

Case 200604065: Falkirk Council

Summary of Investigation

Category

Local government: Housing; Finance; Housing benefit and council tax benefit

Overview

Ms C complained about Falkirk Council (the Council)'s handling of her application for housing benefit. She applied in March 2006 and said she did not receive a determination until October 2006. She felt there was excessive delay and was also concerned about an internal email which she said contained inappropriate comments. In addition, she complained that she had received an eviction notice on the grounds of outstanding rent arrears, when the Council were still processing her housing benefit application. Ms C was in Council rented accommodation at the time.

Specific complaint and conclusion

The complaints which have been investigated are that the Council:

- (a) mishandled Ms C's application for housing benefit (*upheld*);
- (b) failed to ensure she was not sent a notice concerning eviction proceedings¹ (*upheld*); and
- (c) had allowed inappropriate email correspondence referring to Ms C (*not upheld*).

Redress and recommendations

The Ombudsman recommends that the Council review their Rents System to consider whether they could introduce a process of monitoring manual holds on accounts.

The Council has accepted the recommendation and will act on it accordingly.

¹ This was not an eviction notice but a notice for recovery and possession which is an essential preliminary to eviction proceedings.

Main Investigation Report

Introduction

1. Ms C applied for housing benefit in March 2006. She owned some land and this required to be valued as part of the application process. She provided further information and Falkirk Council (the Council) accepted that by 18 April 2006 Ms C had provided sufficient information to start to progress her claim. Ms C was informed of the outcome of her application in October 2006. This was reviewed at her request in March 2007 and her claim was processed again on 11 May 2007. Formal notification of the review was sent to her on 18 May 2007.

2. Ms C was in Council rented accommodation during this period and had difficulty meeting the rent. The Council put a hold on her rent account so that no action would be taken until the outcome of Ms C's claim for housing benefit but on 1 May 2007 she was issued a Notice of Recovery of Possession on the grounds of rent arrears in error.

3. Ms C first raised a formal complaint about the delay in November 2006. A meeting was held and the Council wrote to her on 24 November 2006. Her MSP wrote on her behalf in December 2006. Ms C subsequently appealed to the Chief Executive and received a final response from the Council to her complaint on 15 May 2007. In their responses to Ms C, the Council apologised for the delay which the Chief Executive described as unacceptable. They also apologised for any hurt caused to Ms C by the details of an internal email she had received as part of a request for information. They said, while the wording was unfortunate, it should not be taken as making personal comment. Ms C complained to the Ombudsman on 25 May 2007.

4. The Ombudsman's office is unable to review decisions made on the amount of housing benefit awarded to an individual. The process for this is set out in legislation and ultimately ends in an appeal to the Social Security Commissioners. However, this office can consider matters relating to the Council's administration and the service provided by Councils in processing benefit claims.

5. The complaint from Ms C which I have investigated are that the Council:
(a) mishandled Ms C's application for housing benefit;

- (b) failed to ensure she was not sent a notice concerning eviction proceedings; and
- (c) had allowed inappropriate email correspondence referring to Ms C.

Investigation

6. In investigating this complaint I obtained the correspondence between Ms C and the Council and had sight of documentation relating to the housing benefit application. I considered relevant legislation and guidance as set out in Annex 2. I also made specific enquiries of the Council. Abbreviations used in this report are set out in Annex 1.

7. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Ms C and the Council were given an opportunity to comment on a draft of this report.

Background

8. The basis of the law for housing benefit is the Social Security Administration Act 1992 and the Social Security Contributions and Benefits Act 1992, as amended by the Local Government Finance Act 1992. These Acts provide the framework for the detailed rules contained in the regulations which are regularly amended. The Housing Benefit Regulations 2006 came into force on 6 March 2006. Regulation 89 provides that 'the relevant authority shall make a decision on each claim within 14 days of the provisions of regulations 83 and 86 being satisfied or as soon as reasonably practicable thereafter'. Regulations 83 and 86 deal with the manner in which claims can be made and the right of the local authority to request information in order to determine the claim. The Department of Work and Pensions (the DWP) also produce technical guidance manuals for local authorities.

9. In response to my enquiries the Council said that, while the legislation sets no specific limit, the DWP sets out expected Performance Standards and, along with Audit Scotland, Key Performance Indicators for Councils. The Council provided details of the three relevant targets: 90% for all claims processed within 14 days of receiving all necessary information; less than 9% of new claims to be outstanding after 50 days of receipt and an average time to process a claim from date of receipt of 30 days. The Council's performance against these targets for 2006/2007 was 76%, 4.25% and 30 days. The DWP receives quarterly reports from the Council and they added that administrative

changes had made a substantial improvement to the first indicator, which in quarter 1 of 2007/2008 was now 84%.

(a) The Council mishandled Ms C's application for housing benefit; (b) the Council failed to ensure she was not sent a notice concerning eviction proceedings; and (c) the Council had allowed inappropriate email correspondence referring to Ms C

10. Ms C applied for housing benefit on 9 March 2006. As she owned land, under the regulations the value of the land needed to be included as part of her resources in calculating her eligibility. Ms C had previously been a joint owner of a larger piece of land but by 2006 retained only part of this land in sole ownership. A planning application had been made in relation to the land she had jointly owned in 2002 and a section 75 agreement had been put in place as part of this.² In response to a request from the Council, Ms C provided further information about the land which she owned in 2006 to support her housing benefit application. The Council have said that by 18 April 2006 Ms C had provided sufficient information to start to progress her claim. No further action appears to have then been taken.

11. On 28 August 2006, a Councillor who had been contacted by Ms C brought the delay to the attention of an Area Office Manager (Officer 1) in the Finance Services Department of the Council. In order to progress the application, Officer 1 requested a valuation from the Council's own Property and Estates section.

12. On 2 October 2006 Ms C made a formal complaint. The valuation was sent to the Finance Department on 11 October and the Councillor informed by email on 19 October that this meant Ms C would not receive housing benefit. Ms C was informed of this and of her right to appeal the decision in a letter dated 20 October 2007. The letter included an apology for the delay and said this was because of the need to value the land.

13. On 13 November 2006 Ms C called the Council to say she intended to appeal, to complain about the delay and to approach the data protection Commissioner following a failure by the Council to respond to a request for

² A section 75 agreement is a legal agreement made between the landowner and the planning authority (often with other parties) which restricts or regulates the development or use of land and is usually the result of negotiations during an application for planning consent.

information. A meeting was held between Ms C and the newly appointed Area Office Manager, Officer 2³, on 24 November 2006 and a letter sent to her of the same date. In that letter, Officer 2 apologised for the delay which he described as unacceptable. He said there was no clear explanation and could only assume it was because of the unusual and complex circumstances. Officer 2 confirmed the land had been visited during the valuation and that the valuer had been advised that there was no section 75 restriction on the land. However, as Ms C was unsure of the actual position, Officer 2 said he would ask the Planning Department to confirm how she could obtain written confirmation that a section 75 restriction was not in place over the land (see paragraph 14). Officer 2 said it had been agreed that a request would be made to the District Valuer to value the land. Officer 2 also noted Ms C had said her capital had been diminishing and her application could be reviewed on this basis. Ms C was told she had a month from the date of the letter to appeal but he would take into account the fact that the issue of the valuation remained outstanding and if there were legitimate reasons for the delay the deadline could be extended. Officer 2 confirmed Ms C had been given copies of all documents held by them at the meeting.

14. On 12 December 2006, an MSP wrote to the Council enclosing a letter he had received from Ms C, which set out her concerns. Ms C said that in the meeting on 24 November she was given a form to complete before the valuation would be made. The form asked her whether there was a legal restriction on the land. She was unable to answer this question as she believed a section 75 restriction was in place but had been told by different officers in the Council that this was and was not the case. She had asked for confirmation in writing and had not received this. Ms C also enclosed a copy of an email dated 21 March 2002, which she had received as part of the bundle of information. This was written by a Council official on 21 March 2002 and said that a letter of obligation had not yet been received from Ms C's solicitors relating to the section 75 agreement. The email went on to say: 'if we are concerned about [Ms C] getting up to any mischief prior to the Section 75 being recorded ... Alternatively, we could take a flyer and just record it'. Ms C said she found the comments unprofessional.

15. Also on 12 December 2006, a letter was sent to Ms C replying to her request for information about the section 75 agreement. This confirmed that a

³ Officer 1 having left the Council

section 75 agreement was in place but only for the part of land for which the planning application had been made. The land that Ms C had retained in her sole ownership was not covered by this restriction.

16. On 22 December Officer 2 wrote to the MSP to say that, because the issues raised affected more than one department, he needed a response from each of them before replying. He said that this information would not be available until the New Year. Officer 2 apologised for the delay.

17. On 11 January 2007, the MSP wrote to the Council enclosing a further letter from Ms C. This said she had had the section 75 status of the land she owned confirmed (see paragraph 15) but, when she had approached the planning department about building a house on the land for herself, she had been told that she would need to run a successful business from the site from a mobile home for three years before this would be considered.

18. A response was sent by Officer 2 to the MSP on 23 February 2007. This confirmed the information about the section 75 agreement and said that the land amounted to agricultural land, for which there was no planning history. There was a presumption in the local and structure plan against new housing. They said, however, that Ms C could discuss this with the Council's development control manager. Officer 2 said that the Council official apologised if the email was hurtful and said this was not a reflection of his view of Ms C but that it was intended to reflect possible risks which could exist in any similar property transaction. The letter of obligation guaranteed that the property owner would not undertake any actions that would render the section 75 invalid in the period between the agreement this would occur and its formal recording in the land register.

19. Ms C completed the valuation request form on 12 March 2007 and wrote a letter of complaint to the Chief Executive on 14 April 2007. This stressed Ms C's concerns that she was in arrears and was still not in receipt of housing benefit. The Council say they received the valuation from the District Valuer on 4 May 2007 and the claim was processed on 11 May 2007.

20. The Chief Executive replied to the letter of complaint on 15 May 2007. She apologised to Ms C for the delay and said this was to allow Ms C's benefit to be assessed and they had been waiting for the valuation. This had been received and she would receive written notification of the award. Officer 2 had

contacted her to set up a meeting if she wished to discuss this. The Chief Executive acknowledged again that there had been unacceptable delay. She said she was satisfied that action had been taken to prevent a recurrence. They had also put in place measures to prevent similar delays in information requests. She referred to the email and said she 'understood why you were hurt by the comments' and apologised for this. The Chief Executive continued: 'I accept that acknowledging our faults and apologising cannot entirely undo the damage caused by our delays. I do, however, hope that the eventual assessment of your benefit entitlement has allowed us to conclude to your satisfaction.'

21. Meanwhile, Ms C had been sent a notice on 1 May 2007 which said recovery proceedings may be raised if her rent arrears were not settled. In response to my enquiries, the Council said that such letters were automatically generated to ensure efficient debt recovery. However, this could be manually overridden by placing a hold on the account. A hold had been placed on Ms C's account until 30 April 2007 to allow her housing benefit to be assessed. This was not extended but was reset as soon as Ms C contacted the office on 2 May 2007 and it was agreed this would remain in place until the assessment had been made.

22. The Council also said that, while they had all the initial information they had requested by April 2006, it became clear when this was looked at in September 2006 that further information was required and additional information sought from Ms C and their own valuer. They said that in April 2006 this application had been referred to a senior manager but not progressed. In their response to my enquiry, the Council said that there was no clear explanation for this delay other than an error of judgement made by the member of staff dealing initially with this.

23. The Council also provided me with information about the actions taken to prevent a recurrence. This matter was formally raised at a manager's meeting in December 2006 and all were reminded of the process to follow when land valuations were required. Forms relating to this were made clearly accessible on the intranet and this was also brought up at team meetings. I was provided with screen shots of the intranet and minutes of the relevant meetings.

24. The Council said they were currently evaluating document imaging and workflow systems which would allow them to electronically track and monitor

mail. The Council's Benefits Manager said she had a manual system in place, which was used to monitor delays and to alert managers to cases that were uncalculated. This information was sent to her weekly. The Benefits Manager added that this system was reliant on staff accurately recording details and that was why they were evaluating the document imaging system.

25. I also had sight of the email policy in place in 2002, which said all email must be dealt with in the same manner as other business communication and not be abusive or insulting. This is repeated in the more detailed policy currently in force, which also reminds staff that emails may be released and should not be regarded as private.

(a) Conclusion

26. In making her complaint to the Ombudsman, Ms C described the effect on her of the delay in making the initial decision on her benefit. Ms C said she used up her capital and incurred rent arrears by continuing to remain in accommodation that, given she was not awarded benefit in October, she was not able to afford. Following the revaluation of the land⁴, her claim for the whole period was re-assessed. Ms C was awarded some benefit but remained of the view she could not afford to stay in her accommodation and gave up her tenancy.

27. The Council have apologised to Ms C and put in place systems to prevent a recurrence (see paragraphs 13, 20, 23 and 24). I commend the work done, both to improve the Council's KPI response and to increase individual officer awareness of the correct procedures in relation to land and in developing improved monitoring systems. However, it remains the case that Ms C did not receive a definitive response to her valuation until May 2007, almost one year after her initial application. Not all of this delay is attributable to the Council but there were two periods of delay which could have been avoided by them: the first delay between 18 April 2006 and September 2006; and the delay caused by having the land re-valued. Under the guidance provided by the DWP, a valuation by the District Valuer would have been the normal route to take and the District Valuer should have been approached on receipt of Ms C's application in April 2006. However, the decision to use a Council officer was done with the intention of moving the issue forward and the guidance does not compel local authorities to use the District Valuer. Once they had the form from

⁴ The District Valuer's valuation was £1,000 less.

Ms C, the request was handled quickly. The Council have now ensured that the appropriate forms to obtain such valuations are easily accessible.

28. In the circumstances, I uphold this complaint on the basis of the initial five months delay. However, I would commend the Council for openly admitting to this problem throughout and for their actions taken to prevent a recurrence. The Ombudsman is, therefore, making no further recommendations.

(b) Conclusion

29. The Council have also accepted that this notice was sent in error. It was not an eviction notice but a notice for recovery of possession which they are required to issue before they can undertake recovery proceedings. The Council have explained their system in detail. They correctly put a manual hold on the debt. It would not have been appropriate to have put on an indefinite hold and the error was quickly rectified. However, I am concerned that there appeared to be no system in place which would flag up that such a hold was coming off, which would allow a member of staff to consider whether this was appropriate. The issue of such a notice in error will likely cause distress for the individual and additional work for the Council. I am, therefore, upholding this complaint and the Ombudsman recommends that the Council review their system in the light of these comments. In doing so, I accept that the Council will have to take into account whether this can be done in a cost-effective and efficient manner.

(b) Recommendation

30. The Ombudsman recommends that the Council review their Rents System to consider whether they could introduce a process of monitoring manual holds on accounts.

(c) Conclusion

31. The Chief Executive has described the wording of the email as unfortunate and the language is not appropriate for formal, written communication. Having considered the wording carefully, I do not consider the wording was abusive but it is inappropriate and I can well understand the upset it caused. While the policy did stress email was business communication, I have noted that in 2002, email was still a relatively new form of communication for many people and often seen as very informal, particularly when used internally. However, the Council did have an email policy in place at the time which highlighted to staff their responsibilities when sending email. Their new policy is understandably more detailed as email has become a key method of communication for all

organisations and all staff have to sign a copy to confirm they accept their obligations. I consider that the Council have demonstrated that they have sought to ensure email correspondence was appropriate and apologised to Ms C for the upset caused. Having taken into account all the circumstances, while I am critical of the comments, on balance I am minded not to uphold this complaint because of this.

32. The Council have accepted the recommendation in this report and will act on it accordingly. The Ombudsman asks that the Council notify her when the recommendation has been implemented.

Explanation of abbreviations used

Ms C	The complainant
The Council	Falkirk Council
DWP	The Department for Work and Pensions
Officer 1	An Area Office Manager with the Council
Officer 2	An Area Office Manager with the Council
KPI	Key Performance Indicator

List of legislation and policies considered

The Social Security Administration Act 1992 as amended

The Social Security Contributions and Benefits Act 1992

The Housing Benefit Regulations 2006

Department for Work and Pensions Housing Benefit Guidance Manual

The Council's Guidance for the Acceptable use of Internet and Email