

Report

on an investigation into
complaint no 05/A/18870 against
The London Borough of Brent

27 February 2007

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Key to names used

Ms Benn, the Complainant

Report Summary

Subject

Ms Benn claimed housing and council tax benefits and had a number of changes in her circumstances. The Council should have assessed Ms Benn's underlying entitlement to benefit for the period 4 August 2003 to 1 February 2004. It failed to do so even though there were subsequent reassessments of Ms Benn's benefit entitlement. The claim was finally dealt with properly in October 2005.

As a result of the delay Ms Benn's account showed council tax arrears which she did not owe. The account was referred to the bailiffs and approaches from them caused Ms Benn worry and distress. She asked for help from two advice agencies before the matter was resolved.

Finding

That there was maladministration by the Council which caused an injustice to Ms Benn.

Recommended remedy

The Council should pay Ms Benn £500 and inform the Ombudsman of the outcome of the review of its Anti-Poverty Strategy.

Introduction

1. The complainant, Ms Benn, was dissatisfied with the way the Council dealt with her housing and council tax benefit claims and with the recovery of overpayments of housing and council tax benefit which arose from the mishandling of her claims. In particular, her underlying entitlement for a period was not calculated which led to recovery of overpayments which should have been removed. Ms Benn complained to me with the help of a community law centre. She is a housing association tenant.
2. For legal reasons I cannot use the real names of the people involved in the complaint and so the names have been changed.

Investigation

3. My investigator has obtained a printout of relevant documents from the Council's files and has interviewed Council officers. The Legal and Administrative background is explained in Appendix A. The complainant, the Law Centre and the Council were sent a draft of this report without conclusions. Where appropriate their comments are reflected in the text.

Events in 2003 to 2004

4. Ms Benn who lived with her two daughters then aged 14 and 18, was claiming income support and housing benefit in 2003. In September she set up a cushion-making business. In October she started work part-time in a café. Claimants of housing and council tax benefits have a duty to notify the Council of any changes in their circumstances which may affect their entitlement. Ms Benn did not tell the Council about these changes until 26 January 2004. She explained that as she stopped receiving income support in September (and began to receive working and child tax credits) she assumed that the Council would be notified automatically. She enclosed proof of her earnings, her tax credits and child benefit.
5. On 13 March 2004, following checks with the Department of Work and Pensions, the claim for housing and council tax benefits was cancelled with effect from 3 August 2003. The effect of the withdrawal of housing benefit was the creation of a housing benefit overpayment of £2,388.61 for the period 4 August 2003 to 8 February 2004. In addition, excess council tax benefit of £762.76 was applied to Ms Benn's account. The Council wrote to notify Ms Benn of the position and to inform her of her right of appeal. She did not appeal at that stage.
6. On 7 April Ms Benn's benefit claim was assessed for the period from 2 February 2004 and a revised council tax bill for £1,521.04 was issued. (The bill included net liability for 2004/5 plus tax owing from preceding years.)

7. Between May and July further assessments were carried out in response to information about the elder daughter's earnings, a rent increase notified by Ms Benn's landlord, and then notification that her daughter had moved out. A revised council tax bill for £990.16 was issued on 30 July 2004.
8. The position at this stage was that Ms Benn's claim was in payment, assessed on the evidence she had submitted for the period beginning 2 February 2004. No action for the period from 4 August 2003 to 1 February 2004, however, had been taken.

Council Tax recovery action before the end of 2004

9. On 14 September 2004 the Council sent Ms Benn a reminder for council tax, and then on 7 October issued a summons for arrears of £662.55 for the tax year 2003 to 2004. A liability order was issued by the Magistrates Court on 2 November and costs of £65 were added to Ms Benn's account. A separate summons was issued for the sum of £327.61 outstanding for the year 2004 to 2005. On 12 December a liability order was served for this second sum, with further costs of £65. Both orders were referred to the Council's bailiffs.

Events in 2005

10. In January 2005 Ms Benn got in touch with the Council about a change in her earnings. At this point she was asked to provide both proof of her earnings from February 2004, and proof of her daughter's earnings from June 2002. She provided the information requested.
11. On 16 February 2005 the Citizens Advice Bureau (CAB) wrote on Ms Benn's behalf asking for a review of her benefit entitlement. A hold was put on council tax recovery by the bailiffs for 40 days. The CAB explained that in addition to the council tax debt Ms Benn had rent arrears of £1,800. On 11 April 2005 there was a reassessment of Ms Benn's claim based on fresh information about her earnings and tax credits. The period from 11 November 2002 to 16 January 2005 was reassessed. The effect was a reduction in Ms Benn's housing benefit entitlement and she had then a total further overpayment of £596.90. The underlying entitlement procedure (see paragraph A4) was not applied at this point. During May Ms Benn received several letters from the bailiffs.
12. Ms Benn sought advice from the Law Centre, and on 9 June her adviser wrote to the Council on her behalf. A hold was placed on the bailiff's recovery action while the matter was dealt with. On 2 September 2005 there was a reassessment of Ms Benn's claim and the Council wrote to the adviser to explain the position. The Council confirmed the following points:
 - That non-dependent deductions for Ms Benn's daughter had been removed.

- Ms Benn's earnings details had been corrected.
 - The date Ms Benn's income support ceased was being clarified through an enquiry to the DWP.
 - The Council recognised there was no housing and council tax benefit assessment for the period 4 August 2003 to 1 February 2004, and there had been no attempt made to consider her underlying entitlement for the period.
 - The underpayment had been assessed for another period, from 6 August 2001 to 6 April 2003, resulting in a credit of £1,949.73. This credit would be used to offset the outstanding overpayment of housing benefit of £1,285.92, thus leaving her rent account in credit.
 - A council tax benefit credit of £434.49 would also be posted to her account.
13. The underlying entitlement for the period 4 August 2003 to 1 February 2004 still had not been considered at this point. On 7 October 2005 the Council wrote to the adviser to confirm that, on the basis of information from the DWP and further details of earnings, Ms Benn's underlying entitlement for that period had been assessed, providing a housing benefit credit of £2,241.94. The council tax credit was £609.22. As a result of these assessments, there were no outstanding overpayments.

Bailiffs' action in 2005

14. The Council had passed two liability orders to the bailiffs in December 2004. The bailiffs visited Ms Benn in January 2005, and wrote to her in February threatening further action unless payment was received. A hold was placed on recovery action following the CAB's letter of 13 February. Following a reassessment of the claim the hold was removed, and on 14 May the bailiffs wrote to Ms Benn again.
15. Following the Law Centre's enquiry, a further hold was applied to the bailiffs' action from 13 July for 28 days. At this stage, the underlying entitlement was being assessed but the hold on the bailiffs' action was not maintained. On 18 August a final bailiffs' letter was sent to Ms Benn threatening committal to prison for failure to make any payments. The bailiffs visited on 16 October, and on 23 November Ms Benn made a payment of £8.37. The account was recalled from the bailiffs on 6 December.

The Council's view

16. The Council has accepted there were failures in dealing with some aspects of Ms Benn's housing and council tax benefit claims, and with the recovery of overpayments. Primarily, there was an unreasonable delay in assessing Ms Benn's underlying entitlement. When the overpayment was created in March 2004 Ms Benn should have been invited to provide information, if more was required, in order to

establish whether she remained entitled to some benefit for the period in question. This did not happen and the claim was filed away. The Council points out that Ms Benn did not appeal against recovery of the overpayments at the time.

17. A further opportunity was missed at the time liability orders were sought. Following the hearings the case should have been passed to the benefit section but this did not happen.
18. The Council acknowledges that the delay in resolving Ms Benn's correct entitlement led to her council tax account being passed to the bailiffs. There was an additional delay of two months in recalling the account from the bailiffs once the overpayment had been removed in October 2005. The Council accepts also that the hold placed on the recovery on 13 July 2005 should have been maintained longer than the initial 28 days to allow a response to the Law Centre's letter. The bailiffs took further action before the response was sent on 2 September.
19. The Council has apologised to Ms Benn and has offered to settle the complaint.
20. My investigator interviewed the Housing Benefit Complaints Officer. She confirmed that underlying entitlement can be paid up to the level of the overpayment. It should be assessed automatically without the applicant having to ask for it. If this had happened, the council tax bill for 2003 to 2004 would have been cleared. If the case had been dealt with properly it might not have been referred to the bailiffs. Once underlying entitlement had been awarded the council tax account was in credit.
21. The officer explained that, since these events, the procedures have improved. The letter about recovery of overpayments explains the reason for recovery and requests details in order to assess underlying entitlement. A form is attached which provides for proof of income to be provided.
22. In this case, opportunities to resolve the matter were missed. The officer referred in particular to the failure to extend the hold on bailiffs' action after 10 August 2005, which resulted in recovery being pursued before the benefit position had been resolved.
23. The Revenues Client Manager told my Investigator that the procedure now would be to recall from the bailiffs any cases where action had been suspended pending investigation of benefit issues. He added that, in this case, the benefit issue should have been followed up at the stage it went to the Magistrates' Court. They would now discuss with the person arrangements to pay the arrears, and once an agreement had been reached, the case would not be referred to the bailiffs unless there was a failure to make instalment payments. In this case, no arrangement was made with Ms Benn, nor was the matter referred back to the benefits section or followed up.

24. In responding to the draft of this report the Council explained that the Anti-Poverty Strategy is under review and being developed. Details of the strategy are provided in appendix B. It reflects the position in December 2006.
25. The Council explained also the recent changes to council tax recovery procedures, and that the following actions are taken to assist customers who may have difficulty in paying:
- A notice is sent with summonses advising customers to contact customer services if they have issues concerning their ability to pay or they wish to make arrangements to pay.
 - A pre-bailiff letter is sent before liability orders are passed to the bailiff. This is also intended to encourage the customer to make contact to discuss any difficulties they have in paying and to make arrangements to pay.
 - The empowerment of customer service staff which enables them to agree to arrangements with customers within specific guidelines.
 - Arrangements for customer service staff to refer cases to their manager (or the council tax contractor, Capita) to consider arrangements that fall outside their empowerment level.
 - Suppression of summonses for any account that has a benefit or council tax query outstanding or pending.
 - Procedures for dealing with enquiries at the Magistrates Court are under constant review (although a hearing can deal with over 150 chargepayers and so every encouragement is made to help resolve issues prior to the hearing).

The Law Centre's view

26. In the adviser's view, the case is an example of a general failure by the Council to assess underlying entitlement to benefit on appropriate cases, and so to deal properly with the recovery of overpayments. Ms Benn had no residual liability and so liability orders for council tax never should have been pursued. Furthermore, she was not given the opportunity to pay by reasonable instalments. Unnecessary costs were applied as a result of court proceedings. In cases where there is no challenge the Council enforces routinely recovery of costs, even though the liability order cannot be justified. It was only because Ms Benn had the benefit of professional advice that her case was resolved. The Council is only entitled to proceed without subtracting underlying entitlement where it has tried, and failed, to obtain the required information.

Conclusion

27. The Council has accepted that there was administrative fault in dealing with Ms Benn's housing and council tax benefit claims, and in pursuing her for council tax arrears through the bailiffs. I acknowledge the Council's willingness to settle the complaint.
28. The initial cause of these difficulties was the failure to assess Ms Benn's underlying entitlement to housing and council tax benefits for the period 4 August 2003 to 1 February 2004. As a result Ms Benn had continuing council tax arrears, and the subsequent reassessments of her benefit failed to pick up the missing period, until finally the claim was dealt with properly in October 2005. Even then, the account was not recalled from the bailiffs for a further two months and Ms Benn was subjected to at least one further approach from them.
29. I find that the injustice caused to Ms Benn was the unnecessary worry caused to her over a period approaching two years and the distress caused by receiving letters and visits from the bailiffs. Ms Benn was put to considerable time and trouble also in trying to resolve the matter. She approached two advice agencies, and I have to conclude that it is quite possible the matter would not have been resolved if Ms Benn had not obtained professional advice. There was both a significant injustice to her, and a wider question about the ability of ordinary members of the public to resolve matters of genuine concern.
30. To remedy the injustice caused to Ms Benn I recommend that the Council should pay her compensation of £500.
31. I note that there have been improvements in the Council's procedures (see paragraphs 21, 25 and appendix B). Among those most likely to have been relevant in this case are: the more detailed letter sent notifying of an overpayment, together with a form seeking detailed information to allow the underlying entitlement to be assessed; and the procedure for the suppression of the summons for an account where there is an outstanding council tax benefit enquiry. I shall be interested to know the outcome of the Council's review of the Anti-Poverty Strategy, and would ask to be kept informed of progress.

Tony Redmond
Local Government Ombudsman
Millbank Tower, Millbank
LONDON SW1P 4QP

27 February 2007

Legal and Administrative Background

Housing and Council Tax Benefit regulations

- A1. The regulations provide for the recovery of overpayments of housing benefit and of excess council tax benefit in some circumstances. In calculating an amount of a recoverable overpayment of housing benefit the authority is required to deduct 'any amount of housing benefit which should have been determined as payable in respect of the whole or part of the overpayment period'¹. In effect, the authority should determine whether the claimant should have received any lesser amount of benefit during the relevant period, and if so, it should be deducted from the full amount paid in the period.
- A2. The same position applies in the calculation of an excess payment of council tax benefit. The authority shall deduct 'any amount of council tax benefit which should have been determined to be payable in respect of all or part of the overpayment period'.²
- A3. In July 2006 the government issued guidance on the calculation of overpayments. It says that underlying entitlement must be calculated. In most case, it will be necessary to obtain further details of the claimant's circumstances during the relevant period. It is the authority's responsibility to seek the information, not the claimant's to apply for underlying entitlement. Once the calculation has been done, there is no requirement for the authority to recalculate the overpayment if fresh details come to light later.³

The Council's procedures

- A4. The Council has a procedure to implement the recovery of overpayments in accordance with these regulations: the Underlying Entitlement Procedure. It was first issued in September 2004 and updated in March 2005. It provides a guide for officers to assess benefit which the claimant would have been entitled to receive if he or she had claimed at the relevant time, and to use it to reduce a recoverable overpayment. The procedure requires underlying entitlement to be considered in all cases.
- A5. The Council's Anti-Poverty Strategy provides guidance on several matters including the collection of council tax and the recovery of housing benefit overpayments. The Council says the strategy seeks to balance maximizing recovery of arrears owed to the Council, against preventing extreme financial hardship to the individual. In its current form the strategy makes no mention of underlying entitlement.

¹ The Housing Benefit (General) Regulations 1987 paragraph 104

² The Council Tax Benefit (General) Regulations 1992 paragraph 90

- A6. The Council's Council Tax Recovery Policy provides for a pre-summons vetting stage. Before issuing a summons for arrears of council tax the officer is required to check outstanding benefit claims, benefit appeals, complaints and correspondence. If appropriate the officer can suppress action for 30 days to allow an opportunity to resolve the matter.

Administrative arrangements

- A7. Housing and council tax benefits are administered by the Council's own staff. The collection of council tax is contracted to a private company, Capita. The Council uses private firms of bailiffs for recovery of debts, including council tax.

³ HB/CTB Circular A13/2006

Appendix B

The Anti- poverty strategy

The anti-poverty document was first developed in 2002 following recommendations arising from a Best Value Review of the Revenue and Benefits service. The documents contained within this included

- The Council tax recovery policy
- The Housing benefit overpayment policy
- Policy for processing claims from vulnerable claimants

In practice the 3 documents existed in their own right prior to the decision to bring them together as an anti-poverty strategy. The title is indeed misleading because the documents forming part of the overall document are individual policies covering collection of Council tax and HB overpayments. The intention of grouping these together was to acknowledge the need to consider the needs of vulnerable customers in the context of the responsibilities of the Revenue and Benefits service.

The strategy was reported to a cabinet meeting held on 5 August 2002 following consultation with a range of organisations including the CAB, Brent Community Law Centre, Brent Private Tenants Rights Group, RSLs and Housing.

Reviews of the Anti- Poverty Strategy

As outlined above, the individual policies existed in their own right and were used to guide Council tax and Benefits staff in matters relating to collection, overpayments and benefits administration. There have been various reviews of each of these documents since 2002. These are summarised as follows:

First Review of the anti-poverty strategy

The anti-poverty strategy was reviewed in April 2004, and aspects of all 3 individual policies were updated, expanded or changed. Changes in the Council tax recovery policy included:

- A new policy to allow payment by instalments to continue before the issue of a summons, if the charge payer agrees to pay the outstanding amounts due by direct debit.
- Further guidance for staff on the circumstances in which a summons should be issued
- Further guidance about the number of instalments that would be considered acceptable for arrangements following summonses.
- Further advice about the definition of vulnerable for the purposes of IS/JSA deductions and non referral of debts to bailiffs.

The overpayments policy remained largely unchanged but was updated with any relevant changes arising from circulars such as claw back rates.

The vulnerable policy was further developed so as to include further categories of vulnerable customer including claimants with alcohol and drug dependency, claimants unable to read or write, customers with sensory impairments. The revised procedure referred to plans to develop more proactive action for vulnerable claimants by November

2004.

Impact and needs Requirement assessment of Anti- Poverty strategy 2005

In order to facilitate compliance with level 2 of the Equality standard by April 2004 an equalities plan was drawn up. During the latter part of 2005, an impact and needs requirement assessment (INRA) of the anti-poverty strategy was undertaken to comply with the plan. The target to achieve Level 2 was achieved corporately and Brent is now working towards level 3 compliance. The INRA identified a range of recommendations including:

- Renaming the strategy (acknowledging its misleading title)
- Investigate the issues surrounding language barriers for customers further and to consider how these could be addressed
- Considering benefit take up campaigns to increase awareness of entitlement to HB and CTB and to increase take up
- Developing a central register of vulnerable persons
- Discussing the policies contained within it with stakeholders to identify ways of improving it.

Further reviews of Council tax Recovery policy

January 2005

A further review of this policy was undertaken in the latter part of 2004 /2005 in preparation for main billing for 2005/06 and this was reported to committee in Jan 2005. There were no significant changes made.

2006 – January and October 2006

A separate review of the Council Tax Recovery policy was undertaken in late 2005 in preparation for main billing 2006. This was reported to Committee on 21/1/2006, no major changes were identified. Changes were identified later in 2006 when the policy was developed to allow for more flexible arrangements for customers in financial difficulty. This new policy allows for the aggregation of customer's arrears to be consolidated into one overall arrangement and extended repayment periods, provided that the customer keeps up to date with instalments agreed. This policy also allows for arrears arrangements to be extended beyond the financial year, provided that in year is paid within the financial year. Levels of repayment are determined following the completion of a means enquiry form from the customer and investigation into entitlement to Council Tax Benefit where appropriate. This revision has been in operation since October 2006.

Development of HB policies

During 2005/06 the Benefits service implemented the Interventions and Visits module of the Verification framework. New procedures were drawn up that setting out arrangements for carrying our interventions and these included new procedures for arranging welfare visits to vulnerable customers and additional actions to be taken in respect of vulnerable customers before ceasing their entitlement following a failed intervention. As part of preparation for this proactive review of claims, guidance for defining "vulnerable" customers was reviewed.

A range of other policies were reviewed under our equalities plans including,

arrangements for awarding Discretionary Housing Payments, identifying and assessing urgent claims and backdating.

The overpayments policy is currently being reviewed. Changes to notification letters have already been made as have procedures for identifying and assessing entitlement to underlying entitlement.

Progress on implementing recommendations arising from INRA of Anti-poverty strategy

A fundamental rewrite of the existing anti-poverty strategy commenced in August 2006 and is now well progressed. The document is being renamed and now incorporates an overarching statement that highlights broad objectives covering all of the individual documents. It will include a much broader range of individual policies and also details of arrangements for take up, addressing language barriers and arrangements for liaison with major stakeholders. Plans are in place to consult with a range of stakeholders including RSLs and advice agencies about its content and we would also welcome any comments the Ombudsman service may have, or any examples of good practice elsewhere that we might draw on. A draft copy of this is attached as Appendix A for your consideration.

Special Recovery profiles and identifying vulnerable customers for Council tax purposes

A special "Vulnerable "recovery profile has been set up on the Revenues SX3 system, which prevents automatic recovery beyond final notice stage. Cases within this profile are reviewed on a quarterly basis by Capita.

Cases considered vulnerable for HB purposes are also considered vulnerable for Council tax purposes and work is planned to ensure that the vulnerable profile has been set up in respect of all of these.

A list of vulnerable social services clients was obtained and reviewed in December 2005. Most of these clients were not liable council tax chargepayers however those that were identified as chargepayers have been included in the vulnerable profile.

The information held on the Council Tax system about individual chargepayers is much more limited than benefits and does not include age or disability. In the main customer vulnerability is identified by information provided by customers or their representatives, information held by other services areas such as HB or social services and information ascertained by customer services staff. There are currently 521 accounts with a vulnerable profile (151 open accounts and 370 closed).

Customers with financial difficulties may be included in the vulnerable profile, if their difficulties have arisen due to their vulnerability. The new policy for chargepayers experiencing financial difficulty however extends beyond those who are vulnerable. This does rely on customers contacting the Council to advise of their financial situation as generally we will not be aware of this unless they are in receipt of benefits. We are also reliant on customer co-operation in completing a means enquiry to enable a realistic arrangement to be agreed.

Other actions taken to help customers who have difficulties paying include:

- A notice is sent with summonses advising customers to contact customer services if they have issues concerning their liability or they wish to make arrangements to pay.
- A pre-bailiff letter is sent before liability orders are passed to the bailiff. This is also intended to encourage customer to make contact to discuss any difficulties they have in paying and to make arrangements to pay.
- The empowerment of customer services staff which enables them to agree arrangements with customers within specified guidelines
- Arrangements for customer services staff to refer cases to their manager or Capita to consider arrangements that fall outside of their empowerment levels.
- Suppression of summonses for any account that has a benefit or Council tax query outstanding or a pending.