

**Complaint reference:**  
16 001 632

**Complaint against:**  
Watford Borough Council

## **The Ombudsman's final decision**

Summary: There was fault by the Council because it failed to give the complainant details of his right of appeal regarding its decisions on his council tax. The Council has agreed to consider council tax benefit.

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## **The complaint**

1. Mrs J and her son Mr J complain the Council has delayed after a Valuation Tribunal decision in August 2013 that Mr J is liable for council tax from 2005. Mrs J complains the Council has not refunded her payments. Mr J complains the Council did not fully apply council tax benefit and council tax support to his liability.

## **The Ombudsman's role and powers**

2. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. (*Local Government Act 1974, sections 26(1) and 26A(1)*).

## **How I considered this complaint**

3. I have
  - considered the complaint and the copy correspondence provided by the complainant;
  - made enquiries of the Council and considered the comments and documents the Council provided;
  - discussed the complaint with the complainant; and
  - considered the Council's and the complainant's comments on my draft decision.

## **What I found**

4. Mrs J left the country to live abroad in November 2005. She left her adult son, Mr J, her adult daughter and younger children in the home she owned. Mrs J says she told the Council she had moved out but the Council has no record of this. Mrs J continued to pay council tax until May 2007. In May 2008 she called the Council and told it that she had left late 2005. She suggested her daughter should be responsible for the council tax. She also said she authorised the transfer of the payments on her account to the new account holder.
5. The Council revised liability for council tax to Mr J from November 2005. It sent him bills and applied a single person discount as he was the only person aged

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over 18 in the property. However, Mr J did not pay and the Council obtained several liability orders in court for the unpaid council tax.

6. In early 2012 the Council says liability order notices addressed to Mr J were returned marked “gone away” by the Royal Mail. The Council visited the property and found it was boarded up. It also contacted Mrs J’s mortgage provider and found she was still paying the mortgage on the property. The Council decided to end Mr J’s liability for council tax. It made Mrs J liable for council tax from 2005.
7. In late 2012 as Mrs J had not made payment, the Council decided to obtain a charging order on the property. Mrs J called the Council from abroad in December 2012. She said she had moved abroad in 2007 but her son had lived there since 2007. However, she said the property was now empty and undergoing renovation from July 2011. She asked about council tax benefit for Mr J. The Council advised Mrs J that it could only backdate council tax benefit for 52 weeks.
8. On January 2013 the Council decided that Mrs J should remain as the liable person for council tax. The Council obtained a full charging order against the property. Mrs J called the Council and asked about the charging order. She said her son did not live in the property but asked if he could claim council tax benefit. The Council advised he could not claim if he was not living in the property. Mrs J asked the Council to send a benefit form to Mr J.
9. In August 2013 Mrs J successfully appealed to the Valuation Tribunal about the Council’s decision to make her liable for council tax. The Council received the Valuation Tribunal’s notice on 2 September 2013. On 19 September 2013 the Council revised liability removing Mrs J from April 2007. The Council made Mr J liable from April 2007 to July 2011. The Council applied a Class A exemption from July 2011 to July 2012 as the property was uninhabitable. It made Mr J liable again from July 2012.
10. In October 2013 Mr J claimed a council tax reduction. He also asked the Council to backdate council tax benefit to April 2007.
11. On 22 October 2013 the Council awarded Mr J a council tax reduction of £18 per week from October 2013. The Council sent a notification letter explaining he had to pay £7 per week. The Council did not respond to Mr J’s backdate request. In October Mrs J told the Council that Mr J had lived in the house from 2005, so she should not be liable from 2005 to 2007.
12. In March 2014 the Council revised the council tax liability further. It closed Mrs J’s account from 2005 and made Mr J liable from December 2005. The Council advised Mrs J that it had done this and that it had transferred the credit from Mrs J’s council tax account from 2005 -2007 to cover the period from 2005 – 2007 on her son’s council tax account. The Council said its benefits team would check with the Department of Work and Pensions (DWP) regarding Mr J’s entitlement to jobseekers allowance from 2007. It said it would then award backdated Council tax benefit for the periods Mr J was on job seeker’s allowance. The Council said that Mr J may need to provide evidence if the DWP could not.
13. Mrs J said the Council could transfer the credit once all the benefits issues had been sorted out. But she said the Council should consider the period from December 2005 to April 2007 because Mr J had been on jobseekers allowance intermittently since then.
14. In April 2014 Mr J stopped receiving jobseekers allowance so the Council cancelled his council tax reduction entitlement. Mrs J sold the property a month later. At this point Mr J owed council tax of £6000.

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15. In November 2014 the Council received some information about Mr J's job seeker's allowance. The Council did not assess council tax benefit but it did apply a discretionary reduction to his council tax under section 13A of the Local Government Finance Act 1992. This corresponded with the information the Council had received about the periods of Mr J's jobseekers allowance. The total amount of the reduction was £3087. This left £2923 to pay. The Council emailed Mrs J to confirm the actions it had taken. I asked the Council to provide me with a copy of this email, which may explain the periods and reasons for its decision but it has been unable to do so.
  16. Mrs J responded to the Council. She said Mr J had asked in October 2013 to backdate his council tax benefit claim to 2005. She said he could not have asked earlier because the Council had not made them liable until 2013. She asked how the Council worked out the reduction because Mr J had not worked or received any income when he was not on jobseekers allowance. She said the Council had not taken into account that Mr J had no income between 2005 and 2007 as she was supporting him. She believed he should be entitled to council tax benefit. She asked the Council to review its decision.
  17. Mrs J chased the Council for a response between November 2014 and June 2015. It appears the Council may have responded to Mrs J in mid 2015. I asked the Council for a copy of its response, but it has not been able to provide it. Mrs J emailed the Council again in January 2015 to ask the Council to explain the reasons it had reduced council tax for some periods but not others.
  18. Mrs J emailed the Council again in February 2016. The Council replied in February explaining it had applied a single person discount and council tax benefit. This was incorrect. The Council had not paid council tax benefit. The Council confirmed the periods that council tax was still due starting from 2005. It said a total of £3028 was due. It said that Mrs J had agreed to the transfer of credit on her account to her son's account for the period November 2005 to April 2007. The Council said that it had not received information regarding Mr J's benefit entitlement for the periods where council tax was due.
  19. Mrs J responded that she had not received a letter with the right of appeal regarding the Council's decision. She said the periods of reductions and discounts did not match the periods they had been asked to provide evidence of income. She said the Council was now asking for payment for periods it had previously applied a discount or reduction. She particularly questioned the period from November 2005 to April 2007. She said that during this time Mr J had no income, as she was supporting him and he was looking after younger siblings. Mrs J expected the Council to pay council tax benefit for this period. She repeated that the credit on her account for the same period should not be transferred because Mr J should not be liable for the full council tax. She said she would provide evidence in the form of bank statements and a letter from the DWP. She complained that Council had delayed matters significantly.
  20. The Council replied in March 2016 saying it was sending copies of council tax notices which showed the single person discount and council tax benefit. I asked the Council for copies of these notices, as it did not appear from other evidence that council tax benefit has been paid. The notices did not show council tax benefit had been paid and did not clearly show when the Council had used its discretionary power to reduce council tax. In its response in March, the Council also stated:

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- “ With regards your comment requesting a decision in writing and requesting a right of appeal, without the documentary proof the authority is unable to apply council tax [benefit] hence I fail to see what grounds you will be appealing under”.
21. The Council later asked for documentary evidence of Mr J’s benefits and rejected. Mrs J’s request for meeting. Mrs J repeated her question about Mr J being entitled to council tax benefit while he had no income between 2005 and 2007. She said that they wished to appeal against the Council’s decision.
  22. In April 2016 Mrs J sent the Council a letter from the DWP stating the periods that Mr J was entitled to job seeker’s allowance from 2008. The Council considered this and wrote to Mrs J stating it had applied council tax benefit and council tax reductions to Mr J’s liability. However, it had not applied council tax benefit or council tax reduction, but a discretionary reduction in his council tax under section 13A of the Local Government Finance Act 1992. The Council set out the periods it had reduced the council tax due. The total further reduction was £1593 taking the amount now due to £1429. The Council said it would also remove a summons cost of £100 if Mr J agreed to pay the amount due in 9 instalments of £145.
  23. Mrs J replied that it was not clear why the Council had decided not to reduce council tax liability for the periods when Mr J was not working or claiming benefits. She asked the Council to say what regulation showed he was not entitled for these periods. She repeated that she had not agreed the transfer of the credit from her account unless the whole claim had been dealt with. She asked the Council to send Mr J a form so that he could appeal.
  24. The Council replied it had already written off substantial amounts of council tax and awarded council tax benefit for periods Mr J was on jobseekers allowance. It said Mr J and Mrs J had delayed providing information despite many requests. The Council said it could not award council tax benefit for the periods that he was not entitled to a relevant benefit (jobseekers allowance). The Council asked for evidence when Mr J was abroad and said he would not be entitled to council tax benefit when he was abroad. It also asked when Mrs J was supporting Mr J and why. it said that when Mrs J was supporting Mr J it did not create an entitlement to council tax benefit.
  25. Mrs J repeated her request for the regulations the Council was applying when it made the decision he was not entitled council tax benefit when he had no income and was caring for his siblings. She also asked the Council why it had not refunded the money she paid. She asked the Council for a form so that Mr J could appeal. The Council replied that it was not prepared to discuss the matter further.
  26. In its response to my enquiries the Council confirmed it had paid council tax support from October 2013. But it gave contradictory information regarding the periods it had reduced council tax liability under section 13. The Council explained it had awarded the reduction rather than benefit because “it was very much after the event” and Mrs J had provided information late. The Council said it had also awarded a discretionary reduction for a period it had also applied an exemption. It has not given details of the amount involved.
  27. The Council did not clarify whether it had sent a form to Mr J to claim council tax benefit or responded to his backdate request in October 2013. It initially stated there was no right of appeal against its decisions to award a discretionary council tax reduction. However, there is a right of appeal to the Valuation Tribunal.

### **Analysis**

28. I consider there is fault by the Council which caused injustice to Mr J and Mrs J.

- The Council stated it would pay council tax benefit in November 2014 but did not do so.
- The Council stated it had paid council tax benefit in February and April 2016. However, it did not pay council tax benefit. Instead it reduced the council tax outstanding using its power under section 13A of the Local Government Finance Act 1992. It is not clear why the Council did this.
- If the Council had paid council tax benefit a right of appeal to the first tier tribunal would have applied. Notification letters would have been sent. The Council applied discretionary reductions instead, but the Council did not send a notification letter. Mr J has a right of appeal. But I have not seen that the Council has properly notified him of its decisions and the right of appeal. It has not explained the reasons why it has paid for some periods and not others.
- The Council stated without documentary proof it could not apply council tax benefit, and therefore could not see on what grounds Mr J would be appealing. I do not agree with this reasoning. I consider that the Council should have explained the reasons why it would not pay council tax benefit or a discretionary reduction. Mr J did not have a clear explanation why the Council reduced his liability for some periods and not others. He is also unable to pursue an appeal because he does not have details regarding the Council's reasons, how he may appeal and to whom.
- The Council has not fully addressed why it has decided it will not pay a discretionary Council tax reduction or council tax benefit for periods when Mr J was abroad, or when he was not working but receiving support from Mrs J. It has not stated the regulations it has considered
- I consider it was unfair for the Council to state that Mrs J did not advise it she had moved out until 8 years later. She did advise the Council in 2008 but Council revised liability back to her in 2012. However, I also note that when the Council had made Mr J liable and sent him bills between 2008 and 2012, he did not pay or appear to make a claim for council tax benefit.

### **Agreed action**

29. The Council has agreed to consider Mr J's council tax benefit from December 2005. It has asked for details of his income from that date. When it has made a decision it should write to Mr J with details how he may appeal.
30. I did not recommend any further remedy because I do not know that if it were not for the fault I have identified, that Mr J would be successful at appeal and that further benefit or discretionary council tax reductions would be awarded.

### **Final decision**

31. I consider there is fault by the Council as it did not properly explain its decisions and did not give details of the right of appeal. I find the Council's offer to consider council tax benefit and provide appeal details is a reasonable remedy. I have completed my investigation.

### **Investigator's decision on behalf of the Ombudsman**