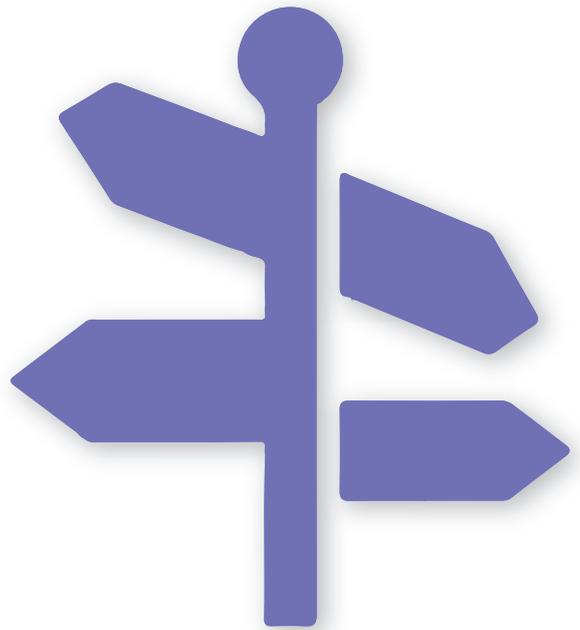


Local Government &
Social Care
OMBUDSMAN

Council tax reduction



*Guidance for
practitioners*

August 2019

Council Tax Reduction

Executive Summary

We receive around 100 complaints and enquiries each year about the way councils manage council tax reduction (CTR). Since the law changed in April 2013 we have noticed some common issues around how councils deal with recharges of CTR and the clarity of the information provided to the public.

We have developed this guidance to share insight from our investigations to help councils improve the way they provide CTR, and understand our approach to complaints in this area.

We illustrate our points through some case studies, grouped into the following themes:

- > Inconsistent recovery of CTR reversals and housing benefit overpayments
- > Inaccessible or unclear CTR policies
- > Incorrect signposting and discretionary payments

While producing this guidance we also researched a sample of council websites to look at the type of information provided about CTR to the public, and we highlight a number of anonymous examples to illustrate our points.

Lastly we give some good practice examples for councils to adopt to ensure their policies and practices are clear, accessible and fair.

We are grateful to the Institute of Revenues, Rating and Valuation, and to the Valuation Tribunal for England for their helpful comments.



What happened before April 2013?

If someone was on a low income they could claim council tax benefit to reduce the amount of council tax they had to pay. If they were paying rent, they could also claim housing benefit to reduce the rent they had to pay. If someone was not paying rent, but was liable for council tax they could still make a council tax benefit claim.

Both council tax benefit and housing benefit were controlled by national regulations. Both benefits were calculated in a similar fashion, based on a claimant's savings, family composition and income. A change in someone's circumstances meant the benefits were recalculated; the amount awarded could go up or down, and any increase or reduction might be backdated. Backdated reductions were called 'overpayments'.

Most council tax benefit and housing benefit overpayments were recoverable unless the claimant could show the overpayment was caused by official error and they could not reasonably have known they were being overpaid. If a council decided, due to official error, an overpayment of either sort of benefit was not recoverable, the debt would be cancelled. If a council decided an overpayment was recoverable a claimant had appeal rights for both types of overpayment to an independent tribunal. They could also appeal to the same tribunal if they contested the amount of benefit they had been awarded.

John's story

In 2012 John was awarded £10 per week council tax benefit and £40 per week housing benefit. His council tax bill was reduced and he was paid the housing benefit directly by the council. His wages then increased by a very small amount and he told the council.

The council failed to deal with this information until three months had passed. It recalculated John's benefits and reduced them to £5 per week council tax benefit and £20 housing benefit. It sent John a bill for £65 more council tax, because he had been overpaid council tax benefit, and also a notification of a £260 housing benefit overpayment.

John objected. He said he had told the council about the change in his circumstances and he would not have known such a small change would have made such a big difference to his benefits. He says both the council tax and housing benefit overpayments were caused by official error and he should not pay them. If the council agreed it would have written off both the council tax benefit and the housing benefit overpayments. If the council did not agree John could have appealed both overpayments to the same independent tribunal.



What changed after April 2013?

In April 2013 the Government abolished council tax benefit and replaced it with council tax reduction. Legally council tax reduction (CTR), sometimes called council tax support, is a reduction in the amount of council tax payable and not a benefit.

Unlike the previous scheme, which was entirely controlled by national regulations, CTR is designed and managed locally. The Government has sent out prescribed regulations, but within those each council has created its own CTR scheme. As with the old council tax benefit scheme the amount of discount awarded is based on a claimant's savings, family composition and income. It is paid by reducing the council tax owed and issuing a new council tax bill.

The housing benefit scheme is essentially unchanged. Both housing benefit and CTR are calculated by the council using the same information about the claimant's circumstances.

If a claimant's circumstances change their CTR may be reduced. If this change is backdated, it will result in an increased council tax bill. The law and prescribed regulations do not recognise the concept of a 'council tax reduction overpayment' or 'official error' for CTR claims. Some councils and members of the public use the term 'CTR overpayment' and 'official error' when talking about these adjustments. But as technically such an adjustment is not an overpayment we will use the term 'CTR reversal' to avoid confusion with housing benefit overpayments.

People can still appeal a housing benefit decision - including that an overpayment is recoverable - to the Housing Benefit Tribunal (the official name is the Social Entitlement Chamber of the First Tier Tribunal). However, appeals about awards of CTR are made to a separate independent tribunal - the Valuation Tribunal for England.

The Valuation Tribunal and appeal rights for CTR reversals

The Valuation Tribunal is an independent appeal body which decides various appeals connected with council tax, business rates and CTR. If someone disagrees with the amount of CTR awarded by their council, they can appeal to the Valuation Tribunal. It will decide if the council has correctly calculated the CTR in line with its CTR scheme.

A claimant can appeal about a council tax reversal, and suggest it should not be recoverable because it was caused by the council's error. But, if the council's CTR scheme says nothing about CTR reversals, the Valuation Tribunal has no power to consider whether a CTR reversal is recoverable.



John's story

In 2019 John is still on a low income and claiming housing benefit and CTR. He is awarded £10 per week CTR and £40 per week housing benefit. His council tax bill is reduced and he is paid the housing benefit by the council. His wages increase by a very small amount and he tells the council.

The council again fails to deal with this information until three months has passed. It recalculates John's benefits and reduces them to £5 per week CTR and £20 housing benefit. It sends John a bill for £65 more council tax, because of backdated change in the CTR, and a notification of a £260 housing benefit overpayment.

As before, John objects, and for the same reason. The council disagrees with John. He appeals the housing benefit overpayment to Housing Benefit Tribunal. The Housing Benefit Tribunal agrees with John and the council writes off the Housing Benefit overpayment as irrecoverable.

He appeals the CTR reversal to the Valuation Tribunal. The council tells the Valuation Tribunal it had calculated the CTR reversal properly. The Valuation Tribunal agrees. As the council's CTR scheme does not say what happens if its errors cause a CTR reversal, the Valuation Tribunal cannot consider if the CTR reversal is recoverable or not. So John still owes the council £65 council tax.

Discretionary council tax relief

Councils can award discretionary council tax relief to reduce someone's council tax. This relief is separate from CTR. Each council should have its own scheme. Generally claimants must apply to the council which will consider their circumstances and whether to reduce the council tax payable or not. But there is nothing in law to stop a council from automatically awarding discretionary relief without an application.

Someone suffering financial hardship as a result of a CTR reversal could apply for such a discretionary reduction. Appeals against the refusal of a discretionary reduction are to the Valuation Tribunal.

Our role

If something can be appealed to a tribunal the law says we should not normally investigate. So, we generally do not investigate how much benefit someone should get or whether the council should have awarded discretionary relief. We can, however, consider issues such as delay in processing applications or a failure to have, or follow, a policy.



Common issues

Inconsistent recovery of CTR reversals and housing benefit overpayments

The most common issue we find is when a council accepts a housing benefit overpayment is not recoverable because it made an error, but still demands repayment of a CTR reversal resulting from the same mistake.

In our view, this is unfair. Sometimes this happens because a council says CTR 'overpayments' do not exist and so simply refuses to engage with the issue.

Inaccessible or unclear CTR policies

It can be hard to find clear explanations in council policies of what CTR reversals are, and how councils deal with them. Sometimes the documents are short, not written in plain English, and are silent on the issue of CTR reversals.

Sometimes CTR policies are not easily found on council websites so it can be difficult for people to find out what a CTR reversal is, and how and when it can be recovered. Because each scheme is local to that council, people cannot get advice from national sources.

Incorrect signposting and discretionary payments

Some councils have been inappropriately signposting people to the Valuation Tribunal if the person challenges the council's decision to recover a CTR reversal.

As mentioned above, if the council's CTR policy says nothing about CTR reversal, the Valuation Tribunal has no power to consider whether a CTR reversal is recoverable. The Tribunal can only decide if the council has correctly calculated the CTR in accordance with its CTR policy. In these cases, the Tribunal strikes out the appeal on the grounds it has no power to consider it. The Tribunal told us it strikes out more than 350 cases a year.

In some instances, the Valuation Tribunal has advised people to apply for discretionary council tax relief. If awarded, this can be used to pay the arrears generated by the CTR reversal.

If the council decides not to award discretionary relief, the person can then go back to the Tribunal and appeal against the discretionary decision. This is, however, a cumbersome process.



Case studies

Ali's story

Ali's housing benefit and council tax reduction claims were assessed by the council. It wrongly assumed he was paying childcare costs for a couple of years. This meant the council paid more housing benefit and CTR than Ali was entitled to.

When the council realised its error, it asked Ali to repay some £3,500 in housing benefit and so increased his council tax bill. Ali appealed and pointed out he had never provided evidence of paying for childcare and had specifically said he did not pay it.

The council accepted his points and wrote off the housing benefit overpayment. But, it insisted he must pay the council tax arrears that had arisen from the CTR reversal. It argued there was "*no such thing as a CTR overpayment*" and the only issue was whether the council tax had been correctly assessed. It signposted Ali to the Valuation Tribunal – which struck out the case because it had no power to consider it.

Following our investigation, the council agreed to acknowledge future CTR reversals arising from its errors and write off the debt if it considers it appropriate. It also agreed to amend its CTR scheme to make it clear which decisions can be taken to the Valuation Tribunal, and when someone can apply for help under the discretionary relief scheme.

Ali received an apology, £150 to reflect his time and trouble coming to us, and did not have to repay the CTR reversal.

Learning point

Ensure there is a section within the CTR policy that covers how the council will treat CTR reversals and ensure consistency between housing benefit overpayments and CTR reversals.



Mary's Story

The council asked Mary to repay a CTR reversal because, it said she had not provided accurate information about her finances. The council issued a new council tax bill.

Mary complained and said she had disclosed everything. The council told her to appeal to the Valuation Tribunal. The Tribunal struck out the appeal because it had no power to consider whether the CTR reversal arose from an error by Mary or the council. The Tribunal suggested Mary apply for discretionary relief. The council agreed to take an application for discretionary relief.

Learning point

Ensure council tax reduction policies are clear on dealing with CTR reversals. If the council signposts to the Valuation Tribunal, ensure the policy brings CTR reversals within the jurisdiction of the Tribunal.



Examples of council practices

For this guidance note we checked a random selection of council websites for information about CTR reversals and housing benefit overpayments.

Generally, we found the information to be focused on housing benefit overpayments; the information is often clear and accessible on this topic.

However, we found it difficult to find websites that gave clear advice about CTR reversals and how to appeal, even when the webpage is titled 'Housing benefit and CTR overpayments'.

Here are some examples we have seen of poor practice:

- > A council, on its website, makes it clear that people cannot appeal to the Valuation Tribunal against a decision to recover a CTR 'overpayment'. But there is no obvious information about how 'overpayments' are treated.
- > A council website says people cannot go to the Valuation Tribunal about a decision to recover a CTR reversal – but it does not tell people how to appeal. There are webpages about housing benefit overpayments which are more informative.
- > A council has a clearly accessible section on its website dealing with CTR reversal. But while it is clear people cannot go to the Valuation Tribunal about such a decision, it does not say what the alternative option is.
- > The CTR policy for a council says the council has “‘the scope of authority’ to recover over-entitlement of CTR”. But there is no clear information about how to appeal and the paragraph is not in plain English.
- > A council has clear information on housing benefit overpayments but lacks information regarding CTR reversals. There is nothing to explain what someone should do if they want to dispute a CTR reversal.
- > A council's CTR page has a link to an appeals page if they wish to dispute a CTR decision – but the appeal page then says nothing about CTR appeals. It only talks about appealing against council tax decisions as opposed to CTR decisions.

Here are some examples we have seen of good practice:

- > A council makes it clear that it will recover CTR reversals that are caused by claimant error. It also explains that it will not seek recovery if the adjustment was caused by a council error and the claimant could not have known they were getting too much benefit. The council says it might decide it would be unreasonable to ask for repayment.
- > A council gives clear information about how to appeal to the Valuation Tribunal. It says the person must appeal directly to the Valuation Tribunal (it provides the phone number and a link to the website) and explains that the council always requests an oral hearing and sends an officer to present the council's case.
- > Another council explains that if someone has asked the council to reconsider a CTR decision, and has not had a reply after two months, they can appeal to the Valuation Tribunal.



Good Practice

Councils should:

- > **Have a clear and accessible section on their websites explaining how they deal with CTR and CTR reversals.** Because CTR is a local scheme, the information needs to be clear and in plain English.
- > **Have a policy which correctly explains how they will deal with CTR reversals and challenges to decisions to recover them.** Councils could, for example, have a policy which mirrors the housing benefit rules on recoverability and automatically award discretionary relief if they consider a CTR reversal was their fault. Or, if they signpost to the Valuation Tribunal, they need to ensure their policies bring CTR reversals within the jurisdiction of the Tribunal. **Alternatively, have a clear policy explaining people can apply for discretionary council tax relief and their subsequent appeal rights to the Valuation Tribunal.**
- > **Follow the CTR policy.** We have seen a case where a council had a good policy but failed to follow it.
- > **Have clear policies for claiming discretionary relief.** Make sure officers are aware of the policy and make it visible on the website. Highlight the policy to people who may need to make an application.
- > **Provide clear appeal bundles for the tribunal.** If possible send a representative to the hearing.
- > **Consider putting recovery action on hold if the council tax arrears are caused by a CTR reversal and the person is challenging the recoverability of the reversal.** People claiming CTR are likely to be on a relatively low income. Avoiding the use of bailiffs, at least in the short-term, will avoid fees and further pressure on the family's budget. This is important as the reversal may have been caused by circumstances rather than by any wrongdoing or inaction by the tax payer.
- > **Make sure CTR decision letters are understandable.** Use plain English, explain what happened and why money is being requested. Clearly explain the appeal rights and deadlines.
- > **Ensure consistency and common-sense when dealing with a housing benefit overpayment and a CTR reversal which have been caused by the same circumstances.** If the CTR reversal is to be treated differently to the housing benefit overpayment then the reasons should be clearly explained and appeal rights offered.
- > **If the CTR reversal policy is very different to the housing benefit overpayment rules then the reasons should be explained.**



Resources for councils

We have a suite of resources available to help support good complaint handling:

- > [Our decisions](#) - a searchable resource of all our published decisions
- > [E-Newsletters](#) - subscribe to see the latest news from the Ombudsman, alerts for new public interest reports and notifications of all new Benefit and Taxation cases published on our website
- > [Complaint handling training](#) - we offer courses delivered by our staff to improve how councils handle complaints
- > [Your Council's Performance](#) - see your council's data on ombudsman complaints via our interactive map



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