98/C/620)

E3: Benefit administration

Tenant eight weeks in arrears with rent – refusal to pay landlord direct

1. Mr and Mrs Taylor complained that a council failed to act on information given by them that their tenant – who had applied for housing benefit – was in rent arrears for more than eight weeks.
2. The Housing Benefit Regulations required that if rent was eight weeks or more in arrears, a council had to pay the rent direct to the landlord, except where it was in the overriding interests of the claimant not to make direct payments.

by a new computer system and that every new tenant would have been eight weeks in arrears.

4. The council determined the claim and sent benefit cheques to the tenant. Mr and Mrs Taylor continued to receive no rent. When the tenant was 17 weeks in arrears she left the flat without notice and without leaving any forwarding address.

Outcome

What happened

3. Mr and Mrs Taylor explained to the council that the lack of rental payments was causing them hardship, and that they would have to ask their tenant to leave in order to secure a tenant who was able to make rental payments. Despite the threat of eviction the council decided not to make direct payments. It told the Ombudsman there were delays caused

5. The council accepted that once the tenant was known to be eight weeks or more in arrears with her rent it should have made arrangements to pay the landlord directly. The council agreed to pay £400 to Mr and Mrs Taylor to cover the period when payments should have been made directly to them and for their time and trouble in pursuing the complaint.

(Report 98/C/1345)

E4: Benefit administration

Benefits suspended – delay – failure to deal with correspondence – repossession action taken while benefit claim not dealt with

1. Mr Daddah was a council tenant. He complained that the council delayed in paying housing (and also council tax) benefit to him, and that it sought to repossess his home even though his benefit claim was outstanding.

council failed to tell him that the benefit had been suspended and give him an opportunity to appeal against that decision, as the law required. The Ombudsman also identified other faults by the council.

Faults

2. Mr Daddah was receiving housing benefit. He told the council of a change of circumstances and the council suspended benefit. But the

- After the suspension the council took no action on the claim for eight months.
- After that delay, the claim was referred to the housing benefit investigation's team because the council suspected

irregularities: and although the council's procedures required claims normally to be paid prior to such a referral, this was not done.

- Mr Daddah made a number of subsequent claims over a 12-month period but the council delayed in determining these for varying periods of up to 15 months.
- Although no determinations were made on the claims throughout that period, the council sent Mr Daddah a number of notifications which told him that he was entitled to benefit.
- When finally the council told Mr Daddah he was not entitled to benefit, it did not tell him of his right to refer the matter to a review board.
- The council recorded on its computer that Mr Daddah's benefit claim had been found to be fraudulent, even though this was incorrect.

Correspondence

3. The council repeatedly failed to deal properly with Mr Daddah's letters asking about his claim. It delayed in replying to some letters, while others received no reply at all. The council said that Mr Daddah was a prolific letter writer, but it seemed to the Ombudsman that Mr Daddah wrote letter after letter because of increasing desperation caused by the council's failure to deal with him properly.

Repossession action

4. Despite the fact that the council failed over a period of many months to take

any action at all on Mr Daddah's benefit claim, it served a notice of seeking possession on him. After that, a court summons was issued for possession of the property. The Ombudsman said:

"If people do not pay the rent that they owe, it is proper for councils to seek recovery lawfully. But councils should not act oppressively, especially where the prime reason for the debt arises from the council's own administrative incompetence."

Outcome

5. The Ombudsman said that the council's handling of Mr Daddah's claims for benefit was riddled with maladministration. His experience was not unique. In the previous four years the Ombudsman had issued formal reports on 34 complaints about the way this council had dealt with claims for benefit, finding injustice caused by maladministration in every case. In the same period 112 complaints were settled without a formal report.
6. The Ombudsman recommended that the council should pay Mr Daddah £1,000; give him the opportunity to put any outstanding dispute to a Housing Benefit Review Board; and correct its computer records.
7. In the light of the Ombudsman's criticisms, the council undertook to review its arrangements and make changes.

(Report 97/A/2321)

E5: Benefit administration

Explanation of determination – review board – recovery of overpayment

1. Mr Amersham complained that a council failed to explain decisions about his housing benefit (and also council tax benefit); that it awarded wrong amounts of benefit; and failed to allow him to appeal. Mr Amersham did not allege that the council was paying him too little benefit. His complaint was that the council paid him too much. He maintained that this caused injustice, because he was never fully aware of the state of his finances, and because the council recovered sums from him without warning at a later date, and that threw his finances into disarray.

Explanation of determination

2. The problems only began when there was a change in Mr Amersham's circumstances and therefore a change in entitlement to benefit. The Ombudsman said that councils should make every reasonable effort to explain determinations as clearly as possible. In this case, the council did not do so. Mr Amersham was sent two letters in the space of three days, each of which gave different information, and each of which was inconsistent with a statement of reasons issued some 10 days previously. The Ombudsman said that the explanations the council provided over a protracted period were inadequate, contradictory and confusing to such a degree that they amounted to maladministration.

Review board

3. The council did not follow proper review procedures when Mr Amersham challenged the determinations. The council believed that it could decide what sort of cases should be allowed to progress to a review board, for example matters of principle or policy. The Ombudsman could find no legal basis for that view. Mr Amersham

expressed serious dissatisfaction with the housing benefit determinations and that should have been sufficient to ensure that he was given access to the review board process.

Recovery of overpayments

4. The Ombudsman did not think the council was acting in accordance with legislation and government guidance in the way it effected recovery of overpayments of benefit:
 - the council did not make a separate determination that any overpayment was recoverable, and that it should be recovered;
 - the notifications did not contain the prescribed statement that there was a recoverable overpayment, nor an explanation of how the overpayment occurred, the amount, how it had been calculated and the period to which it related; and
 - the council recovered overpayments direct from the claimant's rent account, even if this caused rent arrears (whereas the regulations required that debits should be distinguished from rent arrears).
5. The process by which the council recovered overpayments of benefit was, for these reasons, seriously flawed.

Outcome

6. The Ombudsman recommended that the council should:
 - pay Mr Amersham £500; and
 - ensure that it had up-to-date and accurate figures to calculate Mr Amersham's entitlement.

(Report 97/B/2820)

E6: Benefit administration

Request for review – delays

1. Solicitors on behalf of Mr Birt complained that a council failed to deal with a request for a review of its determination of Mr Birt's entitlement to housing benefit. The council's administration of housing benefit was contracted out to a private company.

ensure that his request for a further review was expedited.

Requests for review

2. The council should have reviewed its determination of Mr Birt's entitlement to housing benefit within two weeks of his request. The council took 37 weeks to review it.
3. Mr Birt requested a further review, which the council was under a statutory obligation to deal with in six weeks. The council denied receiving the request. However, Mr Birt had delivered a letter to the council's offices requesting the further review by a Housing Benefit Review Board and had been given a receipt for it.
4. The Ombudsman found that the delay in conducting the first review and the failure to deal with the request for a review board hearing were maladministration. This caused Mr Birt unnecessary worry and put him to time and trouble. The Ombudsman recommended that the council should pay Mr Birt £400 and

Need for an effective system

5. Following an earlier report, the Ombudsman had asked the council to satisfy him that it had in place an appropriate and effective system for dealing with appeals against housing benefit determinations. Despite subsequent correspondence and meetings with council officers and its contractor, the Ombudsman was not satisfied that such a system was in operation. Mr Birt's complaint was an illustration that the council was not delivering on previously promised improvements. As a result, Mr Birt and others were having to wait far longer than they should for review board hearings about their entitlement to housing benefit.
6. The Ombudsman was so concerned by the continuing failings illustrated by this and many other complaints, that he invited the chief executive and leading councillors to meet him to discuss the council's plans to put an end to the deficiencies in its administration of housing benefit.

(Report 98/A/2361)

E7: Benefit administration

Suspension of benefit – possession hearing fixed – urgent action

1. Mr X was an elderly man on income support. He claimed housing benefit for many years, and this was paid direct to his landlord.

Background

2. When the landlord's property was being repossessed, the council suspended benefit payments at the request of the receiver. The council did not tell Mr X or the landlord. The repossession was subsequently abandoned. The receiver did not tell the council, nor did the council enquire what was happening.
3. The landlord served a notice of seeking possession on Mr X on the grounds of arrears of rent. Mr X asked the council what was happening about his housing benefit. The council said it would find his file, but it took no steps to do so. Neither did the council respond to four letters from a law centre acting on behalf of Mr X. Meanwhile, the landlord got a date for a repossession hearing.
4. About four weeks before the hearing Mr X made a complaint to the Ombudsman.

Immediate action

5. The Ombudsman's investigator took immediate action. She persuaded the council to find the file, visit Mr X, write a letter to the law centre explaining the housing benefit position, and offer to send a housing benefit officer to the court hearing to ask for the possession proceedings to be adjourned while the benefit issues were resolved. In fact, the letter was sufficient to persuade the landlord to have the proceedings adjourned.
6. The council then promptly interviewed the landlord, and decided to pay housing benefit back to the date it had been suspended. Benefit was owed for a period of some eight years and the total amount was over £65,000. The landlord dropped the possession proceedings and Mr X was able to stay in his home.
7. The council agreed to pay Mr X £500 in recognition of the anxiety he had suffered.

(Local settlement 99/A/1120)

E8: Benefit administration

Delay – eviction imminent – urgent action

1. Mr X made a complaint to the Ombudsman on 12 August. He said that the council had delayed assessment of his housing benefit application since January, he was in rent arrears, and his landlord intended to evict him. The court hearing was set for 20 August.

a payment on account arranged immediately. The appointment was arranged for 20 August and the landlord agreed to hold up further action until Mr X had seen the officer.
2. The Ombudsman's investigator telephoned the council to ask if someone could look at the housing benefit claim urgently. The council said that a benefit officer would arrange to see Mr X urgently and at least get
3. All arrears owed to the landlord were paid on 7 September. Mr X was not evicted.
4. Mr X was pleased with this outcome and the Ombudsman discontinued his involvement.

(Local settlement 99/A/2222)

E9: Benefit administration

Request for direct payment – failure to inform claimant about right of appeal

1. Mr X was a private tenant. He was entitled to housing benefit. He was in dispute with his landlady over the final two weeks rent on his tenancy. Mr X claimed this was covered by his initial deposit, but the landlady said the deposit was needed to meet damage he had caused.

decision as the law required. The council did not respond to representations about this by a solicitor over a period of nearly six months.
2. Mr X asked the council to pay him the housing benefit for those two weeks. The council told Mr X that it would make the payment to the landlady and did so. The council did not give him the opportunity to appeal against the
3. Mr X complained to the Ombudsman. Following the Ombudsman's enquiries, the council accepted that Mr X should have been given the right to appeal. The council agreed to pay Mr X the sum in dispute, which was £303, and paid him £50 for his time and trouble.

(Local settlement 98/A/5503)

E10: Benefit administration

Payments on account – charges for copies of documents

1. Mr Lorca was a private tenant who rented a room in a house in multiple occupation. He received incapacity benefit and spoke very little English. He complained that a council delayed unreasonably in paying housing benefit to him.

What happened

2. Mr Lorca's landlord would not give him proof of his liability to pay rent. When Mr Lorca renewed his claim for housing benefit in May 1995, the council said it had decided to lapse the claim on the grounds that he had failed to provide evidence of his rent liability which it needed in order to determine the claim.
3. Mr Lorca then visited the council's offices and showed an assessment officer the only evidence of rent payments in his possession. He produced counterfoils showing payments he had made into his landlord's solicitor's bank account over a period of 10 years. He also explained the difficulties he had encountered in getting proof of rent payments from his landlord. The council then agreed to reverse the decision to lapse the claim and told Mr Lorca it would contact the landlord's solicitor to request evidence of rent liability.
4. An assessment officer telephoned the landlord's solicitor to request the evidence but took no further action when the solicitor failed to send it. No further action was taken to determine the claim and no housing benefit or payments on account were made.
5. Some two years later, after receiving letters from his landlord about the rent arrears, Mr Lorca instructed a solicitor to pursue matters with the council.

The solicitor submitted a new claim for housing benefit and pursued the outstanding claim which had been made in May 1995. The solicitor received evidence from the landlord's solicitor of the rent liability and payments made by her client and she sent this to the council. Three months later the council assessed the claim and awarded housing benefit. It also agreed to backdate the award for one year on the grounds that the complainant had good cause for making a late claim. At the same time it determined the original claim made in May 1995. But in view of restrictions in the Housing Benefit Regulations the council awarded benefit for only 52 weeks. Mr Lorca did not receive any housing benefit for the period between June and October 1996.

Eviction threat

6. The Ombudsman found that there were delays by the council in determining Mr Lorca's housing benefit claim; and that the council was at fault for failing to press the landlord's solicitors for the information it had asked for in August 1995. While the claim was undetermined, Mr Lorca received two letters from his landlord threatening to commence possession proceedings because he owed rent.

Payments on account

7. The Ombudsman drew attention to the requirement of the Housing Benefit Regulations that payments on account should be made when a council was unable to determine a claim within 14 days and that inability did not arise because of the claimant's failure to provide the necessary information. In respect of two of Mr Lorca's claims the

council failed to make such payment and that failure, the Ombudsman said, was maladministration.

10. The Ombudsman said it was unsatisfactory that the council had no policy on charges.

Charging for copies of documents

8. At one point Mr Lorca's solicitor (who acted for him without charging a fee) asked the council for copies of papers on Mr Lorca's benefit file and offered to pay a reasonable charge.
9. The council had no policy on charging. The council decided to charge 50p a copy for documents which came to a total of £75 (later reduced to £33). The solicitor considered that charge was excessive and did not pursue the request.

Outcome

11. The Ombudsman recommended that the council should pay Mr Lorca an amount of compensation equivalent to housing benefit not paid to him; pay him £500 in recognition of his anxiety, time and trouble; and pay his solicitor £250.
12. The Ombudsman also recommended that the council should introduce a policy on charging for copies of documents, ensure that staff understood it, and make the policy known publicly.

(Report 98/A/757)

E11: Fraud investigation

Delay – incorrect information

1. Ms George complained about the way a council dealt with her housing benefit. Housing benefit was handled by contractors on the council's behalf.
3. In February 1996 the council became aware that Ms George was receiving a student grant and referred the matter to its special investigation unit.

What happened

2. Ms George was awarded a university grant for the 1994/95 and 1995/96 academic years. She applied for housing benefit in June 1995. The claim form was filled in by an officer of a housing association and said that at the time Ms George was not a student or in receipt of grant. That was incorrect. Nonetheless Ms George signed the form.
4. Following the investigation, the council cancelled housing benefit because it believed Ms George was a student and she had not declared the fact when she made her claim. The letter informing Ms George did not tell her the reason or tell her that there was a recoverable overpayment. The failure to issue a proper notification was in breach of the regulations and was maladministration.

5. When Ms George asked why benefit had been stopped, the council told her that it believed she did not live at the address from which she had claimed. That was incorrect. Misinforming her about the reason for the cancellation was maladministration.
6. Ms George made representations to the council disagreeing with its decision. The council did not treat her representations as an appeal and that was maladministration.
7. Ms George applied again for housing benefit in May 1996. The council did not determine the claim. She applied again in September 1996. The council decided to investigate her claim because it suspected that she did not live at the address from which she was claiming. But the matter was not referred to the special investigation unit for some four months, the investigation took seven months, and the claim was not determined until a year after it was made. These delays were excessive, the Ombudsman said, and amounted to maladministration. The Ombudsman commented:

“Benefit fraud is costing the taxpayer hundreds of millions of pounds every year. It is entirely proper that councils should be vigilant for signs of fraud. If they have reasonable grounds for suspicion, they should investigate. They should do so promptly and in accordance with the law and the guidance from the DSS.”

Outcome

8. The Ombudsman was satisfied that the council had reasonable grounds to investigate the claim. It was ultimately for a Housing Benefit Review Board, not the Ombudsman, to decide whether Ms George was or was not entitled to benefit and for what period. But, on the other hand, the council’s delays, failure to provide the notifications required by law, and failure to treat her representations as an appeal, greatly protracted Ms George’s uncertainty about her financial position and caused her additional avoidable anxiety.
9. The Ombudsman recommended that the council should:
 - consider whether Ms George was entitled to any housing benefit for the relevant period, notify her of its decision and the reasons for it;
 - if the council remained of the view that there was an overpayment, consider any representation she wished to make, notwithstanding that she could be out of time for a formal appeal; and
 - pay Ms George £300 in recognition of the anxiety and additional trouble she had been caused by the maladministration.

(Report 97/A/3744)

E12: Fraud investigation

Delay – failure to give determination – wrongful recovery – claimant threatened with eviction

1. Mrs D'Silva complained about the way a council dealt with her housing benefit claims. of two months before the determination of her claim.

Initial delay

2. It took the council nine months to determine Mrs D'Silva's first claim for benefit. Only about five weeks of that time was attributable to the time taken by Mr and Mrs D'Silva to provide information for which the council had asked them. Seven months of the delay was avoidable.

Fraud investigation

3. When Mrs D'Silva made a second claim, the form did not mention Mr D'Silva. It was reasonable for the council to make enquiries about that. Mrs D'Silva explained that her husband had left her and she had applied for income support. The council suspected that her husband was still living with her but it delayed for four months before starting an investigation.
4. The council withheld payment of benefit because it suspected that Mrs D'Silva was claiming housing benefit to which she might not be entitled. It had discretion to withhold benefit pending the determination of entitlement to income support by an adjudicating officer of the Department of Social Security. The decision to withhold benefit was a determination and so should have been notified to the claimant. Mrs D'Silva was not informed about the decision to withhold benefit and so was deprived of her right of appeal.
5. After the council was satisfied that Mr D'Silva was not living with Mrs D'Silva, there was a further delay

Correspondence

6. The council repeatedly requested information from Mrs D'Silva which it did not need in order to determine her benefit claim.
7. Over a period of about six months the council failed to deal with or reply to any of the letters written by a law centre on Mrs D'Silva's behalf. The Ombudsman commented that if the council had heeded the law centre's clear and cogent letters promptly, Mrs D'Silva would have been spared much unhappiness.

Recovery of overpayment

8. The council wrongly recovered from Mrs D'Silva an overpayment of benefit which had been made to Mr D'Silva who had by that time left the household. None of the officers dealing with Mrs D'Silva's benefit was aware of the relevant regulation.

Threat of eviction

9. Mrs D'Silva fell into arrears of rent. Her landlord, a housing association, obtained a possession order against her. Bailiffs were sent to evict her and, although the eviction was not carried out, the fear that she was about to be made homeless caused her great distress and anxiety.

Outcome

10. The council accepted that it handled Mrs D'Silva's benefit claims very poorly and offered to pay compensation. The Ombudsman recommended a payment of £1,000.

(Report 98/A/224)

E13: Review board

Delays – decision challenged by council – second review board

1. Solicitors acting for Mrs A complained that a council unreasonably delayed paying her the housing benefit to which she was entitled.

Delay

2. After Mrs A had supplied the required information in support of her housing benefit claim, the council took seven months to determine the claim. The Ombudsman found that this delay was unreasonable.
3. The council's determination was that Mrs A was not entitled to housing benefit. She requested a hearing by a Housing Benefit Review Board. It was six months before the council offered a date for a review board hearing. The Ombudsman said that delay, too, was unreasonable.

Challenge to review board decision

4. The review board decided that Mrs A should receive housing benefit. The council was entitled to seek to have that decision set aside by another review board, and did so. The decision of the second review board was that the first decision should not be set aside and that Mrs A should receive housing benefit.
5. The council believed that Mrs A was not eligible for housing benefit and that the decisions of the review boards were wrong in law. The regulations provided that a second decision of a review board could not be challenged through a further review board hearing, but only by way of judicial review.
6. The council considered applying for judicial review but did not do so.

Instead, the council sought to have the matter considered by yet another review board. But the council decided not to proceed with that step following receipt of a Counsel's opinion that the decision of the second review board could not be challenged other than by means of a judicial review. Even so the council did not pay housing benefit to Mrs A.

Outcome

7. As the second review board decision had not been challenged in the courts, it was binding on the council. The Ombudsman considered that it was wholly improper, and maladministration, for the council to continue to refuse to abide by that decision, notwithstanding that the council considered it was wrong in law. The Ombudsman commented:

"It cannot be right that the council itself acts unlawfully in refusing to abide by a decision it does not like but which must stand until challenged in the proper way."

8. The Ombudsman recommended that the council should:
 - make Mrs A a payment equivalent to the housing benefit that she would have been paid for the relevant period, until such time as the council invited her to make a fresh claim;
 - determine any such further claim within the appropriate time limit; and
 - pay Mrs A £150 in recognition of the time and trouble she had in pursuing the matter with the council and with the Ombudsman.

(Report 98/B/3183)