

Scottish Parliament Region: Central Scotland

Case 200602228: South Lanarkshire Council

Summary of Investigation

Category

Local government: Council Tax Benefit

Overview

The complainant (Mr C) raised a number of concerns about the way South Lanarkshire Council (the Council) administered his assessment for Council Tax Benefit.

Specific complaints and conclusions

The complaints which have been investigated are that the Council:

- (a) took an unacceptable amount of time to resolve this issue (*upheld*); and
- (b) failed to investigate Mr C's complaints against two members of staff and also failed to follow the Council's complaints procedure when they received his formal complaint (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) write to Mr C to apologise for the delays in assessing his claim for Council Tax Benefit; and
- (ii) reinforce to staff the importance of ensuring that formal complaints are considered in line with the Council's complaints procedure.

The Council have accepted the recommendations and will act on them accordingly.

Main Investigation Report

Introduction

1. On 23 October 2006 the Scottish Public Services Ombudsman's office received a complaint from a member of the public (Mr C) against South Lanarkshire Council (the Council)'s Finance Department. As Mr C had not raised his complaint with the Council in line with their formal complaints procedure at this stage, he was requested to do so. He remained unsatisfied with the Council's final response to his complaint and he came back to our office on 20 December 2006.

2. Mr C raised his concerns that the Council had failed to properly consider his claim for Council Tax Benefit and failed to investigate the complaints he raised as a result.

3. Mr C also raised concerns that the Council incorrectly refused him Council Tax Benefit. However, the Council Tax Benefit (General) Regulations 1992 detail the appeals process which should be followed if a claimant does not agree with the decision of their council. If, after review by their council, the claimant remains unhappy with the outcome of the claim, they can request, within four weeks, an independent review arranged by the Appeals Service.

4. Section 7 (8) of the Scottish Public Services Ombudsman Act 2002 states that:

'The Ombudsman must not investigate any matter in respect of which the person aggrieved has or had –

(b) a right of appeal, reference or review to or before any tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative,'

5. Mr C was notified by the Council of this right on 24 January 2006 and on a number of subsequent occasions. It was also explained by the Council's Executive Director of Finance and IT Resources (the Director) how this appeal should be made. It was not until 17 May 2006 that an appropriate request for a formal appeal hearing was received by the Council. As Mr C had a right of appeal through the Appeals Service, I am prevented by the above Section of the Scottish Public Services Ombudsman Act 2002, from investigating this aspect of his complaint.

6. The complaints from Mr C which I have investigated are that the Council:
- (a) took an unacceptable amount of time to resolve this issue; and
 - (b) failed to investigate Mr C's complaints against two members of staff and also failed to follow the Council's complaints procedure when they received his formal complaint.

7. Mr C also raised his concerns that he considered that the Council had provided inaccurate reasons as to why they requested the postponement of the Appeals Tribunal. I have, however, reviewed this issue and consider that the Council have provided a reasonable explanation to the Appeals Service of why they requested a postponement. I do not intend to pursue this issue.

Investigation

8. I have reviewed the correspondence provided by Mr C. I have obtained the complaints file and relevant supporting documentation from the Council. During the course of my investigation I have sought to establish whether the Council's actions when considering Mr C's application for Council Tax Benefit were reasonable and whether they correctly handled Mr C's complaints.

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

(a) The Council took an unacceptable amount of time to resolve this issue

10. On 17 September 2005 the Council received an application form from Mr C in respect of Council Tax Benefit. Mr C subsequently provided a report and a set of accounts for his company '[Mr C] Engineering Ltd'. As a result of the assessment of Mr C's income, he was notified on 24 January 2006 that he had been assessed as not qualifying for Council Tax Benefit.

11. On 25 January 2006 Mr C wrote to the Council's Benefit and Revenue Co-ordinator (the Officer) to ask why the Council had made their decision based on an income of £288.22 per week rather than £6000.00 per year as accepted by Her Majesty's Revenue and Customs.

12. On 24 February 2006 Mr C's solicitor wrote to the Council to clarify what they believed was his assessable income and to ask for the Council's confirmation of how they had calculated Mr C's income.

13. An application for Housing Benefit, Council Tax Benefit, Second Adult Rebate and Council Tax Discount was received by the Housing Team at the Council on 8 March 2006.

14. On 14 March 2006 the Director received a letter from Mr C's Member of the Scottish Parliament (the MSP) enclosing a copy of a letter of complaint which the MSP had received from Mr C. This detailed the difficulty Mr C had experienced trying to obtain Council Tax Benefit. Mr C again, in this letter to the MSP, stressed that he considered that the Council had assessed his entitlements based on the wrong income. The Director responded on 15 March 2006 advising that the Council's Benefits and Revenues staff were currently dealing with Mr C's request and would advise the Director when the claim had been reviewed.

15. On 16 March 2006 the Officer wrote to Mr C advising that she had carried out a review of his claim and confirmed that his weekly income had been assessed at £237.52 which would take him over the scale for entitlement to Council Tax Benefit. With this letter was also supplied a breakdown of their calculations. The letter also confirmed that when assessing self employed earnings in accordance with the Council Tax Benefit (General) Regulations 1992 they must first establish a claimant's total earnings. In addition to providing a breakdown of how their calculations and details of how their decision was arrived at, the Officer also provided details of how to formally appeal the Council's decision. She advised that this must be in writing and should provide reasons as to why the Council's decision is wrong. Any appeal hearing would be held by an independent tribunal dealt with by the Appeals Service. On the 17 March 2006 this letter was also copied to the MSP.

16. On 22 March 2005 Mr C wrote to the Officer to advise that he was unhappy with the Council's calculation of his Council Tax Benefit. He raised a number of issues concerning the way the Council Tax Benefit was calculated and stated clearly that he was very concerned about the competency of the officers carrying out the calculation.

17. On 4 April 2006 the Director received a further letter from the MSP enclosing another letter from Mr C and asking that he look into the matter further. On 6 April 2006 the Director replied detailing that the information supplied in Mr C's recent letter was contrary to the information he had previously supplied over the telephone. He advised that the Officer would seek to clarify this point to establish whether it would affect his entitlement. Again it was highlighted that if Mr C was not happy with this action he could formally appeal the decision.

18. On 11 April 2006 the Officer wrote to Mr C detailing the review of the Council Tax Benefit calculation advising again that Mr C did not qualify for Council Tax Benefit. Once again details of the appeals process were also provided.

19. On 26 April 2006 and following a telephone call between the Director and Mr C, the Director wrote to Mr C clarifying his outstanding Council Tax, apologising for the delay and advising that once the Council were in receipt of Mr C's formal appeal, it would be processed within the agreed timescale. Clarification of what was required was sent by letter to Mr C on 2 May 2006. In this letter the Director advised that an appeal should be in writing and could be as long or as short as it needs to be to raise the specific justification for the appeal. He also advised that although the MSP could help him with his appeal, the appeal itself would need to come from Mr C.

20. On 9 May 2006 the Director wrote to Mr C providing details of the appeals process. He advised that this required that a submission of both Mr C's position and that of the Council's would be provided to the independent Appeals Service. He continued by advising that it is important that Mr C provides a clear picture of why he considers his appeal justified prior to submissions being made. On 19 May 2006 Mr C wrote to the Director providing further information and requesting an appeal hearing. On 18 May 2006 the Director wrote to Mr C advising that his case was being prepared for an appeal hearing.

21. On 4 July 2006 the Appeals Service wrote to the Council to advise that the Appeals Tribunal had been arranged. The Council received further information from Mr C via the Appeals Service which required them to reconsider their position. As the presenting officer for the Council was unable to attend the appeal hearing, the case was allocated to another officer. This officer identified

that the Council would have to review the case in light of the information it had received and requested that the appeal hearing be postponed.

22. The Appeals Service agreed to the postponement and rescheduled the appeal hearing for 26 September 2006. A few days prior to this appeal hearing, however, the Council completed their review of the new information they had received. From this review, and after advice from the legal department, they established that Mr C was classed as an employed earner for the period concerned and as such, would qualify for Council Tax Benefit. He was notified of this in writing on 3 October 2006.

(a) Conclusion

23. From my review of the information provided by both Mr C and the Council it is clear that the delay in assessing the correct level of Council Tax Benefit for Mr C was due to a misunderstanding of his employment status. The Council have stated in their response to the complaint that:

'The decision to refuse benefit to [Mr C] in 2005 was flawed in that it was based on a self employed earnings assessment rather than earnings from a directorship. However this decision was based on the information supplied by [Mr C] in his Benefit Review form received by the Council on 17 September 2005 in which he stated that he was self employed and also in a letter from his solicitor in February 2006 which confirmed he was self employed.'

24. The Council calculated Mr C's Council Tax Benefit in December 2005 on the basis of self employed earnings information provided by Mr C. However, the Council have stated that they were provided with information prior to Mr C's appeal hearing which indicated that he was a director and employee of '[Mr C] Engineering Ltd' and not self employed as he had indicated in his original application. As a result of this the case was reviewed by the Council and it was found that Mr C was due to be paid Council Tax Benefit.

25. Although Mr C and his solicitor did explicitly state that Mr C was self employed and did not provide clear details of Mr C's status, the Council were provided with information in this early correspondence which, perhaps, should have convinced them to seek clarification on this point. On 13 December 2005, for example, the Council received a copy of Mr C's company accounts which detailed the company's name, '[Mr C] Engineering Ltd'. As the company was in

his own name, and as it was a limited company, it was reasonable to assume that Mr C would be a director of that company.

26. It is likely that had Mr C requested an appeal hearing when he was first advised of his right to do so, this matter would have been resolved significantly earlier. However, although this was clearly an unusual case for the Council it does appear that Mr C's position within his company took considerably longer than should have been the case to clarify. For this reason, I uphold this aspect of the complaint.

(a) Recommendation

27. In light of Mr C's complaints the Council have already taken action to prevent a similar situation from arising in the future. They have carried out a review of the self employed claim form which makes it easier for the required information to be provided. It also specifically asks whether the claimant or their partner are directors of a company and points out that, if they are, their Council Tax Benefit will be calculated in a different way. The Ombudsman would like to commend the Council for taking this action to prevent this situation arising again.

28. The Ombudsman recommends that the Council write to Mr C to apologise for the delays in assessing his claim for Council Tax Benefit.

(b) The Council failed to investigate Mr C's complaints against two members of staff and also failed to follow the Council's complaints procedure when they received his formal complaint

29. On 5 April 2006 the Council received two complaints cards completed by Mr C. Comment Card one stated:

'I asked [a member of staff] for review of Council Tax on 21/1/06. Why was I sent 2 final notices threatening Sheriff action? Surely an appeal should suspend these

What do you think we need to do to solve your complaint?

Tell me what is on your charter regarding appeals.'

30. Comment Card two stated:

'I have been asking [a member of staff] to explain Council tax rebate since Nov 2005. On 21 Jan 2006 she stormed off without suitable explanation.

What do you think we need to do to solve your complaint?

Follow the statutory charter whereby you are charged to answer any query from Council Tax Payer.'

31. On 11 April 2006 the Council wrote to Mr C detailing his Council Tax Benefit assessment and providing a breakdown of the calculation. In addition, details of how to appeal against this decision were provided.

32. The Council's complaints procedure details that, on receipt of a complaint: 'We will try to sort out your complaint straight away, but if we can't we will contact you within 5 working days to let you know what is being done'.

33. On 15 May 2006 as part of his appeal letter, Mr C asked why he had not received a response to his complaints. On 18 May 2006 the Director replied advising that he had traced the complaints and considered that the issues raised in the complaints cards were responded to in the letter from the Officer to Mr C dated 11 April 2006.

(b) Conclusion

34. The complaints cards received from Mr C did not raise any clear and specific complaint. I have reviewed the letter of 11 April 2006 and consider that it did address what appeared to be the main concerns detailed in these cards.

35. Although the Council were of the view that the complaints had been addressed, they were not considered in line with the Council's formal complaints procedure. As a result, no referral rights were given to Mr C allowing him to formally escalate his complaint to the next stage and ultimately, to our office. As a result of this, I must uphold this aspect of the complaint.

(b) Recommendation

36. The Ombudsman recommends that the Council reinforce to staff the importance of ensuring that formal complaints are considered in line with the Council's complaints procedure.

37. The Council have accepted the recommendations and will act on them accordingly. The Ombudsman asks that the Council notify her when the recommendations have been implemented.

Explanation of abbreviations used

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| Mr C | The complainant |
| The Council | South Lanarkshire Council |
| The Director | Council's Executive Director of Finance and IT Services |
| The Officer | Council's Benefit and Revenue Co-ordinator |
| The MSP | Mr C's Member of the Scottish Parliament |