

7 August 2020

**Complaint reference:**  
18 017 040

**Complaint against:**  
Watford Borough Council

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

Summary: The Council was at fault in the way it dealt with Mr and Mrs X's benefit claims. The Council has apologised and made several service improvements. Mr and Mrs X say the Council was malicious in its actions. The Ombudsman has found no evidence of further fault by the Council but has asked it to make a financial payment for the distress and uncertainty caused to Mr and Mrs X.

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## **The complaint**

1. Mr and Mrs X complain about the way the Council handled their Housing Benefit and Council Tax Reduction. They said this resulted in a summons for unpaid council tax and threats of eviction from their landlord because of rent arrears. Mr and Mrs X say that officers were malicious and deliberately sabotaged their case.

## **What I have investigated**

2. I have investigated the Council's handling of their claims. But I could not investigate decisions about the amount of Housing Benefit awarded or the decision to recover overpayment because Mr and Mrs X could have appealed these matters to a statutory tribunal.

## **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*)
4. 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*). The Valuation Tribunal deals with appeals against decisions on council tax liability and council tax support or reduction.
5. 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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6. 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**

7. I have spoken to Mr and Mrs X and considered the Council's response to my enquiries.
8. I sent Mr and Mrs X and the Council a copy of my draft decision and invited their comments. I considered all the comments I received before issuing my decision.

### **What I found**

9. Councils are responsible for administering housing benefits and must tell people about their decisions in writing. If a council decides a person does not qualify for a certain benefit the written notice must give reasons for this. The notice must also tell the person about their right to ask for more information and to appeal.
10. People have a right to appeal most housing benefit decisions. The person can first ask the council to review its decision. However, they can also ask it to send the appeal directly to the Tribunal.
11. If a person asks for an appeal the council can reconsider its decision. If it decides not to change its decision or its revised decision is not to the other person's advantage, the Council should send the appeal to the Tribunal "as soon as is reasonably practicable". (Rule 24(1A) of the Tribunal procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008)
12. The Ombudsman cannot look directly at decisions about entitlement to benefit. This includes issues such as overpayment of housing benefit or recalculations of housing benefit. This can only be done by a Tribunal. However, the Ombudsman can look at a council's actions and how it administered the process.

### **What happened in this case**

13. Below is a chronology of key events. It is not meant to show everything that happened.
14. In August 2018 the Council wrote to Mr and Mrs X and explained that it had reviewed their housing benefit and council tax reduction claim. The Council determined that Mr and Mrs X did not qualify for housing benefit and council tax reduction from September 2016 to April 2019. The basis for its decision was that Mr and Mrs X's son had loaned them £30,000 in August 2016 and they had failed to show how that money had been spent. The Council therefore considered the £30,000 loan as capital. It said that they had been overpaid £22,902.20 in housing benefit and £4210.84 in council tax reduction. The Council also adjusted discretionary housing payment (DHP) from April 2017 to April 2018 and determined an overpayment of £1,544.44.
15. In September Mr and Mrs X requested a review of the Council's decision. On 30 October the Council concluded that the capital of £30,000 was given to Mr and Mrs X over a period of 26 days in 2016 and had been used to support family needs. It said that Mr and Mrs X held a property with an equity values in excess of £16,000 and therefore upheld the original decision. At the same time, the Council decided to re-instate benefit from 27 August 2018 and this was determined on 2 November.

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16. On 1 November Mr and Mrs X made an application for Discretionary Housing Payments (DHP). The application was considered by a senior manager (Officer 2) and was rejected on 27 December 2018. Mr and Mrs X were informed in writing of the Council's decision.
  17. On 22 November Mr and Mrs X appealed against the Council's decision about their benefit claim and overpayment. He requested that the appeal be forwarded to the independent appeal tribunal.
  18. On the 7 January 2019, the Council suspended the benefit payment but failed to inform Mr and Mrs X of its decision and the period of suspension.
  19. On 11 January Officer 1 spoke to Mrs X about the benefit claim. Mrs X said that Officer 1 was harsh and intimidating. Specifically Mrs X said that Officer 1 repeated requests for information which they had already provided; asked Mr and Mrs X to attend the Council office with evidence of how they had spent the loan from their son; disregarded what she said and harassed and threatened her.
  20. On the same day Mr X sent an email to the Council and repeated that he wanted to appeal against the decision of 30 October. Officer 1 wrote to Mr and Mrs X and requested details about their income and copies of bank statements. The letter stated that the information should be provided within one calendar month, by 10 February.
  21. On 8 February Mr and Mrs X's landlord contacted them about a missing rent payment. It was at this point Mr and Mrs X became aware that the Council suspended its benefit on 7 January.
  22. On 1 February, the Council submitted details of Mr and Mrs X's appeal to the independent appeal tribunal. The Council incorrectly stated that they were appealing against the decision of 24 August 2018 and not the decision made on 30 October. Mr and Mrs X complained about the quality of the appeal submission and said that key documents had been omitted.
  23. On 6 and 8 February Mr X submitted further evidence in support of their claim. On 13 February, the Council requested more information and Mr X responded on the same day. He asked the Council to de-suspend the benefit payments. The Council sent another letter on 20 February and explained that it had completed a review of their application for housing benefit and council tax reduction. It confirmed that payments would resume from 7 January. When Mr X checked his online account, he found that payments had been suspended again on 20 February.
  24. On 26 February Mr X received another letter from the Council dated 22 February. The Council asked Mr X to provide further evidence including company bank statements and payslips. Mr X said that this information had already been provided to the Council on numerous occasions.

### **The Council's response to Mr and Mrs X's complaint**

25. The Council commissioned an independent investigation into Mr and Mrs X's complaint. The investigation and the Council's response that followed has already highlighted several areas where it was at fault. However, Mr and Mrs X complained that the Council failed to address their complaint about Officer 2 and the way she handled their DHP application in November 2018. Mr and Mrs X said this was a deliberate omission by the Council.
26. The Council acknowledged that this aspect of Mr and Mrs X's complaint was not part of the stage two investigation. It said that the investigating officer was

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provided with a copy of Mr X's substantive complaint dated 11 March 2019. The Council accept that it did not include supplementary issues raised by Mr X in an email sent to Officer 2 on 16 April. The Council says this was a simple oversight on its part. I am satisfied with this explanation.

27. The Council took eight weeks to reach a decision on the DHP application. This was fault. However, it explained that it was satisfied that it considered a range of information in reaching its decision to decline the application.
28. The Council's accepts that there was a delay in Officer 2 responding to Mr and Mrs X's complaint. The Council explained that due to the complexity and allegations of prejudice, harassment, discrimination and senior officer conspiracy it decided that an independent investigation was necessary. I note that Mr and Mrs X were given an opportunity to speak with the investigating officer but declined to do so.

### **Service improvements made by Council**

29. The Council has already made a number of service improvements as a result of Mr and Mrs X's complaint. This includes:
  - Staff training and workshops
  - Improved quality assurance
  - New procedures for complaints and appeals for benefits and council tax
  - Increase in DHP resources

### **Analysis**

30. The Council commissioned an independent investigation into Mr and Mrs X's complaint. The investigation and the Council's response that followed has already highlighted several areas where it was at fault. Therefore, I have considered whether to make any further findings of fault and whether it has taken sufficient action to remedy the injustice it caused.
31. The Council accepts it made flawed decisions on 24 August 2018 and 30 October 2018
32. The Council has put Mr and Mrs X to significant, unnecessary time and trouble. It has given wrong information, made repeated requests for information already provided, denied appeal rights, suspended benefits without notice and wrongly said it owed £28657.48 in overpayments. But for these faults I consider that the Council could have paid Mr and Mrs X's claims for housing benefit and council tax reduction from the end of August 2018. Because of these faults Mr and Mrs X experienced uncertainty and significant distress in not knowing what was happening with their claim. They were faced with the fear of losing their home and struggled to cope financially.
33. I also have concerns about some of the Council's communication with Mr and Mrs X. It simultaneously issued decision notices saying they did not qualify for benefit and letters inviting them to provide further information so that their benefits could be re-instated. The Council failed to explain to Mr and Mrs X why it was requesting further information from them. The telephone conversation Officer 1 had with Mrs X in January 2019 makes little sense and I can appreciate why Mrs X felt "harassed" by repeated requests for information. I consider these poor communications also justify a finding of fault. They too will have added to Mr and Mrs X's uncertainty and distress.
34. I do not consider the Council's delay in handling Mr and Mrs X's DHP application can escape criticism either. The Council's policy states that it will send a written

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notification of its decision within seven days “or as soon as practicably possible”  
The Council took eight weeks to decide Mr and Mrs X’s application and fell considerably short of the expected timescales. This was fault. This would also have added to Mr and Mrs X’s uncertainty and distress. I note that the Council has since taken on extra staff which has reduced delays.

35. Mr and Mrs X have said many times that Council officers lied, were rude, malicious and deliberately sabotaged their case. Whilst I have found fault in the actions of the Council, there is no evidence to support these claims.
36. We publish guidance on remedies. We usually suggest payment of between £100 and £300 for unnecessary time and trouble. We also recommend a payment between £100 and £300 for distress. I consider the time and trouble and the distress the Council caused Mr and Mrs X is at the top of our scales and will recommend a remedy accordingly.

### **Agreed action**

37. To put matters right for Mr and Mrs X within one month of my final decision the Council will:
  - a) Apologise to Mr and Mrs X
  - b) Pay Mr and Mrs X £600 for their distress and time and trouble.

### **Final decision**

38. I have found fault by the Council causing injustice to Mr and Mrs X. The Council has accepted my recommendations and I have completed my investigation on this basis.

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