



Section E

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E1: Appeals

Delay in appeal – representative complaint – significant backlog

A solicitor complained on behalf of Miss Jayasuriya that a council delayed in dealing with her appeal against a decision on her housing benefit claim.

Delay

1. The Ombudsman said this complaint was representative of many he received about delays in dealing with appeals. The new appeal system introduced in July 2001 provided an independent verification that a person's entitlement to housing benefit had been correctly assessed, and it was important that claimants had access to it. Appeals could be dealt with by the council in the first instance, and then by an independent appeals service.
2. In this case the council dealt with the appeal and made a decision which seemed to the Ombudsman to be favourable to Miss Jayasuriya. But there was a delay of 18 months in doing so. The Ombudsman commented:

"This delay is, by any standard, unacceptable. She has been denied her statutory rights for all this time and there has been a delay in writing off an overpayment of benefit."

The council's difficulty

3. The Ombudsman observed that the council's difficulties in dealing with appeals were apparent after six months of the new system. The council had taken some measures but the number of outstanding appeals continued to rise. At the time the Ombudsman was drafting

his report there were more than 900 outstanding appeal cases. Of those, more than half had been outstanding for six months or more. The Ombudsman commented:

"This must mean that many other people are being denied their right of independent appeal and, in some cases, money that should have been paid to them or to their landlords is being withheld. I consider the current backlog of such work is unacceptable."

Outcome

4. The Ombudsman recommended the council to pay Miss Jayasuriya £250 in compensation for the delay and her time and trouble in pursuing her complaint.
5. The Ombudsman also asked the council to tell him what steps it would take to reduce the backlog of appeal submissions. He suggested there should be reasonable targets for a staged reduction in the numbers so that, after six months, it should be exceptional for an appeal to be more than a month old. He asked the council to report to him on its progress in meeting these targets after three months and again after six months.

(Report 02/A/11146)

E2: Appeals

Delay – failure to meet target

Mrs Smith's solicitors complained that a council unreasonably delayed in dealing with her appeal.

What happened

1. Mrs Smith was a widow who had been receiving housing benefit for some seven years.
2. The council wrote to Mrs Smith claiming that it had overpaid her nearly £4,000 in housing benefit over a four-year period. Mrs Smith appealed against this decision.
3. The council did not submit the appeal to the appeals service for some 13 months.

The Ombudsman's view

4. The Ombudsman noted that the council had a target for submitting appeals within 28 days. It did not give any satisfactory reason for the very long delay in this case. The Ombudsman saw no reason why the council should not have submitted the appeal within something like the 28-day target time.

5. Mrs Smith was not the only claimant to suffer from delays in the processing of appeals. The Ombudsman commented:

"Whilst I am pleased to note that the council has now dealt with its backlog of appeals, I do not believe that the backlog should ever have been allowed to occur. The council should have provided sufficient resources to enable appeals to have been dealt with within four calendar weeks."

6. The council agreed to pay Mrs Smith £250 compensation. The Ombudsman looked to the council to monitor its performance in dealing with appeals so as to ensure that the time limit was met.

(Report 02/C/17572)

E3: Benefit administration

Failure to determine claim – fraud investigation – inadequate records – court action

Mr Smith complained that a council failed to determine his claim for housing benefit and council tax benefit.

What happened

1. At the time of the Ombudsman's report, it had been over three years since Mr Smith made a benefit claim. The council had still not determined it.
2. Mr Smith accumulated rent and council tax arrears. He received letters and a visit from bailiffs threatening to have him committed to prison and threatening to seize his property. The council took possession action against him and obtained an outright possession order because of his rent arrears.
3. Mr Smith said he suffered from mental ill health, which had been made worse by the anxiety and uncertainty about his benefit claim.

Fraud investigation

4. The council's housing and council tax benefits administration had been contracted out to a private company. The company said that the firm for which Mr Smith said he worked was known to it and other investigation agencies as an organisation which provided false employment details to support fraudulent benefit claims. Mr Smith's claim was therefore referred to the company's fraud section.
5. The fraud section took no action at all for six months. Its action after that was intermittent. The Ombudsman said that the fraud section should have ensured

that it pursued its investigation as speedily as possible and that the three years that the investigation had been outstanding indicated "staggering incompetence" in the company's benefit fraud section.

Legal action

6. The council started legal action against Mr Smith because it believed he had no outstanding benefit claim and his rent arrears were growing rapidly. But that belief was based on inaccurate information from the council's computer system.
7. The Ombudsman said that the council's failure to maintain accurate records was maladministration.

Advice

8. At one point the council learned that Mr Smith was receiving income support. It did not advise him that his earlier benefit claim would only cover the period up to the date he started receiving income support and that he would need to submit a new application. The council was aware that entitlement to benefit expired when a claimant's circumstances changed. The council was also aware that recipients of income support automatically received housing and council tax benefits if they applied to the council.
9. The Ombudsman considered the council's failure to advise Mr Smith that he needed to make a new benefit claim once he was receiving income support was also maladministration.

Complaint to the council

10. Mr Smith's solicitor complained at one point to the council about the failure to determine the benefit claim. But the council failed to appreciate the significance of the delay.
11. If the council had investigated the complaint it would have realised that the fraud section had taken very little action on Mr Smith's case for two years. Instead, the council simply stated it could do nothing while the fraud section was investigating the matter. The council therefore missed an opportunity to resolve Mr Smith's complaint more speedily. That too was maladministration.

The Ombudsman's investigation

12. Even after the Ombudsman informed the council he was investigating Mr Smith's complaint, the council took court action against Mr Smith and obtained an outright possession order. The council acknowledged to the Ombudsman at that stage that it had not determined the housing benefit claim. The council also sent bailiffs to Mr Smith's property during the investigation despite being aware that there was an outstanding council tax benefit claim. The Ombudsman commented:

"All these actions contravene the council's own procedures and indicate that various council departments have failed to communicate effectively with each other."

13. The Ombudsman added:

"It seems to me that the council's failures here raise important questions about its ability to act as a responsible steward for public funds, as well as contributing to the

financial uncertainty and distress of individuals who might not be guilty of any benefit fraud at all."

14. The Ombudsman therefore brought his report to the attention of the Government's Benefit Fraud Inspectorate.

Injustice

15. It was not possible to conclude what injustice the council's maladministration caused Mr Smith as the fraud investigation was still ongoing. The Ombudsman noted that, if the council concluded that the benefit claim was fraudulent, the delay in reaching a decision would not have caused Mr Smith a significant injustice. In any event, Mr Smith would then have the right to appeal.
16. But if the council decided that Mr Smith's claim was not fraudulent, the council's actions would have caused him a significant injustice.
17. Apart from a payment of £250 in recognition of Mr Smith's time and trouble in pursuing the complaint, the Ombudsman recommended that the council should contact him when the fraud investigation was concluded so that he could consider whether the council should do more to remedy any injustice caused to Mr Smith.

(Report 02/B/6799)

E4: Benefit administration

Delay – tax recovery action – communication with bailiffs

Mr Gower complained about the way a council handled his housing benefit and council tax benefit applications.

Events

1. Mr Gower was a tenant of a registered social landlord. He was in receipt of housing and council tax benefits.
2. When the benefits were due for renewal, Mr Gower submitted a renewal claim some five weeks before the renewal date. The council did not process the claim, and ended his benefit entitlement.
3. Mr Gower requested an explanation. He pointed out that his circumstances had not changed since his previous applications. He asked for an appeal form. The council failed to respond to the request for an explanation and an appeal form.
4. The council correctly assessed Mr Gower's claim some three months after the due date. In the meantime, the council inappropriately started court action to recover council tax arrears and obtained a liability order.
5. When Mr Gower complained to the Ombudsman, the investigator asked if the council would suspend any further recovery action until the complaint had been determined. The council undertook to do this. However, a month later Mr Gower received a notice of distress and a removal notice from the council's bailiffs.

The Ombudsman's view

6. The Ombudsman said that Mr Gower spent much time and went to considerable trouble to find out what was happening and to exercise his statutory right of appeal. He was caused prolonged anxiety about the progress of his benefit claims, and about the consequent growth of his arrears of rent and council tax. He was caused additional stress by the unnecessary recovery action and the liability order. Then, after the council had given an undertaking to suspend the bailiff's action, Mr Gower was alarmed by the two notices served on him.
7. The Ombudsman recommended that the council should pay Mr Gower compensation of £500. The Ombudsman noted that the procedures for the council to communicate with its bailiffs were defective and recommended that they should be reviewed.

(Report 03/A/1900)

E5: Benefit administration

Information about landlord – interim payment

Mr Abbott and Mr Bailey complained about the refusal of a council to pay housing benefit.

Information

1. Mr Abbott and Mr Bailey both complained that the council refused to pay them any housing benefit because they were unable to provide the name and address of the owner of the properties they occupied. They were unable to do this because the properties were let by an agent. They supplied the name and address of the agent to the council.
2. Both said they had no means of obtaining the detailed information about their landlord that the council had demanded. Both had to borrow money to pay their rent and eventually Mr Abbott had to leave his accommodation.
3. Mr Abbott suffered 21 months delay before he was paid the benefit due to him. Mr Bailey's claim had still not been determined by the council at the time the Ombudsman concluded the investigation. That was some 15 months after Mr Bailey made his claim.

Investigation

4. The investigation confirmed that the council refused to pay these claims because it did not have full information about the landlord. The council had adopted this practice because it felt this would assist it in preventing benefit fraud.

5. However, the council did not need any more information in order to determine the claims in accordance with housing benefit regulations and government guidance. In the course of the investigation the council obtained written advice from the Department for Work and Pensions. That advice was that the council's policy was unlawful, but the council still refused to determine Mr Bailey's claim.

6. The Ombudsman commented:

"I appreciate that the council has a responsibility to do as much as possible to prevent people from defrauding the benefit system. However, it also has a duty to determine claims for benefit in accordance with the law."

7. The Government's verification framework set out the minimum standards of evidence which councils were expected to adhere to in determining benefit claims. The guidance stressed that a council could only ask for what was reasonable and could not ask for information that the claimant could not reasonably be expected to provide. Nor could the council ask for information which was not necessary to determine the claim.

Interim payments

8. The council accepted that both claimants had good cause for not providing the information it requested. The council should therefore have made interim payments as required by law. It failed to do so.

9. The Ombudsman found the council had sufficient information to determine the claims and its failure to do so was maladministration. It was also maladministration not to make interim payments.

10. The Ombudsman commented:

“The council has other powers to tackle fraud and should use these rather than penalising some of the more vulnerable members of society. In acting in the way that it had, the council has put private tenants at potential risk of losing their homes through no fault of their own by asking them for information which it had no power to do and which it acknowledged they could not provide.”

Outcome

11. The council agreed to pay Mr Abbot £750 to compensate for the anxiety and hardship caused by the delay and the fact that he had to leave the property. The council agreed to determine Mr Bailey’s claim and to pay him £300 compensation for the delay.

12. The council also agreed to ensure that claimants in future would only be asked for information which was needed to determine their claims.

(Report 02/C/15217 et al)