

Report

on an investigation into
complaint no 03/A/14278 against
Southend-on-Sea Borough Council

27 June 2005

Millbank Tower, Millbank, London SW1P 4QP

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Key to names used

Mr Picton	The complainant
Miss Foster	The complainant's partner
Officer A	Area Housing Manager
Officer B	Senior Estate Officer
Officer C	Homeless Assessment & Prevention Officer

Report Summary

Council housing management

Mr Picton has a history of mental illness which has resulted in lengthy periods as an inpatient in hospital psychiatric units. He held a Southend-on-Sea Borough Council tenancy and then, briefly, a private tenancy. Miss Foster complained on Mr Picton's behalf about the Council's handling of his claims for housing benefit, and the lack of liaison between the Council's Housing and Borough Treasurer's Departments.

The Local Government Ombudsman upheld the complaints. Whilst accepting the difficulties faced when dealing with a benefit claimant who is in and out of hospital on a regular basis, the Council has failed to administer Mr Picton's claims properly, and the lack of liaison between departments compounded this. This caused Mr Picton injustice in that he was caused anxiety by mounting arrears, was served a Notice of seeking Possession and was evicted from his Council flat, and was threatened with eviction from his private flat.

Finding

Maladministration causing injustice.

Recommended remedy

The Council should pay Mr Picton £1,000 to compensate him for the distress and anxiety caused by its actions.

Introduction

1. Mr Picton is a single man with a history of mental health problems. In October 2001 he applied to the Council for assistance as a homeless person. He was rehoused in a Council-owned bedsit in May 2002, and made a claim for housing benefit to cover the cost of his accommodation.
2. Ms Foster complained to me on Mr Picton's behalf about
 - (a) the Council's handling of his claims for housing benefit made after his entitlement to Income Support ended in December 2002; and
 - (b) the Housing Department's failure to liaise with the Borough Treasurer's Department (which administers housing benefit claims), his mother or partner, when it knew of Mr Picton's mental health problems and that he was hospitalised.

Legal and Administrative Background

3. Claims for housing benefit must be made in writing, and accompanied by such certificates, documents, information and evidence as may be reasonably required by the Council in order to determine that person's entitlement to housing benefit¹; the material should be provided within four weeks of the request for it². The Council has discretion to extend the time for the submission of such evidence where it considers it reasonable to do so.
4. At the time relevant to this complaint councils were under no duty to determine a claim where the claimant had failed to provide information and evidence as requested³. The claimant had no right of appeal if the claim was not determined. However, a Tribunal of Social Security Commissioners decided in September 2004 that the Regulations that appeared to allow an authority to refuse to make a decision on a claim are not valid. Because of this, a decision must now always be given on a claim, whether it is complete or not, and the decision is appealable.
5. When a housing benefit claimant ceases to be entitled to Income Support, he is also to be treated as no longer entitled to housing benefit. The entitlement to housing benefit ends on the last day of the week in which the claimant is entitled to Income Support⁴.

1 The Housing Benefit (General) Regulations 1987, regulations 72(1) and 73(1)

2 Ibid, regulation 73(1)

3 Ibid, regulation 76(2)(b)

4 Ibid, regulation 67(1)(b)

6. The Council may pay housing benefit for a period of temporary absence of up to 52 weeks where the claimant is resident in hospital or similar institution as a patient⁵. If a claimant returns to and occupies his home, even for a short time, the period of temporary absence starts again.
7. The Council may backdate a claim for housing benefit for a period of up to 52 weeks before the date on which it receives it if the claimant can show continuous good cause for the delay⁶.
8. The Council's rent arrears recovery procedure in operation at the time of the events investigated says
 - (a) that where claims for housing benefit have lapsed it is imperative that contact is made with the tenant to prevent loss of benefit and prevent rent arrears accruing, and that this should be done by a home visit;
 - (b) a Notice of Seeking Possession may be served when arrears of water rates (for which housing benefit is not payable) reach £50;
 - (c) that within the 28 day expiry period of the Notice a home visit should be made if there is no contact from the tenant;
 - (d) that if, during the 28 day expiry period of the Notice it has not been possible to contact the tenant by letter and at least two visits, and the arrears have not reduced, the case will be referred to the Area Housing Officer for authorisation to start court action;
 - (e) a visit should be made to the tenant two weeks before the court hearing date if he has failed to make contact;
 - (f) a visit should be made to the tenant if the arrears have not reduced after a court order is obtained.
9. The Council has a protocol for the exchange of information between the Borough Treasurer's Department and Housing staff. This enables either department to seek information from the other, but only information that is relevant to a tenant's claim or possible claim for housing benefit.
10. The Council is now considering a newly drafted procedure for the recovery of rent arrears. This includes procedures for dealing with tenants who are in hospital long term, and those with mental health problems.
11. The draft procedure says that where a tenant is in hospital long term, there should be regular contact with the tenant or the person authorised to handle his affairs.

5 Ibid, regulation 5(8B)(c)

6 The Housing Benefit (General) Regulations 1987, regulation 72(15)

12. The draft procedure says that where a tenant is vulnerable due to, for example, mental illness, that more personal face-to-face contact should be considered, rather than relying on correspondence. It goes on to say that it may be more appropriate to establish contact with a nominated family member or support worker who may have the authority to deal with a tenant's finances, rather than cause undue concern to the tenant. It also says that where attempts to contact a known vulnerable tenant prove unsuccessful, checks should be made with family members or support agencies to establish the tenant's situation.

Investigation

13. My investigator has met Mr Picton and his partner, Ms Foster, examined the relevant Council files, and interviewed Officers A and B who dealt with the case.

Background to the complaint

14. Mr Picton made a homelessness application to the Council on 16 October 2001. On 6 November his psychiatrist wrote to the Council supporting his application, saying that Mr Picton suffered from schizophrenia but was very well. Mr Picton's application was approved because of his vulnerability.

Events relating to the complaint

15. Mr Picton's tenancy with the Council started on 20 May 2002. He made an application for housing benefit on 24 May. The claim was assessed on 19 June. Although Mr Picton was entitled to full housing benefit, he remained responsible for paying the water rates of £4.53 per week.
16. The Area Housing Office sent Mr Picton two letters about his arrears on 6 and 13 June. He telephoned the Area Housing Office on 19 June and agreed that he would pay his water rates, but did not do so. Officer B visited Mr Picton on 24 July to discuss his arrears, but he was not at home.
17. Mr Picton was in Braydon Hospital between 17 July and 7 August, which included three periods of leave.
18. The Council served Mr Picton with a Notice of Seeking Possession on 12 August when he had arrears of £54.36. The Notice was, apparently, hand delivered, but the officer who delivered it did not see Mr Picton.
19. Mr Picton was readmitted to Braydon Hospital on 5 September.
20. On 19 September Officer B visited Mr Picton's flat with a contractor to do a repair to the flue in the bathroom. Mr Picton was not at home, although there were signs that he was in occupation. The locks to the flat were changed, and the keys held in the Area Housing Office.

21. On 23 September Mr Picton's mother (Mrs Picton) telephoned the Area Housing Office to say that he was unwell and was in Braydon Hospital; she was unsure when he would return home. She left her telephone number.
22. Officer B telephoned Mrs Picton on 28 October and left a message saying that her son's water rates needed paying, together with £2.70 towards the arrears. Mrs Picton responded on 31 October, saying that Braydon Hospital was dealing with her son's financial affairs and gave him the telephone number of the Patient Welfare section. Mrs Picton called again on 15 November saying that her son was still in hospital and that she would monitor his rent account.
23. Mr Picton was discharged from hospital on 2 January 2003. He was readmitted on 15 January.
24. On 16 January Officer B visited Mr Picton's flat with a carpenter following a break-in.
25. On 20 January, the Department of Social Security wrote to the Borough Treasurer's Department saying that Mr Picton's entitlement to Income Support ended on 26 December 2002. As a result, the Borough Treasurer's Department wrote to Mr Picton on 22 January at his Council flat address, saying that his entitlement to benefit had ended, and inviting him to make a fresh claim. It sent a second letter the same day (22 January) to the same address, saying that there had been an overpayment of housing benefit. The Borough Treasurer's Department sent an invoice to Mr Picton for the overpayment on 27 January.
26. On 26 February the Area Housing Office wrote to Mr Picton threatening court action for rent arrears which stood at £172.17. The following day, the Police contacted the Area Housing Office to say that Mr Picton's flat was insecure following a break-in; the flat appeared empty of belongings. The Council has a receipt for new keys following a lock change at the property. The receipt has two dates on it – 26 and 27 February – but appears to have been signed by Mr Picton on 27 February. The lock change was presumably done on 26 February.
27. Mr Picton was discharged from hospital on 20 March.
28. Braydon Hospital made payments totalling £182.86 between October 2002 and March 2003. These were at weekly intervals from November 2002 to March 2003.
29. On 1 April, Officer B sent a request to the Chief Executive and Town Clerk's Department asking that a court application be made to repossess Mr Picton's flat. His arrears were £343.16. Officer B also notified Social Services that an application to court was to be made. By coincidence, Mr Picton visited the Area Housing Office the same day and spoke to Officer B. He told Mr Picton that there was no housing benefit being paid (he had, apparently confirmed this with the Borough Treasurer's Department) and that his water rates were not being paid. Officer B also told Mr Picton of the application to court. Mr Picton told Officer B that there was a new claim in for housing benefit and that there had been problems with Braydon Hospital making payments.

30. The Borough Treasurer's Department received completed NHB1 forms from the Job Centre on 8 April. The Council applied to court for a possession hearing on 11 April.
31. Ms Foster says that Mr Picton was admitted to Musgrave Hospital on 10 April as there were no beds available at Braydon Hospital. He was, apparently, transferred to Braydon Hospital when a bed became available.
32. On 22 April the Area Housing Office received a further report that the property was not secure. A Council officer contacted Braydon Hospital and was told that Mr Picton had been transferred to Musgrave Hospital. The Council officer left two messages for Mr Picton's Community Psychiatric Nurse (CPN) asking for contact. The CPN did not return the calls.
33. The Borough Treasurer's Department wrote to Mr Picton on 1 May 2003 at his home address enclosing a claim form for housing benefit which it asked him to complete and return within four weeks. The letter was returned to the Borough Treasurer's Department marked "returned by Royal Mail no answer". The Council treated his claim as lapsed.
34. Mr Picton was admitted to Braydon Hospital on 21 May.
35. At the possession hearing on 17 June the Council was granted a possession order in 14 days. Mr Picton's arrears were £1084.36. Officer B wrote to Mr Picton the same day notifying him of the outcome of the hearing.
36. On 9 July Officer B prepared a report for the Director of Social Care requesting permission to evict Mr Picton having first confirmed that housing benefit had been cancelled. On 8 August Officer C added to the report that Mr Picton would have a priority need because of his history of mental health problems, and that the Council would have a duty to assist him.
37. On 13 August Officer C sent a memorandum to Officer A saying that Mr Picton was still supported by Braydon Hospital, that he had not been discharged, but had been on leave from the Hospital and was due back that day. Mr Picton had been resident "on and off" since October 2002. In response, Officer B sent a memorandum to Officer A saying that he had contacted Braydon Hospital and was told that Mr Picton was no longer under its supervision; he had been transferred to Musgrave Hospital.
38. The hospital records provided by Braydon Hospital suggest that Mr Picton was discharged from hospital on 14 August. Ms Foster, however, said that he was re-sectioned during his discharge interview, and was transferred to a psychiatric clinic in London as no beds were available locally.
39. On 21 August Mr Picton visited the Council. The Borough Treasurer's Department received a Change of Circumstances form from him saying that he was moving from his Council flat to another property in the area. It also received a completed housing benefit form for the new address. The form has a tick box asking whether the claimant is in hospital. Mr Picton had ticked to say that he was in hospital from May

2003. The Borough Treasurer's Department handed Mr Picton a letter asking for information in support of his claim. It wrote to him again at his new address on 3 September.

40. On 4 September the Director of Social Care and Executive Councillor (Housing) gave their approval for Mr Picton's eviction. Officer B wrote to the Chief Executive and Town Clerk's Department asking it to arrange the eviction.
41. On 17 September the Borough Treasurer's Department wrote to Mr Picton saying that his claim for benefit had been cancelled because of his failure to provide information. On the same day, however, it received proof of Mr Picton's Disability Living Allowance (addressed care of Ms Foster's address); a letter from Ms Foster (which gave her address) saying that he was in hospital; a tenancy agreement; and a letter from Mrs Picton saying that Ms Foster should be regarded as her son's next-of-kin.
42. On 24 September Ms Foster visited the Borough Treasurer's Department. She handed in a completed tenancy termination form for Mr Picton's Council flat; he said that he was in hospital and was moving to flee violence, drug abuse and pushers. She also provided authorisation from Mr Picton that she could act on his behalf; a letter saying that he had been sectioned; and another change of circumstances form. Mr Picton had been moved from Musgrave Hospital to a clinic in London.
43. The Borough Treasurer's Department wrote to Mr Picton at his new address on 25 September asking for further proof in support of his claim; the letter said that the Council could not discuss his account with his mother or Ms Foster.
44. The Borough Treasurer's Department received a completed claim for housing benefit from Mr Picton on 8 October. It was a request for backdated benefit for his Council flat. The form said that he was in hospital, and had been in and out of hospital since December 2002. The Borough Treasurer's Department wrote to Mr Picton at his former Council address the same day asking for proof in support of the claim, but this was returned by Royal Mail on 13 October marked "gone away". It wrote again on 16 October to Mr Picton's new address asking for further information in support of his backdating request.
45. Mr Picton was admitted to Braydon Hospital on 23 October, possibly having been transferred from the clinic in London. He was allowed home on leave immediately, and discharged on 30 October.
46. On 27 October Mr Picton visited the Borough Treasurer's Department. He was on leave from Braydon Hospital, but did not know when he would be discharged. He told the Borough Treasurer's Department that he was no longer in receipt of Disability Living Allowance or Income Support, and his only income was Severe Disablement Allowance (SDA); he provided proof of his entitlement to SDA. He did not know if he still had a bank account. He asked the Borough Treasurer's Department to consider

awarding housing benefit from the date of his original claim, saying that it was difficult for him to provide information because of his health problems and being in hospital.

47. The Borough Treasurer's Department rejected Mr Picton's request for backdating on 12 November. He was told of his right to request a review of this decision. Mr Picton reacted badly to the Council's referral of backdating on 12 November and caused considerable damage to his private flat.
48. On 17 November Mrs Picton wrote to the Director of Housing asking for a review of the decision. She explained that her son had been in hospital for the past year, and he had given up his Council flat because of repeated burglaries. The letter was forwarded to the Borough Treasurer's Department.
49. Mr Picton was admitted to hospital on 20 November.
50. On 26 November the Borough Treasurer's Department wrote to Mr Picton asking for authorisation for his mother to act on his behalf. On 27 November Ms Foster wrote to the Borough Treasurer's Department explaining the situation and asked for Mr Picton's claim to be looked at again; she said that he was in Braydon Hospital and was unable to deal with the matter himself.
51. On 18 December the Borough Treasurer's Department received a letter from Southend Advocacy Service and authorisation from Mr Picton that it could act on his behalf. The letter asked for Mr Picton's housing benefit to be backdated to cover both his tenancies. The letter gave the dates of Mr Picton's times in hospital, and said that from 25 October he had been in Braydon and Musgrave Hospitals. He was in no fit state to manage his affairs.
52. The Borough Treasurer's Department received a further letter from Ms Foster on 31 December saying that housing benefit had yet to be paid to the landlord of Mr Picton's new address.
53. On 19 January 2004 the Borough Treasurer's Department agreed to the backdating request. This apparently left residual arrears on Mr Picton's account of £98.58, plus court costs.

The views of Mr Picton and Ms Foster

54. My investigator met Mr Picton in the psychiatric unit where he was resident. He told her that he knew the Council had been to court for rent arrears, and he believed the arrears to be in the region of £150. The next thing he knew, he had arrears of about £1,700, but he does not understand how this came about. He did not know that the Council wanted to evict him.
55. Mr Picton said that letters were sent to his flat, but it was boarded up. The letters were returned to sender. The letters were not copied to him in hospital, although the Council knew where he was. The Hospital was making payments on his behalf,

which he believed to be in the region of £20 per week. (However, the payments were, in fact, only £3.47 per week.)

56. Ms Foster also made the point that the Council continued to write to Mr Picton at his home address when it knew he was in hospital. She pointed out that in his later claims for housing benefit, he ticked the box saying that he was hospitalised. The Council did not pick up on this at the time or since.

The Council's comments

57. Officer A is Officer B's line manager, and she considers Officer B to be one of her more proactive officers. She checks that arrears action is taken. Officer A has 1:1s with officers, although this was infrequent during the period under investigation. Nevertheless, she monitored pending arrears action. She was not very familiar with Mr Picton's case at the time.
58. Officer A told my investigator that the Council is currently consulting on a new arrears procedure which includes sections on dealing with vulnerable tenants and those in hospital. The start of the review predates my investigation. The new procedure recognises that there should be more liaison with agencies.
59. Officer A contacted Braydon Hospital before she was interviewed by my investigator. The Hospital provided her with details of Mr Picton's admission and discharge, as well as the dates when he was allowed home on leave.
60. Officer A made the point that Mr Picton's tenancy termination form said that he was fleeing violence, and made no mention of stress caused by his rent arrears.
61. Officer A believes the Council's arrears policy was followed in this case.
62. Officer B told my investigator that he was first aware of Mr Picton's hospitalisation in October 2002. He knew of Mr Picton's mental health problems from his application for housing, but not the severity.
63. Officer B visited Mr Picton at home prior to the Notice of Seeking Possession being served. He visited on two other occasions with repair contractors: once to unblock a flue in the bathroom, and the second time following a break-in.
64. Officer B's only contact with Mr Picton was when he visited the Area Housing Office on 1 April 2003.
65. Officer B did not liaise with the Borough Treasurer's Department regarding Mr Picton's housing benefit claim other than on 9 July 2003 when he was preparing the arrears report for the Director of Social Care. Nor did he contact Braydon Hospital or Mrs Picton after December 2002. He pointed out, however, that he did not have authorisation from Mr Picton to do so, other than that received by the Borough Treasurer's Department from Ms Foster in September 2003. (Southend Advocacy Service had provided further authorisation in December 2003.)

Conclusions

Allegation a): that the Council was at fault in its handling of Mr Picton's claims for housing benefit made after his entitlement to Income Support ended in December 2002.

66. It seems to me that the Council is not at fault for cancelling Mr Picton's housing benefit claim from 29 December 2002 when it was told by the DWP that he was no longer entitled to Income Support from 26 December, as it had no discretion over this. In addition, the Council sent Mr Picton a new claim form which he did not return.
67. Nor would I criticise the Council for treating Mr Picton's new claim of 8 April 2003 as lapsed when he failed to provide the necessary detailed information requested, as there was nothing on the claim form to alert the Council to the fact that he was in hospital.
68. But I would criticise the Council for lapsing Mr Picton's new claim of 21 August 2003 for the private flat when he failed to provide the necessary information within the time limit. Mr Picton did not mention mental illness on the claim form, but he did say that he was in hospital and had been there since May 2003. In its most recent comments, the Council pointed out that this form was hand-delivered by Mr Picton. I accept that it must have been confusing for the Borough Treasurer's Department to receive a claim form in person from someone claiming to be in hospital. Nevertheless, the information on the form should have alerted the Borough Treasurer's Department to the fact that Mr Picton might need help in providing the necessary information in support of his claim. And it should have liaised with the Housing Department to clarify the situation and to see if it knew which hospital Mr Picton might be in.
69. I would also criticise the Council for failing to recognise Miss Foster as being able to act on Mr Picton's behalf once it received written authority from him on 24 September 2003. Mr Picton confirmed in the letter that he had been detained under Section in a clinic and that Miss Foster could deal with any of his affairs. Although this letter did not give Miss Foster's contact details, the Council had already received a letter from her on 17 September giving her address. In addition, the Council had the address of the clinic the same day (24 September) and so could have contacted Mr Picton's Community Psychiatric Nurse there.
70. The Council should, therefore, have reactivated the August 2003 claim for housing benefit, and asked Miss Foster for any outstanding information. Had it done so, the claim could have been agreed and paid by the end of October 2003 rather than on 19 January when the Head of Benefits reviewed the claim.
71. The Council's handling of the request for backdating for Mr Picton's Council flat made on 8 October 2003 was poor. The Council wrote to the Council flat the same day (8 October) knowing that it was boarded up; that Mr Picton had been in hospital since August; and that Miss Foster had been authorised to act on his behalf on 24 September. The Council subsequently wrote to the private flat on 16 October.

72. Had the Council made the necessary enquiries of Miss Foster or the hospital it would have received all the information it needed to approve the backdating request within a month of the claim, ie by 8 November 2003 rather than on 19 January 2004.

Complaint b): that the Council's Housing Department failed to liaise with the Borough Treasurer's Department (which administers housing benefit claims), his mother or partner, when it knew of Mr Picton's mental health problems and that he was hospitalised.

73. It seems to me that the Council failed to follow its own rent arrears procedure. This clearly sets out when visits must be made. But in this case, officers failed to visit Mr Picton in January 2003 after his housing benefit stopped following the DWP's notification that he was no longer entitled to Income Support. Nor were there visits two weeks before the court hearing on 17 June 2003, or after the court order was granted and there was no reduction in the rent arrears.
74. The Council insists that, with the exception of the visit prior to the court hearing, there was no other failure to follow its rent arrears procedure. But it has not provided evidence of a visit after Mr Picton's housing benefit stopped, or after the court order was granted, and my investigator saw nothing on the Council's files to suggest that such visits took place. I am somewhat surprised, therefore, that the Council insists that its rent arrears procedure was followed.
75. Despite there being a protocol between the Borough Treasurer's Department and the Housing Department for the exchange of information, the Housing Department failed to share the following information:
- (a) that Mr Picton was schizophrenic (known since November 2001);
 - (b) that he was in Braydon Hospital and that his mother could be contacted for more information (known since September 2002);
 - (c) the telephone number of the Patient Welfare Department at Braydon Hospital (known since October 2002);
 - (d) that the flat was empty of belongings (known since February 2003);
 - (e) that the property was not secure and that Mr Picton was in Musgrave Hospital (known since April 2003);
 - (f) and that Mr Picton was in Braydon or Musgrave Hospitals and had been since October 2002 (known since August 2003).

Had proper liaison taken place, it might have been possible for the Council to establish as early as September 2002 a responsible person to act for Mr Picton and with whom the Departments could liaise. This would have ensured that Mr Picton's housing benefit continued to be paid throughout his stay in hospital, as he was never in hospital for more than 52 weeks at any time.

76. I would also criticise the Council for writing to Mr Picton at his Council flat on 26 February 2003 threatening court action for rent arrears when it knew he had been in psychiatric hospital and that his mother was monitoring his rent account. The Council had been receiving cheques weekly from Brandon Hospital for Mr Picton's water rates. And the following day, the Housing Department knew that the flat had been broken into and was empty of belongings. Despite Mr Picton collecting keys from the Council, apparently on 27 February, it seems to me that as he was known to have been in hospital and the flat was empty, this should have prompted further enquiries regarding his whereabouts.

Injustice

77. I consider that the Council's faults identified in the paragraphs above amount to maladministration and have caused Mr Picton injustice. Whilst I sympathise with the Council's difficulties in dealing with a Council tenant in receipt of housing benefit who is frequently in and out of hospital, I have greater sympathy for Mr Picton. Not only has Mr Picton struggled with his mental ill health, he has also had to struggle to maintain a tenancy despite being in psychiatric hospital.
78. If the Council had not failed in the ways described above, Mr Picton could have been spared the anxiety of worrying about large arrears, his water rates might have been paid from his Disability Living Allowance, and he would not have been evicted from his Council flat or had a threat of eviction in his private flat because no rent was paid for the first few months.
79. It is difficult for me to judge whether Mr Picton would have left his Council flat if there had been proper liaison between the Departments: he was clearly unhappy in the flat for other reasons and was facing frequent break-ins and threats of violence.
80. I think it would be reasonable for the Council to pay compensation of £1,000 for the distress and anxiety caused by the Council's actions. This should be paid, with an accompanying letter apologising for the Council's failures, care of Mr Picton's mother, as he remains in hospital.
81. I welcome the Council's draft procedure for the recovery of rent arrears, which now includes a section on dealing with tenants who are in hospital long term. The drafting of this procedure started before I began my investigation, and the Council is to be commended for recognising this gap in its procedures and taking steps to remedy it. I should like the Council to provide me with a copy of the full rent arrears procedure once it has been finalised.

**Mr Tony Redmond
Local Government Ombudsman
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27 June 2005