

Report

on an investigation into
complaint no 07B10865 against
Luton Borough Council

27 August 2009

Investigation into complaint no 07/B/10865 against Luton Borough Council

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Key to names used

Ms Salt

the complainant

Report summary

Homelessness

The Council evicted the complainant for rent arrears when a disputed housing benefit overpayment was pending review.

Finding

Maladministration causing injustice.

Recommended remedy

The Ombudsman recommends that to remedy the injustice caused to the complainant by its maladministration the Council should apologise and pay her compensation of £5,000.

Introduction

1. Ms Salt says that the Council unfairly evicted her for rent arrears created by the incorrect calculation of benefit entitlement, and did not delay the eviction until after the outcome of her appeal against this was known. As a result, she and her daughter were made homeless, and she says they had to stay with friends, sleep in the car, and return briefly to Ms Salt's violent ex-partner; and many of their belongings were in storage and not easily accessible from the time of the eviction until Ms Salt was offered accommodation again in May 2008.
2. For legal reasons, the names used in this report are not the real names of the people concerned.¹
3. One of the Commission's officers has examined the Council's files, interviewed officers, examined records kept by the complainant's health visitor, and interviewed the complainant and her advocate.

Legal and administrative background

Housing benefit

4. The primary legislation covering housing benefit entitlement is contained in the Social Security Administration Act 1992 (consolidating act) as amended and Social Security Contributions and Benefits Act 1992 (consolidating act) as amended. The provisions governing housing benefit are contained in regulations made by the Secretary of State for Social Security and laid before Parliament. The regulations covering housing benefit are the Housing Benefit Regulations 2006 and rules regarding appeals are covered in the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001.
5. The law requires claimants to notify the council of certain changes in circumstance that affect entitlement to housing benefit. Claimants also have a general duty to notify the council of changes in circumstance which *may* affect entitlement to benefit, and should do so within one month of the change. And the Department of Work and Pensions expects councils and its own local offices to establish systems to ensure that information about changes of circumstances is properly shared. Such systems can help to detect fraud, ensure continuity of benefits, and prevent overpayment of benefits.
6. The council can usually recover overpaid benefit, but it has the discretion not to do so. A common way of recovering overpaid benefit is by reducing future payments of benefit. Anyone on Income Support, Jobseeker's Allowance, or Pension Credit (guarantee credit or guarantee and savings credit) is normally

¹ Local Government Act 1974 Section 30 (3)

eligible for maximum housing benefit; benefit entitlement is variable for those in receipt of Incapacity Benefit. Recovering an overpayment by reducing benefit means that the claimant has to pay towards the rent.

7. Where a claimant disagrees with a decision on housing benefit she is entitled to request an appeal. This request should usually be made within one month of the decision and the time limit can be extended by the local authority for a maximum of a further 12 months, if the claimant applies in writing for an extension of time setting out particulars of the grounds on which it is sought, and satisfies the local authority that:
 - it is reasonable to extend time;
 - the application has merit;
 - there are special circumstances relevant to the application as a result of which it was not practicable for the application to be made in time.
8. In deciding reasonableness the local authority cannot take into account any ignorance or misunderstanding of the Regulations. Government advice is that a council should firstly consider the request to see if it can revise the decision. If the council does not revise the decision in the claimant's favour, then it should pass the request to the Appeals Service, an independent tribunal service.
9. In February 2004 the Local Government Ombudsman published a special report which, among other things, recommended that councils should establish a system which identifies and gives special priority to those benefit cases where there are particularly difficult personal circumstances, such as a threat of eviction to the claimant. I also recommended that councils should ensure that the housing benefit and housing departments liaise where there is an outstanding appeal by a council tenant.

Eviction

10. Most council tenants have secure tenancy agreements, so a council can only evict them in certain specified circumstances, including where the tenant has rent arrears. Eviction on these grounds is at the discretion of the County Court. The council begins eviction proceedings by sending the tenant a Notice of Seeking Possession, which explains the grounds on which the eviction is sought. The Notice will set a date, at least four weeks in advance, when the council can apply to Court for a possession order. If the council does this, the Court has the discretion to make an outright possession order, or suspend such an order on terms (for example, on condition that the tenant reduces arrears by weekly repayments).

Homelessness

11. When someone makes enquiries as homeless the council has a duty to make immediate enquiries in all cases to ascertain whether there is a duty to the applicant under Part VII of the Housing Act 1996 (as amended). Councils do not need to wait for a formal homelessness application at any particular point in time to trigger their homelessness responsibilities. If it appears that an applicant is homeless and in priority need then temporary accommodation is to be provided. Enquiries into priority need must always be carried out where there is reason to believe that an applicant is homeless or threatened with homelessness. Dependant children under 16 are a relevant consideration. The council's duty towards those presenting as homeless includes the provision of interim accommodation under S188 of the Housing Act 1996 (as amended) where necessary, while enquiries are being made. This may include bed and breakfast accommodation.
12. Various categories of applicant have a priority need for accommodation. These include people who are vulnerable as a result of old age, mental illness or handicap, or physical disability, or other special reason. The critical test of vulnerability is whether, when homeless, the applicant would be 'less able to fend for oneself so that injury or detriment will result where a less vulnerable person will be able to cope without harmful effects.' The Homelessness Code of Guidance suggests that, when considering vulnerability due to mental or physical illness or disability, councils should have regard to medical advice and, where appropriate, seek social services advice. The Code also states that when considering vulnerability, authorities will need to take account of all relevant factors, including the relationship between the illness and/or disability and other factors such as challenging behaviours. In addition, an applicant may be considered vulnerable for any 'other special reason' because of a combination of factors which taken alone may not necessarily lead to a decision that they are vulnerable.
13. The Courts have held that when medical evidence is put before a housing authority, the authority ought either to accept it or make its own further enquiries. The Code of Guidance states that housing authorities should have regard to any medical advice or social services advice obtained, but the final decision on the question of vulnerability will rest with the housing authority. The Code suggests that in deciding whether an applicant is vulnerable, the housing authority may wish to take into account:
 - The nature and extent of the illness or disability which may render the applicant vulnerable; and
 - The relationship between the illness or disability and the individual's housing difficulties.

Welfare of children

14. The Children Act 1989 S17(1) places a general duty on every local authority:
 - to safeguard and promote the welfare of children within its area who are in need; and
 - so far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.
15. Families with children who have been found intentionally homeless will not be owed a main homelessness duty even if the applicant is in priority need. But if homelessness persists, any child in the family could be in need and the family could seek assistance from social services. So the housing authority should make social services aware of the case at an early stage. Where the family are found to be intentionally homeless by the housing authority, and social services decide the child's needs would best be met by helping the family to obtain accommodation, social services can ask the housing authority for reasonable assistance and the housing authority must respond.

Investigation

Background

16. Ms Salt became a Council tenant in November 1999. She had rent arrears within the first few months and the Council issued a Notice of Seeking Possession in March 2000 when her arrears were just over £350. She never succeeded in clearing the arrears and the Council was awarded a suspended possession order on terms in December 2002.
17. The Council applied for an eviction warrant in January 2003 when the arrears had reached over £1,000 and this was withdrawn when Ms Salt made a payment of £700 and agreed to a payment plan and to modify her behaviour. But she did not keep to the weekly payments after paying the lump sum and the Council applied again for an eviction warrant in June 2004, when her arrears were at £1,600. The Council withdrew this in July 2004 when Ms Salt paid a lump sum of £600 and made a new weekly agreement. The Council again considered eviction in 2005 and carried out an eviction interview in April 2005, when her arrears were £845. Ms Salt paid £250 towards the arrears and the Council withdrew its application for an eviction warrant.
18. Ms Salt suffers from depression, which is controlled by medication except during pregnancy. She attempted suicide in January 2005 and Housing noted that a referral to Adult Mental Health Services might be appropriate in April 2005. Ms Salt was hospitalised in June 2005, and in response to this Housing referred her to the Money Advice Service at Luton Citizens Advice

Bureau. Until approximately 2006 she was a victim of domestic abuse. She reported incidents to the police and to Housing, and Social Services were aware of the situation when she was expecting her first child in 2006.

19. Ms Salt's housing file is a 'red dot' file, which means that Housing staff will not visit her unaccompanied. Several incidents of abusive and threatening behaviour have been recorded by Council staff and contractors. Housing officers considered applying to evict her because of her behaviour in 2003 and 2004. In March 2006 the Area Housing Manager barred her from attending the housing office for a period of two months, as a result of her behaviour. In February 2007 the Council obtained a County Court injunction against Ms Salt forbidding her from using or threatening violence and from acting in a threatening or abusive or insulting way in the housing office and the area around her home. The injunction also forbade her from preventing or obstructing work by the Council at the block of flats in which she resided.

Overpayment of benefit

20. In 2005, Ms Salt was at times on Job Seeker's Allowance (JSA) or Incapacity Benefit (IB), and for a short while was in employment. She did not always inform the Council herself of changes in her circumstances as they occurred. She says that this was because she completed cards at the Job Centre which she was told would be forwarded to the Council on her behalf. In August 2005, Housing informed Benefits that Ms Salt was working, and Benefits issued a change of circumstances form on 3 August 2005. Ms Salt does not remember receiving this and did not return it, and on 29 September 2005, the Council decided that Ms Salt had been overpaid benefit during the period 28 March 2005 to 1 August 2005, the overpayment totalling £904. Ms Salt's rent arrears at this point were £388.72 and she was at that time receiving support in managing her finances from an outreach worker, as a result of a referral from Housing.
21. The Council did not add the benefit overpayment to Ms Salt's rent account. It arranged to recover the overpayment by reducing her housing benefit, which meant that she had to pay more rent every week. Ms Salt did not appeal against the calculation of the overpayment. She made a new benefit claim in December and added a note to the claim form saying that she disputed the overpayment.
22. Ms Salt telephoned the Council about this in January 2006. The Council responded by asking her for proof of her income during the period of overpayment, so that it could check whether she had had an underlying entitlement to benefit. Ms Salt complained in writing on 6 March 2006 and provided copies of letters sent to her by the Council, which referred to her receipt of benefit. The Council says that it replied to her complaint on 20 March 2006, explaining how it had calculated the overpayment, and giving her a fresh set of appeal rights from this date.

23. Ms Salt phoned Benefits on 23 March 2006. Officers advised her to provide proof of her income and capital for the period of overpayment, and suggested that she applied to Court for a delay in proceedings. Ms Salt refused to provide more information and said that she would see the Council in Court.

Application for eviction

24. The Council had again applied for a warrant for eviction in February 2006, when Ms Salt's arrears were £841. The Court set this aside on terms in March 2006 and Ms Salt says she referred in Court to her current appeal against the recovery of the overpayment. The Judge ordered that Ms Salt could make no further applications to suspend the warrant without the Court's permission. The Council noted on her housing file at this time that she was vulnerable.
25. The Council applied for a warrant of eviction again in May 2006. Ms Salt again applied to suspend the warrant and her application was heard on 19 June 2006. At the hearing Ms Salt confirmed that she was six months pregnant, and had been told that the overpayment of benefit was incorrect, but had not been able to make progress in appealing against it. The Council did not oppose her application and the Court set aside the warrant.
26. In May 2006 Ms Salt's midwife contacted Social Services as she was concerned about how Ms Salt would cope after the birth of her baby. Social Services met Ms Salt for a pre-birth assessment in July 2006 and identified housing issues and financial problems. During a home visit on 17 July 2006 the social worker undertook to discuss this with Housing. The Council has no record that this took place. Social Services did not conclude its assessment because of Ms Salt's aggressive behaviour towards staff.
27. Ms Salt's baby was born in September 2006. Her rent arrears had increased to £852 and the Council sent her another written warning of eviction on 22 September 2006. File notes show that in November 2006 her rent arrears were £819, and the overpayment was reduced to £515. Ms Salt asked the Council if she could reduce the amount of overpaid benefit she was repaying each week. On 14 December 2006, the Council said that it would not do this, and she should write within one month if she disagreed with this decision. Ms Salt approached an independent advice service, who wrote to the Council on her behalf on 11 January 2007. The Council confirmed its decision.
28. The Council wrote to Ms Salt again in January 2007, following a reassessment of her benefit entitlement. Her arrears now amounted to £874, and to supplement her housing benefit she would need to pay a minimum of £20.42 rent each week.
29. In January 2007 Social Services held a child protection conference to consider Ms Salt's daughter's welfare and concluded that Social Services no longer needed to be involved, as Ms Salt seemed to be caring well for her baby. The

meeting agreed that the social worker should write to Housing requesting a housing transfer as soon as possible. He did so on 4 January 2007 and wrote again on 9 January 2007 to clarify that the primary reason for requesting a transfer was the domestic abuse she had previously suffered from her ex-partner. The same month, Ms Salt's health visitor wrote to Housing, asking the Council to consider an urgent housing transfer. Housing did not consider that Ms Salt's housing conditions warranted a transfer and in any case she was in breach of a Possession order and had not submitted an application for a transfer. Housing did send Ms Salt an application form following a conversation with the social worker, but Ms Salt did not return it.

30. The Council had also discovered during a routine data-match check that Ms Salt was receiving child tax credits which she had not declared to Benefits. The Council wrote to Ms Salt about this, inviting her to attend an interview under caution. Ms Salt engaged a solicitor to represent her and asked for more written information, which the Council sent to her solicitor. She did not attend the interview and the Council did not pursue the matter.

Reconsideration of benefit overpayment

31. Ms Salt still believed that the overpayment from 2005 was incorrect. So the advice service wrote to the Council again on 6 February 2007 and asked it to reconsider the overpayment. The advice service said that Department of Work and Pensions (DWP) staff at the Job Centre had said they would inform the Council of her changes of circumstances during the period of overpayment, and that recovery of the overpayment was causing severe hardship.
32. This application for review was out of time but the Council put it into a queue for reconsideration. At about the same time, the Council applied again for a further warrant for eviction on grounds of arrears. Ms Salt applied for the warrant to be set aside and the Court did so in March 2007. The Council wrote to Ms Salt on 10 May 2007 warning her of eviction on grounds of arrears, and asking her to contact the Council within seven days. Ms Salt attempted to do this. She says that officers did not return her calls; the Council's records indicate that officers tried but were unable to make contact.
33. Officers also had concerns about Ms Salt's history of aggressive behaviour towards staff and referred to these on the final eviction form. The Council applied for a warrant for eviction on grounds of arrears again in May 2007 and wrote to Ms Salt on 1 June 2007 telling her that the Court bailiff would notify her of the time and date of eviction. Ms Salt says that she did not receive this letter, although she did receive the letter from the Court bailiff a fortnight later. She did not apply to Court for the warrant to be set aside as she had done previously, so the warrant was executed. At this point, her rent arrears were around £900, and the balance of benefit overpayment still to be recovered was approximately £525.

34. Ms Salt wrote to Benefits confirming that she had started work on 24 April 2007. The Council received this letter on 4 June 2007 and cancelled her housing benefit claim with effect from 30 April, 2007 with a four-week run-on of benefit.
35. Housing officers checked the housing benefit computer system and found that Ms Salt was not currently claiming benefit. The computer system did not show that the Council had received a request for consideration of the recovery of benefit overpayment. The Council wrote to Ms Salt on 21 June, 2007 when her arrears were just over £800, confirming the date of the eviction. The Council evicted Ms Salt on 2 July 2007 and put her possessions into storage.
36. Ms Salt visited the Homelessness unit with her health visitor later that day and provided information about her circumstances. As she was able to stay with a friend for that night, the Council told her to return the following day. When she did so, the Council offered her bed and breakfast accommodation for 28 days while it assessed her circumstances. Ms Salt did not want to stay in bed and breakfast accommodation because she felt this would make her depression worse, and she did not think it was appropriate accommodation for her young child. So she refused the offer.
37. Ms Salt and her child slept in Ms Salt's car for a time before staying temporarily with her child's father, who had previously subjected Ms Salt to domestic abuse. Ms Salt found private accommodation in late August 2007. This was subsequently flooded and in October 2007 she contacted the Council's Social Services team about her imminent homelessness. Social Services advised her to contact the Homelessness unit and took no further action. Ms Salt then stayed with friends in Stevenage, commuting to work in Luton. From January to May 2008 she stayed at her mother's house, sharing a bed with her young daughter. When she had to leave, the Council provided temporary accommodation while it considered a new homelessness application.

Refund of overpayment

38. On 11 July 2007 the Council carried out the review of the overpayment that Ms Salt had requested in January 2007. It checked DWP records and discovered that Ms Salt had been awarded Incapacity Benefit for the whole of the overpayment period at some point since the Council had last reviewed the overpayment in September 2005. This meant that she had an underlying entitlement to housing benefit during that period.
39. The entitlement to benefit for the period was £904 (the same amount, to within a few pence, as the overpayment). The Council deducted the benefit which Ms Salt had already repaid, and credited her rent account with the balance. In total £525 was credited to her rent account, which reduced her rent arrears to £376.

40. Ms Salt's health visitor wrote to the Council on 24 July 2007. She felt that the eviction could have been avoided had there been better communication between Housing and Benefits, and asked the Council to provide permanent housing for Ms Salt and her daughter. There is no record of the Council's response.
41. The Council concedes that the Court may have again suspended the warrant had it been aware that the payment was imminent. But it maintains that although the level of arrears at which the Council will evict is normally considerably higher than £400, had Ms Salt again applied to set aside the warrant it might well have opposed that application because:
- she had been in arrears for many years;
 - she had failed to make the repayments ordered at her numerous previous applications to suspend; and
 - she had a history of aggressive behaviour towards officers, contractors and people in her locality.
42. The Council says that it was willing to co-operate with Ms Salt, but she did not reciprocate, and so should take some responsibility for the situation in which she found herself. It maintains that it is highly unusual for a tenant to make so many applications to suspend a warrant for possession. Further the Council's view is that given her record of failing to make repayments over many years and her aggressive behaviour it was inevitable that she would be evicted at some point.
43. Officers from Benefits said that between October 2005 and June 2007 the Council sent Ms Salt 39 letters about the recovery of the overpayment, all of which referred to her appeal rights, and she did not appeal. They also said that Ms Salt did not inform the Council of changes in her circumstances as she was required to do, and that some of these changes, such as the birth of her child and the award of Incapacity Benefit, would not routinely be notified to the Council by another body such as DWP. Ms Salt says that the Council did know about these changes, and although she did not specifically inform Benefits it was reasonable to expect the Council's departments to exchange information.
44. Under the Council's allocation policy the Council will not normally make an offer of permanent accommodation until an arrangement has been made to pay off the arrears from her previous tenancy. In May 2008 the Council accepted the full duty to Ms Salt under homelessness legislation and since then she has been living in a house provided as temporary accommodation by the Council.

Conclusions

45. The Council incorrectly filed on its computer system Ms Salt's application to review its decision about her housing benefit. That was maladministration. Had the Council properly recorded this information, the Housing team would have discovered that a benefit review decision was pending when it did its final cross-check prior to eviction. And this should have prevented the eviction from taking place on grounds of rent arrears.
46. The Council also delayed from January to July 2007 in reviewing its decision about Ms Salt's housing benefit, and this delay was maladministration. So Ms Salt continued to repay the overpaid benefit and this caused her arrears to increase further, to a level where Housing decided that enough was enough and she should be evicted. I accept that Ms Salt would probably still have had some arrears in July 2007 if the Council had reviewed its decision earlier. But on balance I believe that she would not have been evicted simply for arrears at this level. And Ms Salt was at last in settled employment with a regular income, so the Council was more likely to recover the arrears by keeping her as a tenant than it was by evicting her.
47. The Council says that it would still have evicted Ms Salt, regardless of her level of arrears, because of her unacceptable behaviour towards officers. It is clear that officers had previously considered doing this, and officer concerns about her previous behaviour are recorded on the final eviction form. But the Council had taken alternative action to ensure she modified her behaviour by serving an injunction on her, and this seems to have been effective. The Council would have found it difficult to obtain an eviction on grounds of unacceptable behaviour, without evidence of new incidents since it had taken out the injunction.
48. Most significantly, I have seen no evidence that the Council weighed in the balance Ms Salt's vulnerability, its statutory duty towards children and families, or the concerns of its own social services staff and medical professionals about her housing situation, when taking its decision to evict her for rent arrears. Ms Salt's depression, and her experiences as a victim of domestic violence, mean that she is a vulnerable woman whose housing circumstances are vitally important to her own welfare and that of her young child. In these circumstances the Council should have considered whether it could reasonably take steps to assist Ms Salt to overcome her debt problems; had it done so it would have uncovered her underlying entitlement to housing benefit. I do not consider that the Council did enough here and in the particular circumstances of Ms Salt's vulnerability that was service failure by the Council.
49. The Council says that it was willing to co-operate with Ms Salt, but she did not reciprocate, and so should take some responsibility for the situation in which she found herself. Certainly Ms Salt had a history of arrears, did not always

inform the Council of her changes of circumstances, at times behaved unacceptably towards staff, and did not make a clear and timely appeal against the benefit overpayment. But that does not mean that the eviction was all her own fault. If the Council had properly recorded her request to review the benefit overpayment, and if the Council had properly considered her own vulnerability and the welfare of her young daughter, I consider that on balance Ms Salt would not have been evicted.

50. I accept that Ms Salt chose to stay with friends, sleep rough, and even return to her former partner, rather than take up the Council's offer of temporary accommodation in the immediate aftermath of the eviction. But this was a choice that, had things gone as they should have done, she should never have had to make. Ms Salt did not consider herself to be in settled accommodation again until May 2008, some ten months after the eviction. Yet if the Council had acted with proper consideration of all the circumstances she would almost certainly have remained in her original home for all of that time, and might well have been in a position to apply for a transfer to better accommodation. So the injustice caused to Ms Salt by the Council's maladministration was significant.

Finding

51. For the reasons I have given in paragraphs 45, 46 and 48 I find maladministration by the Council causing the injustice I describe in paragraph 50.
52. To remedy the injustice to Ms Salt I recommend that the Council should apologise and pay her compensation of £5,000, to be offset against any outstanding rent arrears or other debts to the Council if necessary.

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