

The Ombudsman's final decision

Summary: Miss Y complains about the approach used by the Council to recover overpaid Housing Benefit and Discretionary Housing Payments. The Ombudsman finds fault because the Council wrongly pursued Miss Y for the recovery of Discretionary Housing Payments, and then prematurely wrote to her employer to seek a Direct Earnings Attachment for overpaid Housing Benefit. This fault caused distress, which the Council will remedy by offsetting £200 from any outstanding debt owed by Miss Y.

The complaint

1. The complainant, whom I will call Miss Y, complains about the approach used by the Council to recover overpaid benefits.

What I have investigated

2. I have investigated the process followed by the Council to recover overpaid benefits. I have not considered Miss Y's entitlement, the decision to recover the benefits and the level of benefits recovered for the reasons explained at the end of this statement.

The Ombudsman's role and powers

3. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*) The Social Entitlement Chamber (also known as the Social Security Appeal Tribunal) is a tribunal that considers housing benefit appeals. (*The Social Entitlement Chamber of the First Tier Tribunal*)
4. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I 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. I 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), as amended*)

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5. 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), as amended*)

How I considered this complaint

6. During my investigation I have discussed the complaint with Miss Y and considered any information she submitted. I also made enquiries of the Council, and considered its response. When reaching my decision I have consulted the relevant law and guidance, referenced where necessary in this statement.
7. I issued a draft decision and invited comments from Miss Y and the Council before making a final decision.

What I found

What happened

8. An overpayment of benefit occurs when a person is paid a benefit they are no longer entitled to, or when they are paid more benefit than they are entitled to. This could happen for several reasons, such as an administrative error or a change in the claimant's circumstances.
9. Miss Y received Housing Benefit (HB) and Discretionary Housing Payments (DHP) from the Council. In July 2017 the Council wrote to Miss Y to explain that it had reviewed her claim. The Council confirmed: "You have been overpaid £783.13 Housing Benefit. This overpayment is 'recoverable'. The reason for the overpayment is because your earnings have increased, based on confirmation of your earnings passed to our department from HMRC...this was notified on 26 June 2017 by a 3rd party and we recalculated it on 17 July 2017. An invoice will be raised. I will recover the overpayment from your current entitlement".
10. Miss Y agreed to repay the amount owed in instalments.
11. In February 2018 the Council also found that it had overpaid £238.34 in DHPs. However, due to an error with the Council's system, the DHP overpayment was duplicated. The Council therefore initially considered that Miss Y owed £476.68 in overpaid DHPs, as well as the £783.13 in overpaid HB.
12. The Council issued three reminders about the DHP debt: 16 March 2018, 30 March 2018 and 13 April 2018. The last letter made clear it was the final reminder and, if Miss Y did not make payment within seven days, the Council would begin recovery action via the County Court.
13. The Council then wrote to Miss Y about the HB debt. In a letter dated 19 June 2018, the Council confirmed that Miss Y had failed to clear the invoices via the agreed instalment plan. The Council said it would register the remaining £616.63 HB debt with the Court for recovery.
14. However the Council wrote to Miss Y again the following day to provide an invoice reminder for the HB. This conflicted with the information previously given regarding the registration of the debt with the Court, and instead gave Miss Y a final seven days to make the payment before debt recovery would take place.
15. Two days later, and five days before Miss Y's final deadline for payment had lapsed, the Council wrote to Miss Y again. This time it said: "I do not appear to have received payment for the outstanding amount shown below (£1507.90) I

have therefore written to your employer for deductions to be made from your salary. I enclose a copy of the Direct Earnings Attachment issued to your employer in respect of the above matter. Deductions will now be made from your salary pursuant to Part 6 of the Social Security (Overpayments and Recovery) Regulations 2013 to repay the amount you due [sic]"

16. Miss Y wrote to the Council on 29 June 2018 regarding the proposed Direct Earnings Attachment (DEA). The Council responded, and suggested a meeting with the officers involved. That meeting was arranged for 6 July. Miss Y says she waited half an hour for the officers to arrive. When they did not turn up, Miss Y left. The Council then called Miss Y to re-arrange the meeting for later that day.
17. The Council then wrote to Miss Y's employer on 6 July. The short letter simply confirming: "further to my correspondence sent to you on 22 June 2018, I would like to request the above order to be cancelled".
18. Dissatisfied with the outcome of the meeting, Miss Y submitted a formal complaint on 11 July 2018. The Council responded on 19 July 2018. It confirmed that £891.27 of the overpayment would be written off, leaving £616.63 outstanding. This is less than half of the amount originally pursued by the proposed DEA.
19. Miss Y made a second complaint on 20 July and proposed a repayment plan for £20 a month. The Council responded; it accepted there was fault in the process followed. But Miss Y remained dissatisfied and approached the Ombudsman.

Was there fault in the Council's actions causing injustice to Miss Y?

20. The law is clear that the only method of recovery for overpaid DHPs is via a request for repayment from the claimant, either through an invoice or debt collection. Councils cannot recover overpaid DHPs via a DEA. The law is also clear that councils can only recover DHPs in limited circumstances. The Council's second complaint response confirmed: "the one true DHP invoice will not be recovered because in general DHP overpayments are not recovered unless there is doubt as to the validity of the award when it was originally made".
21. It was therefore fault for the Council to attempt to recover the full amount from Miss Y's earnings. There is further administrative fault in the Council's duplication of the DHP debt on its systems, which it apologised for in its complaint response.
22. There is no right of appeal against a DHP decision. Decisions relating to DHPs therefore fall within the Ombudsman's jurisdiction. However, as the overpaid DHP has now been written off in its entirety, there is no ongoing injustice in this element of Miss Y's case. With that said, the fault identified in the above paragraph did, in my view, cause Miss Y avoidable distress.
23. There is a right of appeal against a decision to recover overpaid HBs, so I have not considered whether the Council's calculations of the outstanding debt are correct and whether the Council is entitled to recover the amount in question. However I have considered the method used by the Council when pursuing recovery of the debt, because this is within our jurisdiction.
24. In its second complaint response, the Council acknowledged the fault in the method of HB recovery. It said in relation to the HB debt: "...aside from the original invoice dated 17 July 2017 there has only been one further 'notice' sent and this was the reminder invoice dated 20 June 2018. The other 'notices' were reminders for the DHP invoices (incorrectly issued). Our standard process is to issue a 'debt recovery letter' and a 'letter before action' after issuing the original invoice and the reminder before we commence down the DEA route. I therefore

agree that we did contact your employer prematurely and I sincerely apologise for any reputational issues this may have caused you and your workplace”.

25. The Council has already accepted there is fault in this case. I must consider the impact of that fault. The Council was entitled to apply to Miss Y’s employer for a DEA, but it did so prematurely. The Council accepts that it should have issued two reminders after the initial invoice, but only issued one in this case. The DEA subsequently issued was also incorrect by a significant margin, leading Miss Y’s employer to believe that she owed much more than she actually did. I consider the Council could have limited Miss Y’s embarrassment and reputational damage by explaining the error to Miss Y’s employer, but instead it sent a brief letter merely asking for the DEA to be cancelled.
26. Miss Y says the Council’s actions caused her to leave her employment due to reputational damage. I accept that the Council’s actions did cause Miss Y some distress, but it would have been entitled to proceed with the DEA had Miss Y not made full payment within seven days of the final reminder. As some of Miss Y’s debt remains outstanding, I find it unlikely that she would have been able to clear the debt within seven days. With that said, the DEA was issued prematurely and contained incorrect information. I find this did cause Miss Y some distress, but I cannot make a causal link between the fault and Miss Y’s resignation.
27. Miss Y continues to dispute the level of debt owed. The Council has agreed to issue a full breakdown of the liability, but only once Miss Y has submitted payslips for the period 2014 to 2017. Miss Y feels this is onerous. As the reason for the overpayment was due to an increase in Miss Y’s earnings, it is understandable that the Council would want to be clear on her earnings for the period in question. Miss Y considers the Council should issue a breakdown of the debt, but this is a circular argument because the Council feels that it needs to see Miss Y’s payslips first.
28. It is concerning that the Council still to this date remains uncertain about the level of overpayment owed by Miss Y, despite originally pursuing her case as far as a DEA. However, in the interests of resolving the matter, I would urge Miss Y to work with the Council to provide proof of earnings for the relevant period.
29. The Council has now adopted a clear procedure for its officers to follow when pursuing recovery of overpaid benefits. It has shared a copy of the new process map with the Ombudsman. It is reassuring to know that the Council has taken action to make the process clearer for its officers, and this will hopefully reduce the opportunity for errors in the future. As the Council has already taken steps to strengthen its processes, I have not recommended any service improvements.

Agreed action

30. Within four weeks of my draft decision, the Council will pay £200 to Miss Y to remedy the avoidable distress caused by the faults identified in this case. In line with the Ombudsman’s guidance on remedies, the Council will offset this payment against Miss Y’s outstanding debt.

Final decision

31. I have completed my investigation with a finding of fault and injustice for the reasons explained in this statement. The Council has agreed to implement the Ombudsman’s recommendations to remedy the injustice caused by fault.

Parts of the complaint that I did not investigate

32. I have not investigated Miss Y's entitlement, the decision to recover the benefits and the level of benefits recovered. This is because, as per paragraph three of this statement, the Social Security Appeal Tribunal is in place to consider such matters. The Ombudsman does not investigate matters which are appealable to a Tribunal.

Investigator's decision on behalf of the Ombudsman