

Case 200502310: The City of Edinburgh Council

Introduction

1. On 22 November 2005 the Ombudsman received a complaint from a member of the public (Mr C in this report) against The City of Edinburgh Council (the Council). The complaint concerned the Council's handling of Mr C's council tax account.

The Complaint

2. Mr C contended that the Council failed to:
- (i) repay an overpayment of council tax;
 - (ii) pay interest incurred as a consequence of the cancellation of a cheque;
 - (iii) provide a proper explanation of the handling of the account.

The complaint was not upheld.

Investigation and Findings of Fact

3. The investigation included an examination of documentary evidence supplied by Mr C, and a written enquiry was made of the Council, whose Council Secretary provided relevant background information and copy correspondence. Mr C and the Council were given an opportunity to comment on this report.

4. In July 2004 Mr C telephoned the Council's Revenues and Benefits Department (the Department) concerning a refund payment of council tax (£115.53) which had arisen following the ending of his council tax account from 31 August 2004. (In this context the Council have indicated that because council tax was collected in 10 instalments, with each payment there was an element of paying 'in advance'; therefore, ending the account before the end of the year in question created a credit on that year's accounts). Mr C told me that, during the telephone call, he requested repayment by electronic means, to which the Council

agreed.

5. Mr C requested the Council to pay the money directly to his bank account, rather than follow the Council's normal procedure of sending a cheque to his home address. The Department wrote to Mr C on 20 August 2004 advising that this was not possible and that a cheque would be issued to him. Thereafter arrangements were made to issue the cheque, which Mr C banked.

6. Mr C was not happy with this response and telephoned the Department on 24 August. During this call he informed the Council that he would be out of the country for a period of time. Against this, the Department decided to pay the money to Mr C's bank. To avoid the risk of the refund being paid twice, the original cheque had to be stopped. However, the Council subsequently discovered that the proposed direct payment was not possible (because Mr C's bank was an internet bank and would not accept it). In these circumstances, and because Mr C was abroad, the Department attempted to contact him by e-mail, however the officer was unable to do so because the record of his e-mail address was incomplete. Mr C contended that the Council had no reason not to make the payment because he had already provided all the necessary information to enable them to do so.

7. Despite Mr C having requested a payment to his bank, the cheque already issued (in his wife's name) was lodged in the bank account on 26 August 2004. This was not honoured, given its cancellation. Mr C's bank wrote to him at an address in Turkey on 18 November 2004 to advise him that the cheque had been returned unpaid.

8. In the meantime, on 20 October 2004 whilst dealing with a council tax enquiry form, the Council noted that another person (Mr R) had taken up occupancy of Mr C's property from 3 September 2004. This meant that Mr C's council tax account had to be amended to take cognisance of this change in circumstances, as he required to be billed for council tax up to and including 2 September 2004.

9. As the Revenues and Benefits Division held the original credit balance of £115.53 on his account, a further credit note was produced on 20 October 2004 showing the amended charge period from 1 April 2004 to 2 September 2004. This

showed that the credit balance for 2004/2005 was £107.74. The notice detailing the new credit balance was sent to Mr C's home address, because the Council had no other means of contacting him. Mr C contended that from 1 April 2004 to 2 September 2004 a total of £603.57 was due to the Council. Up to 10 October 2004 a total of £826.24 was paid; a difference of £222.23.

10. The Council explained that generally overpayments were not automatically refunded; on receipt of a notice showing that a credit existed on an account, the customer was invited to respond to the notice and indicate his/her preference. For example, if Mr C had returned to Edinburgh during the period in question, he could have requested the credit to be transferred to his new liability from the date of his return. As there was no response to the new credit notice (20 October) the credit was 'held' against Mr C's account for that year. The Council understood that Mr C was out of the country for some time.

11. In July 2005, following his return to Edinburgh, Mr C complained to the Department about the previous refund cheque not being honoured. The Council replied to this on 13 July 2005, indicating that a refund cheque would be issued and they referred to the process for re-imbusement of the bank charge Mr C incurred due to the presentation of the cancelled cheque.

12. Mr C e-mailed the Department on 16 July 2005 indicating that he wished to be compensated for the bank charge (£10) and also claimed that he was out of pocket in respect of the loss of interest on the refund which the Council had not made. Mr C made further representations about this on 26 July.

13. On 14 September 2005 the Council agreed to pay compensation for the returned cheque, as they had not been able to make the payment direct to Mr C's bank. A cheque was raised for £10.

14. Mr C sent a further e-mail to the Department regarding the Final Notice and, again, made reference to the on-going refund issue. On 6 October 2005 a senior officer of the Department wrote to Mr C in the following terms

...I am sorry you are unhappy to have received a final notice.
However the reminder notice issued to you on 12 August 2005

contains the following paragraph – If you have lodged an appeal in respect of the property band, disabled relief, discount or other reason, you must nevertheless continue to meet your instalment payments on time.

This means that the instalment profile issued should have been adhered to during this time.

However, given the delay in dealing with your correspondence, I have decided to withdraw the final notice on this occasion.

I have applied a 50% discount to your property for the period 2 June 2005 to 27 June 2005. This is based on the property being unoccupied.

The information passed to us from the letting agents managing your property was that you became liable from 2 June 2005 and, until your e-mail of 16 July 2005, no information was received to the contrary.

With reference to your enquiry regarding your previous credit balance refund, the City of Edinburgh Council does not issue such payments by BAC, hence the issuing of a cheque.

I believe that you telephoned this office on 24 August 2004 and discussed with (officer) that you were unhappy we could not make this payment directly to your bank account. Due to your circumstances at that time, we agreed on that occasion only we would make a special arrangement to pay directly to your bank account. However when we attempted this, due to your bank being an internet bank we could not carry out this process and were unable to contact you as you were travelling.

You later passed this cheque to your bank but due to your earlier contact with this Department the cheque had already been stopped. I am sorry you have incurred bank charges. As a gesture

of goodwill and due to the confusion which has arisen, I enclose a cheque for £10 in respect of the bank charge applied to your account.

This payment is made by separate arrangement and takes longer to administer than payments directly from the Council Tax system. I am sorry for the delay you have experienced in receiving this payment.

With regard to your claim for compensation for interest lost, I am sorry that the City of Edinburgh Council makes no provision for these types of requests.

You will shortly receive an amended notice and new instalment profile under separate cover...'

15. On 20 October 2005 a further e-mail was received from Mr C complaining about the 'grudging' apology from the Council. The Council replied on 25 October, re-iterating the point regarding the original refund cheque and explaining the issues with his current council tax demand. However, the reply made no reference to the fact that Mr C had received payment on 13 July.

16. Mr C approached the Council again, through their Customer Care office, indicating that, unless the Head of the Revenues and Benefits Department phoned him by 28 October, he intended to contact the media.

17. In response to this the Director of Finance issued a letter to Mr C on 9 November 2005 in the following terms:

...'Your problem with the Council appears to have started when you requested a refund of council tax by BAC rather than the normal Council method of cheque.

In attempting to meet your request a 'stop' was placed on the cheque and a BAC payment made. However the Council was advised by its bankers that the BAC payment had failed as your

nominated account was not able to accept our BAC payment.

Although you were travelling we attempted to advise you that the BAC payment failed, but the e-mail sent to the address supplied was not delivered.

After review the Council agreed to re-imburse you the bank charge you incurred in attempting to cash the cheque, despite the fact that you had requested payment by BAC which had resulted in a stop being placed on the cheque which had been previously issued. No interest was paid on your outstanding council tax refund as the Council has no statutory power to pay interest on council tax overpayments.

Whilst I acknowledge that the Council can make mistakes I consider that the Council has made every effort to address the complaint you have raised and must advise that this concludes the Council's complaint process.

If you are still not happy you have the right to take your complaint to the Scottish Public Services Ombudsman.'

18. The Council maintained that they did repay the overpayment of council tax (13 July 2005). They contended that Mr C was under the wrong impression that a further refund was due. As explained earlier, the Council confirmed that he received a revised credit notice due to the original refund not being successfully completed and the fact that his account was amended following further information from his tenant. Mr C did not agree with this; he indicated that he was due to pay £826.24 and, after the repayment of £107.74, this left a balance of £115.53

19. Notwithstanding this, the Council drew attention to the expressions used in the background correspondence with Mr C such as 'special arrangement' and 'pay directly to your bank account'; they accepted that such expressions had suggested that the Council had attempted to make a BAC transfer, when this was not, in fact, the case. The Council did not make payments by BAC. They explained that the computer software used by the Council was developed in consultation with a group

of other local authorities, and at the time of its development none of the authorities expressed a desire for the system to include an ability to process BAC payments as part of the council tax refund arrangements, therefore the system did not include such facility. In an effort to be helpful to Mr C, an attempt was made to repay the overpayment by sending a cheque direct to his bank, but that was not possible due to the bank operating only 'on line'. It was that process which was unsuccessful. The Council apologised for any misunderstanding caused by the terms used in the correspondence. The Council confirmed that they had responded timeously to Mr C and had attempted to explain their position in good faith.

20. In conclusion they indicated that, given the relatively small amount of compensation involved, they were prepared to make a payment for the sum claimed by Mr C (£7.23) as a gesture of goodwill and to resolve the complaint.

Conclusion

21. My investigation found no evidence of any administrative fault or service failure on the part of the Council in dealing with Mr C's request for a refund payment which, under their normal procedure, was arranged by the issue of a cheque.

22. However, in view of Mr C's representations about this, an alternative arrangement was made but this was problematic and there was some confusion about the final payment of the amount in question. Notwithstanding this, I consider that the Council replied timeously to Mr C and explained their position properly; they apologised and compensated him in respect of the bank charge and they explained that there was no statutory basis on which they were required to pay for compensation for lost interest.

23. During the investigation the Council reviewed their position on the matter of lost interest and agreed to make a goodwill payment of compensation. I consider that the Council's actions effectively resolved the complaint and, therefore, there was no need for further scrutiny of their handling of the case.

27 June 2006

Explanation of abbreviations used

Mr C	The complainant
The Council	The City of Edinburgh Council
Mr R	Occupant of Mr C's property