

Council			
Report Title	Local Government Ombudsman – Housing Benefit Report		
Ward	All	Item No.	
Contributors	Executive Director for Customer Services and Head of Public Services		
Class	Open	Date	21 September 2016

1. Purpose

- 1.1 To bring to the Council's attention that a Local Government Ombudsman (LGO) investigation on behalf of a Lewisham resident claiming housing benefit (HB) found injustice and malpractice against the Benefit Service.

2. Executive Summary

- 2.1 In 2014, a HB overpayment was raised following an unreported change in circumstance being highlighted as a result of a data matching exercise between the Council and Her Majesty's Revenue and Customs service. This resulted in the claimant having received HB they were not entitled to.
- 2.2 The claimant appealed the Council's decision but the Council did not administer the appeal correctly. The claimant complained to the LGO and an investigation was undertaken. The LGO concluded their investigation and found that delays in fulfilling their recommendations resulted in the claimant having suffered injustice and malpractice and proposed a number of recommendations to remedy the complaint.
- 2.3 The Council did not act on the recommendations in the timescales set by the LGO. This resulted in a further investigation and the LGO concluded that the delays demonstrated malpractice and injustice against the claimant.
- 2.4 Although the Council has compensated the claimant and fully resolved the complaint, it is still required to report the outcome to Mayor and Cabinet and Full Council.

3. Recommendations

- 3.1 Note the contents of the report.

4. Policy context

- 4.1 One of the primary functions of the Council is to promote the social, economic and environmental wellbeing of the borough and its people. In discharging this important role the Council has a specific duty to safeguard the most vulnerable from harm and to regulate access to public services and to provide social protection for those that might otherwise be put at risk.
- 4.2 As Council funding is provided through public resources (grants from central Government; Business Rates and Council Tax) the local authority must also demonstrate both responsibility and accountability in the stewardship of public resources.

- 4.3 The overarching policy and decision making framework for the discharge of the Council's many functions and duties is Lewisham's Sustainable Community Strategy. The Strategy contains two overarching principles which are:
- Reducing inequality – narrowing the gap in outcomes; and
 - Delivering together efficiently, effectively and equitably – ensuring that all citizens have appropriate access to and choice of high quality local services.
- 4.4 Also contained within this overarching policy framework are the Council's ten priorities. These priorities describe the specific contribution that the local authority will make to the delivery of the Sustainable Community Strategy.

5. Background

- 5.1 Annually the Council awards approximately £250m housing benefit and council tax reduction to 36,000 of Lewisham's most vulnerable residents. Despite a reduction in administration funding from the DWP of £1.1m (30%) in the past 2 years, against a caseload reduction of just 5%, the service continues to deliver top quartile performance.
- 5.2 The LGO is the final stage for complaints about councils and some other organisations providing local public services. Once the LGO conclude their investigation, if they find there has been maladministration or injustice, they are required under Section 30(3) of the Local Government Act 1974 to provide a report without naming or identifying the complainant or other individuals.
- 5.3 The LGO are also able to require us to take certain actions, in this case the Council have been required to make a public notice in more than one newspaper within two weeks of receiving their report, and to make the report available at one or more of the Council's offices for three weeks.
- 5.4 This report sets out the details of the case and the LGO's findings. The report was presented to Mayor and Cabinet on 7 September 2016 and noted.

6. Details of the case

- 6.1 Miss C lived in Lewisham and was in receipt of HB and council tax reduction between 2012 and 2014. Her benefit was suspended on 31 January 2014 as the Council received notification from her that she had moved. The Council also obtained confirmation from the DWP that her Jobseekers Allowance had ceased from 31 January 2013, a change in circumstances which she had not reported to the Council. As a result of this, her claim was amended which resulted in an overpayment of £2,053.85 for the period February 2013 to January 2014.
- 6.2 In March 2014 Miss C challenged this decision. The Council responded confirming the decision to recover the overpaid benefit was correct as Miss C would have been aware she was receiving benefit incorrectly. On 8 May 2014, Miss C appealed but, as she had not signed the appeal (which is a legal requirement), her appeal was returned to her and subsequently re-submitted on 5 July 2014.

- 6.3 Miss C provided further details of her income with the appeal enabling the Council to amend the overpayment to £2,002.21. In addition, further appeal rights were given to Miss C which could have been used were she dissatisfied with the decision. However, no further contact was received until 26 February 2015 when Miss C complained about the way her appeal had been handled. Miss C was advised again that the overpayment was recoverable from her.
- 6.4 There was no further contact from Miss C until 14 July 2015 when the Council received a letter stating that matters had not been dealt with properly and requesting a tribunal hearing. The Benefit Service erroneously advised Miss C that she was out of time to submit a further appeal and on 3 November 2015, an enquiry from the LGO was received.
- 6.5 On 11 January 2016, the Benefit Service received the decision from the LGO concluding that there was fault by the Council and making a number of recommendations to resolve the complaint, these being:
- Apologise to Miss C by 15 February 2016;
 - Pay Miss C £150 compensation;
 - Ask Miss C whether or not she wished to proceed with her appeal; and
 - Review our procedures to ensure we act properly regarding all matters that are subject to appeal.
- 6.6 The Council accepted the 4 recommendations but did not implement them as agreed as set out below:
- 6.6.1 We did not write and apologise to Miss C;
- 6.6.2 The LGO had suggested that the Council pay compensation once the appeal was concluded; however, it was felt that Miss C would be better off as a result of this being paid early to resolve the matter. The LGO acknowledged this was acceptable;
- 6.6.3 The Council did not ask whether or not Miss C wanted to appeal. However, as they were aware of her discontent with prior decisions and, rather than delay further by asking her, the prior decision was reviewed and subsequently found in her favour. While this was the correct action and beneficial for Miss C, it was not what the Council had agreed, and the Council failed to do so sufficiently quickly, taking 2 months to make the decision;
- 6.6.4 The Council also reviewed their processes and carried out the following actions to ensure they were able to avoid recurrence;
- Arranging for a specialist organisation to run an in-house course to improve administration and decision making when managing appeals;
 - Reconfigured the Council's workflow system to generate earlier "alerts" to senior managers where there is a potential delay;

- Allocating responsibility for addressing cross-service LGO enquiries to dedicated individuals, eliminating the prospect of a breakdown in communication between, for example, the HB and council tax services;
- Broadening circulation lists to ensure service managers are aware of LGO complaints;
- Scheduling cross-training in areas of known complexity for HB and council tax staff;
- Broadening responsibility and awareness of LGO enquiries by adding them as fixed items to senior HB and council tax management meetings.

6.7 As well as not apologising or asking Miss C if she wanted to appeal within the agreed timescale, the Council took recovery action to collect the overpayment by referring the debt to its Enforcement Agency for recovery. If the Council had acted within the agreed timescales this would not have happened.

6.8 Miss C complained to the LGO again. The LGO conducted a further investigation and concluded the Council's failure to carry out its recommendations in full demonstrated malpractice and injustice against the claimant. As a result of this, the LGO issued a formal report and made 4 further recommendations:

- 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 the LGO;
- Review its procedure for debt recovery to minimise the chances of the faults identified recurring.

6.9 The Council has accepted and fully complied with these recommendations.

7. Conclusion

7.1 This was a one-off but serious failing which the service regrets and has learnt from. The measures put in place since should prevent this happening again.

7.2 On 1 August 2016, the Council received correspondence from the LGO which confirmed their agreement with the action the Council has taken following the report on Miss C's complaint and that they are formally satisfied with the Council's response in accordance with section 31(2) of the Local Government Act 1974.

8. Financial implications

8.1 There are no financial implications arising from this report.

9. Legal implications

- 9.1 The Commission for Local Administration, usually known as the Local Government Ombudsman (“LGO”) was established by the Local Government Act 1974. The Local Government Ombudsman covers local authorities and other specific public bodies.
- 9.2 The 1974 Act required that a complainant must have sustained injustice in consequence of maladministration in connection with the action taken by or on behalf of an authority. “Maladministration” may include any one or more of the following: delay, incorrect action or failure to take any action, failure to follow procedures in law, failure to provide information, inadequate record- keeping, failure to investigate, failure to reply, misleading or inaccurate statements, inadequate liaison, inadequate consultation, broken promises. The “injustice” suffered, must arise from the fault by the authority. Injustice may include any one or more of the following: hurt feelings, distress, worry, or inconvenience, loss of right or amenity, not receiving a service, financial loss or unnecessary expense, time and trouble in pursuing a justified complaint.
- 9.3 Where the Ombudsman reports that there has been maladministration or service failure a report is sent to the parties involved. Section 92 of the Local Government Act 2000 gives Local Authorities the power to pay compensation or provide some other benefit to a person adversely affected by actions that amount to maladministration. The Ombudsman makes recommendations. The Ombudsman cannot compel a Council to implement its recommendations.
- 9.4 There is no right of appeal against a decision by the Local Government Ombudsman. It may be possible to apply for a judicial review of that decision, subject to obtaining leave from the Court. Such a challenge is not however on the merits of the decision itself, but upon the legal basis of the decision.
- 9.5 The Council when carrying out its functions, must always seek to comply with the Equality Act 2010 (the Act). It introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 9.6 In summary, the Council must, in the exercise of its functions, have due regard to the need to:
- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - advance equality of opportunity between people who share a protected characteristic and those who do not.
 - foster good relations between people who share a protected characteristic and those who do not.
- 9.7 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 9.8 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The

guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

9.9 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

9.10 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

10. Crime and disorder implications

10.1 There are no direct crime and disorder implications arising from this report.

11. Equalities implications

11.1 There are no direct crime and disorder implications arising from this report.

12. Environmental implications

12.1 There are no environmental implications arising from this report.

13. Background papers and report author

13.1 If you require further information about this report, please contact Ralph Wilkinson, Head of Public Services, on 020 8314 6040.

13.2 The full report produced by the LGO is included at Appendix 1.