

Report

on an investigation into
complaint no 06/A/15371 against
London Borough of Ealing

6 December 2007

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Key to names used

Mrs Nawal

The Complainant

Report Summary

Subject

Mrs Nawal complains that the Council failed to put her claim for Housing Benefit into payment, even though it had decided not to challenge further her entitlement to benefit.

Finding

The Council was at fault for taking no action to put Mrs Nawal's claim into payment for 10 months after the Council lost its appeal and then only after she had complained to the Ombudsman. There was a further delay of four months in carrying out a full assessment, following the provision of additional information in support of her claim which was not linked to the correct case reference number. Mrs Nawal's complaint also revealed that the Council was not monitoring its performance against targets agreed as a result of previous complaints to the Ombudsman from people in similar circumstances to Mrs Nawal.

Recommended remedy

In order to remedy the injustice caused to Mrs Nawal as a result of the delay in putting her claim into payment, the Council should pay her £500 and send her a letter of apology. The Council should also:

1. ensure that it monitors its performance against the agreed targets on a regular basis;
2. identify any other cases which remain outstanding from before October 2006 and ensure the appropriate action is taken; and
3. review the procedures for cases with two reference numbers with a view to simplifying them, either by allocating one case reference number or ensuring that the two reference numbers are linked in such a way that it does not matter to which number documents are scanned.

Introduction

1. Mrs Nawal (not her real name for legal reasons) complains that the Council failed to put her claim for Housing Benefit into payment, even though it had decided not to challenge further her entitlement to benefit.

Investigation

2. My Investigator has inspected the Council's files. A copy of the factual parts of this report was provided to the Council and Mrs Nawal's solicitor in draft. Where appropriate their comments have been reflected in the text.

The appeals process

3. Following a negative decision, Housing Benefit claimants have the right to appeal to the Appeals Service. Both claimants and councils have the right to appeal to the Social Security Commissioners against decisions made by the Appeals Service. Commissioners' decisions can be appealed to the High Court.

Mrs Nawal's application for Housing Benefit

4. Mrs Nawal applied for Housing Benefit in September 2003. She provided proof of her income and proof of her rent. In November 2003 the Council told her it had decided that she was not entitled to Housing Benefit as she was living in the same home as her landlord who was a close relative.
5. Mrs Nawal requested a revision of the Council's decision on the basis that her landlord (her brother) did not live with her but lived further down the same road. However, on review the Council said its decision was not based on the claim that her landlord/brother lived with her but on the basis that her tenancy had been contrived to take advantage of the Housing Benefit system.
6. Mrs Nawal submitted a further revision request on 30 January 2004. In March 2004 she was advised that she could not request a revision of a decision which had already been reviewed and that the only option open to her was to take the matter to an Appeals Tribunal, which she did on 29 March 2004.
7. The Council then requested further information from Mrs Nawal which she provided in April 2004. The Council wrote to Mrs Nawal on 26 April 2004 claiming that it had mislaid the information she had provided during the process of scanning it onto its computer system. The Council asked her to provide it again and also repeated some of its original questions as though they were requests for new information. However, the Council's records indicate that it had scanned the information provided by Mrs Nawal onto its computer system on 13 April 2004.

8. The Council arranged to visit Mrs Nawal at her home on 17 June 2004. During this visit it obtained further copies of the information she had already provided in April 2004.

The Appeals Process

9. On 16 July 2004 the Council wrote to confirm receipt of Mrs Nawal's appeal and at the end of the month it sent the papers to the Appeals Service.
10. The Appeals Tribunal, held on 18 November 2004, decided in Mrs Nawal's favour.
11. On 10 December 2004 the Council wrote to the Appeals Service to request a statement of reasons, with a view to appealing against the Tribunal's decision. However, this request was not received by the Appeals Service.
12. On 27 January 2005 Mrs Nawal's solicitor wrote to ask the Council to process her application for Housing Benefit, given that she had been successful on appeal. As her solicitor received no reply, a further reminder was sent on 22 February 2005.
13. On 9 March 2005 the Council wrote to the solicitor to say that it had requested a statement of reasons and was still waiting for this to arrive. The Council also sent a reminder to the Appeals Service. The Appeals Service replied on 19 April 2005 to say that, as it only received the request on 9 March 2005 (i.e. more than three months after the decision was issued) there was no provision in law for a statement to be obtained.
14. Following further correspondence, the Appeals Service advised the Council on 1 June 2005 that a statement of reasons would not be given and that, if it wished to pursue the matter, it would need to put in a request for leave to appeal direct to a Social Security Commissioner.
15. On 22 June 2005 the Council requested leave to appeal but this was turned down on 13 July 2005. In the meantime, Mrs Nawal's solicitor wrote to ask the Council to process her claim for benefit as the Tribunal had refused to issue a statement of reasons. The Council explained that it was pursuing its right to appeal to the Social Security Commissioners, which it did on 8 August 2005.
16. A Commission hearing was held on 18 November 2005 and the decision, refusing the appeal was issued on 24 May 2006.

Events following the failure of the Council's appeal

17. Mrs Nawal's solicitor wrote to the Council four times between July 2006 and January 2007 asking it to process her claim.
18. In January 2007, as a result of other complaints to me from people who had been suspected of having contrived tenancies but were nevertheless successful on

appeal, the Council agreed to amend its procedures and monitor progress against the following targets:

- (i) Within 28 days of a decision by the Appeals Service – to inform claimants of a decision to request a statement of reasons.
- (ii) Within 28 days of a decision by the Appeals Service to refuse leave to appeal to the Social Security Commissioners – to inform claimants of any intention to pursue an appeal directly to the Commissioners.
- (iii) Within 28 days of a decision by a Social Security Commissioner – to inform claimants of any intention to pursue an appeal to the High Court; and
- (iv) Within 28 days of any decision not to pursue any further right of appeal – to put the claim into payment

19. Mrs Nawal's Solicitor complained to me on her behalf at the end of January 2007 and my Investigator made enquiries in February 2007.
20. The Council then arranged to visit Mrs Nawal on 15 March 2007 to obtain the information which would enable it to assess her claim.
21. On 25 May 2007 the Council wrote to Mrs Nawal to advise her that it had insufficient information to fully assess her claim from September 2003 to May 2006. However, based on the information provided, the Council said it would pay Housing Benefit totalling £4,984.18 to Mrs Nawal on account, pending a full assessment of her claim. It also advised her that she was not entitled to Housing Benefit from 15 May 2006. She was asked to provide further information within four weeks so that the assessment could be finalised.
22. The Council also referred Mrs Nawal's case to the Rent Officer Service for a fair rent figure. However, when the Rent Officer's decision was received on 31 May 2007 no action was taken by the Council as her case had not been identified as a 'pending' case.
23. Mrs Nawal visited the Council's offices on 22 June 2007 to provide documents in support of her claim as well as a letter from her solicitor. Although the documents were scanned on to the Council's system, they were linked to only one of the case reference numbers which had been allocated to her claim. The Council says it therefore appeared that no response had been received from Mrs Nawal to its letter of 25 May 2007.
24. The Council spotted this error when invited to comment on the draft of my report. It says the Scanning Manager has been advised of the error and will alert her staff to be aware of the problems it can cause.

25. Having identified the error on 7 November 2007, the Council arranged for Mrs Nawal's claim from September 2003 to be reassessed on the basis of the information she had provided in June 2007. This resulted in a payment of £15,193.98 to her landlord on 9 November 2007.
26. When responding to my Investigator's enquiries, the Council said it had not been formally monitoring its performance against the targets set out in paragraph 19. Although, it said it had the systems in place for extracting the necessary information, it was initially unable to show how quickly it put claims into payment once it had decided not to pursue an appeal further.
27. However, the Council has now confirmed that since January 2007 the Appeals Service has upheld 10 appeals (either in full or in part) against the Council's decision to refuse benefit. Of these cases:
 - (a) One claimant was not informed by letter of the action the Council was taking (i.e. to appeal further);
 - (b) One claim was not put into payment within 28 days following a decision not to proceed with a further appeal; and
 - (c) On one case the decision whether to proceed with an appeal was not made within 28 days.
28. The Council says it is now monitoring performance against the targets set out in paragraph 18 on a monthly basis.
29. The Council denies that it has been reluctant to put claims into payment when it has lost appeals. In support of this claim it points to the fact that since October 2006, only two claims out of 18 cases have not been put into payment within 28 days following the Council's decision not to pursue a further appeal.
30. Mrs Nawal continues to live in the house owned by her brother. She currently receives a Housing Benefit payment of £490.68 every four weeks.

Conclusion

31. The Council failed to deal properly with Mrs Nawal's claim for Housing Benefit. It made no attempt to put it into payment until 10 months after the Social Security Commissioner had refused the Council's appeal. There was then a further delay of four months in taking action following receipt of the documents which Mrs Nawal provided to the Council in June 2007. The evidence suggests that this latter delay was due to an administrative error, rather than a conscious decision to delay matters further. However, the failure to monitor what was going on, despite the fact that Mrs Nawal's complaint was subject to an investigation by my office, suggests a level of carelessness which goes beyond the initial error.

32. The Council's handling of claims since October 2006 where it has lost an appeal and is not seeking to pursue further appeal rights, indicate that it is not now reluctant to put claims into payment in such circumstances. However, the fact that the Council ignored four request from Mrs Nawal's solicitor to put her claim into payment and only took action following my Investigator's enquiries, suggest that may not always have been the case. This view is underlined by the other complaints I have received from people in similar circumstances to Mrs Nawal.
33. The Council was also at fault for not monitoring performance against the targets agreed in January 2007 as a result of those other complaints. Nevertheless, I welcome the Council's commitment now to do so on a regular basis. I hope this will avoid similar complaints in the future.
34. The failings I have identified amount to maladministration. In order to remedy the injustice caused to Mrs Nawal as a result of the delay in putting her claim into payment, the Council should pay her £500 and send her a letter of apology. In making this recommendation I have taken into account the fact that Mrs Nawal continues to live in the property owned by her brother.
35. The Council should ensure that it monitors performance against the agreed targets on a regular basis. As the report provided by the Council only relates to cases where there have been decisions by the Appeals Service since October 2006, and did not therefore include Mrs Nawal's case, the Council should identify any other cases which remain outstanding from before October 2006 and ensure that the appropriate action is taken.
36. Finally, given that Mrs Nawal's documents were not linked to the correct case reference number in June 2007, the Council should review the procedures for cases with two reference numbers. It should simplify them, either by allocating one case reference number or ensuring that the two reference numbers are linked in such a way that it does not matter to which number documents are scanned

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