

Report by the Local Government Ombudsman

Investigation into a complaint against London Borough of Lewisham (reference number: 15 019 725)

20 June 2016

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Miss C – the complainant

Report summary

Benefits and tax

In January 2016 we upheld Miss C's previous complaint. The Council agreed to take some actions to put matters right. This complaint is that the Council did not properly take those actions.

Finding

Fault found causing injustice and recommendations made.

The Council did not apologise to Miss C as it had agreed to do. It also delayed fulfilling its agreement to deal with her challenges to its decisions that she should repay some benefits which had been overpaid. In the meantime, the Council mistakenly wrote to Miss C demanding payment and it sent bailiffs to her home. The Council also gave us and Miss C inaccurate information. These faults caused Miss C injustice.

Recommendations

To remedy the injustice caused, the Council should do the following:

- Send Miss C a written apology for its faults and the resulting injustice in respect of the previous and current complaints to us.
- Pay Miss C £250 to recognise the injustice caused by the Council's faults since 15 January 2016.
- Introduce a procedure for ensuring the Council completes actions it has agreed with the Ombudsman.
- Review its procedure for debt recovery to minimise the chances of the faults in this case recurring.

The Council should send the apology and payment within one month and complete the other points of the remedy within three months of today.

Introduction

1. Between November 2015 and January 2016 we investigated and upheld Miss C's previous complaint. A statement describing that investigation and decision is on our website (www.lgo.org.uk – reference number 15 011 361). The complaint was that the Council had not dealt properly with Miss C's requests to appeal against its decisions that it had paid her too much benefit and that she should repay some money. The Council agreed to our recommendations to put matters right, including apologising, paying £150, dealing with the appeals and reviewing its procedures.
2. In February and March 2016 there were communications between Miss C, us and the Council about whether the Council was properly implementing the agreed recommendations. On 9 March 2016 Miss C made a new complaint to us, saying the Council had not carried out the agreement.

Legal and administrative background

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*) Our investigation of Miss C's previous complaint ended on this basis as we were satisfied with the Council's agreement to take certain actions to put matters right.
5. The Ombudsman investigates complaints about councils and certain other bodies. Where an individual, organisation or private company is providing services on behalf of a council, we can investigate complaints about the actions of these providers. (*Local Government Act 1974, section 25(7)*) For this reason we consider the Council responsible for the actions of the enforcement agents (bailiffs) it instructed in this case.

How we considered this complaint

6. This report has been produced following the consideration of relevant information and documents the complainant and Council provided.
7. The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken into account before finalising the report.

Investigation

The Ombudsman's investigation of Miss C's previous complaint

8. This complaint was about the Council's actions after it decided it had given Miss C too much housing benefit and council tax benefit and that it should recover the overpayments.
9. If someone disagrees with a council's housing benefit or council tax benefit decision, they should appeal within one month to the Council. If the Council does not change its decision, it must forward the appeal to the Social Entitlement Chamber, an independent tribunal. The Chamber can decide to consider a late appeal. The maximum time limit for making a late appeal is 12 months after the normal time limit, that is 13 months after the Council's decision. If the Council receives an appeal it believes has been made after this maximum time limit, it must refer the case to the Social Entitlement Chamber immediately. *(Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 No. 2685, regulation 23(7)(b))*
10. Our previous investigation found the Council did not properly tell Miss C about her appeal rights. That was fault. Miss C requested a late appeal against the Council's decision one day after the 13-month period described in paragraph 9 expired. As paragraph 9 explained, the law is clear that the Council must pass such appeals to the Social Entitlement Chamber immediately. This is important because it means the Social Entitlement Chamber, not the Council, ultimately decides whether an appeal is too late to be considered. The Council did not do this. Instead, it told Miss C she had appealed outside the 13-month limit so it would not act on her appeal. That, too, was fault.
11. Our previous investigation found that these faults deprived Miss C of the opportunity of having the Social Entitlement Chamber decide whether to entertain her appeal. This left Miss C with avoidable uncertainty as well as justified anger that the Council did not follow the law. Miss C also had to go to some avoidable time and trouble pursuing the matter. At our recommendation, the Council agreed to do the following to resolve the complaint:
 - Apologise to Miss C for the injustice caused by its faults. The Council agreed to do this by 15 February 2016.
 - Pay Miss C £150 to recognise that injustice. The agreement was that, if Miss C's appeals were unsuccessful, or if Miss C was refused permission for late appeals, the Council could offset this amount against the debt. Otherwise it would pay this sum to Miss C.
 - Ask Miss C by 15 February 2016 if she still wanted her appeal about the housing benefit and council tax benefit overpayments to go to the tribunal. If she did, the Council would forward the appeal within one month of Miss C saying she wanted this.
 - Review its procedures and staff training to ensure it acts properly regarding all matters that can go to the Social Entitlement Chamber and the Valuation Tribunal. The Council would complete this by 15 April 2016.

12. On this basis, our previous investigation ended on 15 January 2016.
13. Miss C had also disagreed with the Council about the application of a council tax reduction scheme. We found fault in the council failing to inform her fully about her appeal rights in relation to this. However Miss C still had the right to ask the Valuation Tribunal for a late appeal herself. So we did not make any further recommendations in relation to that part of her complaint.

Events after the Council agreed to resolve the previous complaint

14. We have investigated what the Council did on each part of the agreement described in paragraph 11.

Apology

15. The Council accepts it has not done this. This is fault.

Payment of £150

16. The Council has paid Miss C this money so there is no need for more action on this point.

Asking if Miss C still wants to appeal and, if so, forwarding the appeal to the tribunal

17. The Council says it believed Miss C's correspondence with us had made clear she still wanted to appeal so the Council did not ask her about this and instead got on with dealing with the appeal. This was not in line with the agreed recommendations. If the Council did not consider it necessary to establish Miss C's wishes, it could reasonably have said this in response to the draft recommendations we sent during the previous investigation. Instead the Council agreed those recommendations then decided not to implement one of them. That was fault.
18. As the Council did not consult Miss C, it effectively moved straight to the second part of this recommendation. Therefore it should have dealt with the appeals substantively within one month of 15 January 2016. However, that did not happen either.
19. Instead, the Council mistakenly took recovery action regarding the debts while it was supposed to be considering Miss C's appeals. On 28 January 2016, enforcement agents (previously called bailiffs) acting for the Council called at Miss C's home while she was out. They left a notice stating Miss C owed council tax of £646.41 plus bailiffs' fees of £305 and threatened to remove and sell Miss C's belongings. As paragraph 5 explained, the Council is responsible for its agents' actions here. The Council later recalled the matter from bailiffs and has now removed the fees. Regarding the housing benefit, the Council wrote to Miss C in February 2016 demanding payment of this debt. The Council accepts this, too, was a mistake.
20. We consider the Council was at fault for taking recovery action when it was supposed to be implementing our recommendations, including considering Miss C's arguments that she need not repay this money. This recovery action, especially the contact from the enforcement agents, caused Miss C avoidable anxiety.
21. Miss C told us about this and we contacted the Council. The Council then wrote to Miss C on 1 March saying it was considering her appeal about council tax benefit for a different

address, unconnected to a separate debt the enforcement agents were pursuing. Miss C and the Ombudsman's office then pointed out to the Council that Miss C had not tried to appeal for the different address. Indeed, that would be impossible as she did not owe any council tax there. The alleged debt Miss C was appealing against related to the same address and the same debt the enforcement agents were pursuing. The Council then apologised for the error with the address and recalled the matter from the enforcement agents.

22. The Council's fault here suggests a confused approach. This fault caused avoidable misunderstanding and needlessly occupied Miss C's and our time resolving this.
23. When the Council reviewed matters before sending the appeals off to the tribunal, it decided to change its position. On 14 March 2016 the Council decided to write off the housing benefit overpayment. Therefore there was no need to forward that appeal to the tribunal. The Council wrote to Miss C about this decision and said it was still considering the council tax benefit matter separately.
24. The Council was entitled to decide to write off the housing benefit overpayment. That decision was in Miss C's favour. However the Council took two months to decide this, twice as long as the relevant timescale it had agreed to resolve the previous complaint. That was fault.
25. The Council then told our office it had written off the overpayments. We pointed out the Council had only written off the housing benefit overpayment, not the council tax benefit overpayment. We asked the Council to explain the current position accurately. That enquiry was passed to the wrong part of the Council, resulting in another incomplete response and further chasing of the matter by us.
26. On 20 April, the Council decided it should not recover the council tax benefit overpayment either so it would write off this amount too. This meant that rather than Miss C owing the Council money, her council tax account was £44.01 in credit. The Council will refund this. There is therefore no need for the Council to forward this appeal to the tribunal either.
27. As with the housing benefit matter, the Council was entitled to change its position and write off the council tax benefit overpayment. However it was at fault for taking three months to do this when the relevant part of the agreed remedy was for the Council to deal with this within one month. The Council was also at fault for its confused and partly inaccurate responses to us.
28. The Council's faults here caused Miss C unnecessary uncertainty, anxiety, time and trouble. It is also possible that, had the Council avoided the delays resolving the benefits disputes, the mistaken recovery action would not have happened.

Review of procedures and staff training

29. The Council is arranging staff training about benefits appeals. It has also given us details of improvements to its procedures for dealing with appeals and with our enquiries. We welcome these steps.

The Council's response to the draft report

30. In response to a draft of this report, the Council accepted fault, recognised this had caused Miss C inconvenience and agreed to comply with our recommendations. The Council added that, despite diminishing resources and increasing demands on its services, this is the first time it has failed to respond appropriately to an Ombudsman's decision. It stated it took this seriously and is changing its practices to try to ensure there is no repeat. We commend the Council's positive response here.

Conclusions

31. The Council did not properly complete the recommendations it agreed in January 2016. That was fault. It is a serious matter when a council does not honour an agreement with the Ombudsman. Parliament has given us wide discretion to investigate complaints and make recommendations. Implicit in this is the assumption that, if a council freely agrees our recommendations, it should fulfill what it has agreed. The Council's failures here undermine the important principle of remedying complaints. That in turn undermines Miss C's and our trust in the Council's good faith.
32. The Council was also at fault for its confused and sometimes inaccurate responses to Miss C and us. The Ombudsman has the same powers as the High Court to obtain information. The Council should take the same care to give us complete and accurate information as it would for court proceedings.

Injustice

33. The Council's faults meant Miss C had to wait longer than necessary for resolution of the benefits matters. Miss C is still without an apology for the Council's original failings. She experienced avoidable frustration and uncertainty from the delays, anxiety caused by the enforcement agents' actions, a justified sense of anger that the Council did not keep its promise and the time and trouble of having to come back to us. Our further involvement cost time and public money in a way that should not have been necessary.
34. We are pleased the Council has now resolved the benefits matters, albeit belatedly, so there is no need to forward the appeals to the tribunal. Nevertheless we are issuing this report to draw attention to the Council's faults in providing the agreed remedy properly, and because of the additional distress its actions caused since the previous complaint.

Decision

35. The Council was at fault for not implementing the previously agreed recommendations fully and promptly. It was also at fault for taking recovery action in the meantime and for its inadequate responses to our enquiries. These faults caused Miss C injustice.

Recommendations

36. To remedy the injustice caused, the Council should:
- Send Miss C a written apology for its faults and the resulting injustice in respect of the previous and current complaints to us.
 - Pay Miss C £250 to recognise the distress caused by the Council's faults since 15 January 2016.
 - Introduce a procedure to ensure it fulfils agreements with us.
 - Review its procedure for debt recovery to minimise the chances of the faults identified in paragraphs 19 to 22 recurring.
37. The Council has agreed to carry out these recommendations. It will send Miss C the apology and pay her £250 within one month of the date of this report. It will carry out the other actions within two months of the date of this report.
38. The Council's agreement to the recommendations above will put right the injustice the Council's faults caused. We welcome the Council's agreement to our recommendations and its commitment to avoid similar faults in future. We have completed the investigation and issued this report because we consider there is a public interest in doing so and because we hope other councils will take the opportunity to learn from what happened in this case.