

SPSO decision report

Case: 201003747, Falkirk Council
Sector: local government
Subject: finance - housing benefit and council tax benefit
Outcome: some upheld, recommendations

Summary

Ms C rented a property from a housing association. She claimed housing and council tax benefit from the council. Ms C thought that she was charged too much rent because the housing benefit department did not include an amount for a service charge on her tenancy. She said that she had asked for an explanation of her rent but they did not provide it. In early 2010, the council carried out a joint investigation with the Department for Work and Pensions (DWP), which found that Ms C was not entitled to all the benefits she had been receiving. This meant that the DWP wanted to recover incapacity benefit, and the council wanted to recover housing and council tax benefit from her. Ms C told us that she wrote to the council saying that she wanted to appeal, and they said that they would pass this to the tribunal service. However, they did not do so, as they said that the DWP could not confirm that Ms C had appealed the incapacity benefit decision. The council said that, as it was the primary benefit, Ms C needed to appeal it first before appealing the other benefits. They began recovering overpayments of housing and council tax benefit. Ms C had, in fact, appealed the DWP decision but they had overlooked this until November 2010. In December 2010, it went in front of an appeal tribunal, which upheld the original decision.

In May 2011, however, the council found that the DWP had accepted a further appeal out-of-time. On that basis, the council suspended the recovery of housing and council tax benefit. Ms C asked them to make a discretionary housing payment to write off these two benefit overpayments, but the council told her that they could not consider a discretionary payment for this purpose. Ms C made a further application for a discretionary housing payment in September 2011, as she was suffering hardship. The council did not respond as they were waiting for the outcome of Ms C's incapacity benefit appeal before making a decision. In January 2012, the incapacity benefit appeal tribunal found in Ms C's favour, and wrote off all her incapacity benefit overpayment. The council did not accept the conclusion of the incapacity benefit tribunal but agreed, as a gesture of goodwill, not to recover the remainder of Ms C's other overpaid benefits.

We found no evidence that the council provided the housing association with incorrect information about Ms C's benefit entitlement or failed to respond to her enquiries about the reasons for increases in her rent and deductions from her benefit. Our investigation did, however, find strong evidence that the council did not deal appropriately with Ms C's requests for her overpayment decision to be sent to the tribunal, and for deductions to be stopped. Although they told her that she had not confirmed that she wanted to progress matters to the tribunal, we found that Ms C had quite clearly said she wanted to appeal. In the circumstances, the council should also have considered suspending the deductions, as their policy was to stop deductions when an appeal was outstanding. We found that the council correctly refused Ms C's first application for a discretionary housing payment application. However, we found that they unreasonably delayed on the second application and failed to provide any sort of communication during the application process.

Recommendations

We recommended that the council:

- credit Ms C's rent and council tax accounts with any monies already taken relating to the overpayment,

confirming in writing to her when they have done so;

- apologise for failing to suspend payments of housing benefit after her request for an appeal and providing inaccurate information for their failure;
- review their practice relating to accepting appeals and suspending repayment of overpayments to reflect housing and council tax benefit guidance;
- apologise for delaying Ms C's application and for failing to communicate effectively when processing her discretionary housing payment; and
- remind relevant staff of their responsibilities to deal with applications for discretionary housing payments promptly and to communicate effectively with applicants when considering such payments.