

The Ombudsman's final decision:

- a) the Council did not unreasonably delay submitting the appeals to the Tribunal, but its communications about this could have been clearer;
 - b) the Council did not unreasonably pursue recovery of benefits or cause a significant injustice to Mr Z, although there were shortcomings I have identified;
 - c) I should not investigate the complaint about general mismanagement further as this would require further consideration of evidence before the Tribunal which is outside the Ombudsman's jurisdiction and would not achieve more for Mr Z.
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The complaint

1. Mr Z complained that Stoke on Trent City Council treated him unfairly in relation to his claims for council tax benefit and in its attempted collection of council tax, in particular that the Council:
 - a) delayed referring his request for an appeal to the Tribunal Service,
 - b) failed to apply the law in its decision making,
 - c) pursued non-payment when an appeal was outstanding knowing he was away,
 - d) failed to take appropriate care of his personal information,
 - e) showed general mismanagement and lack of policy which led to comments by the Tribunal Service in its decision,
 - f) failed to consider his disability when the Tribunal hearing venue was changed.

What I have investigated

2. I have investigated:
 - a) Complaint 1a) as the Tribunal did not consider these administrative actions.
 - b) Complaint 1c) as it relates to debt recovery through the courts.
 - c) Complaint 1e) what consideration the Council has given to the Tribunal decision in terms of its policies and practices as the judge was critical of the Council's consideration of evidence and its actions in a number of respects.
3. The final section of this statement contains my reasons for not investigating the rest of the complaint.

The Ombudsman's role and powers

4. The Ombudsman's role is to consider complaints of service failure and maladministration causing injustice. The Ombudsman must consider whether the council has acted reasonably in accordance with the law, its own policies and

generally accepted standards of local administration. Where a council has acted with maladministration, the Ombudsman considers whether injustice has arisen, and any appropriate remedy for that injustice.

How I considered this complaint

5. As part of the investigation, I have:
 - a) considered the complaint and the documents provided by Mr Z and discussed the issues with him,
 - b) made enquiries of the Council and considered the comments and documents the Council provided;
 - c) spoken to Customer Services at the Tribunal.

What I found

What happened

6. Mr Z, an accountant, made claims for housing and council tax benefit between 2000 and December 2008. The Council interviewed Mr Z under caution in November 2009. Its fraud team sought to interview his parents but accepted this was not necessary following a solicitor's letter.
7. In March 2010 Mr Z was sent a bill by the Council for his annual council tax. This set out what was due assuming Mr Z was entitled to council tax benefit for the period 2000 to 2008.
8. In May 2010 the Council cancelled Mr Z's earlier housing and council tax benefit claims for the period 2000 to 2008 on the basis of "non-commerciality" in relation to his dealings with companies set up to manage properties owned by his parents, one of which he was a tenant of. The Council issued a revised council tax bill for the full amount excluding benefit.
9. Mr Z asked to appeal the Council's decisions for both benefits on 18 May. Mr Z asked for important documents not to be sent to him on 7 June as he was going away until at least 20 July. The Council said on 28 June that its appeal submission would take time as the matter was complex. The Council again tried to contact Mr Z's parents and he asked it to stop doing so on 7 July. On 9 July the Council's investigations officer sought further documents and Mr Z sent a number of these on 28 July. In June and July 2010 the Council also sent Mr Z an invoice for housing benefit overpayment of over £23,000, and threatened court proceedings. The Council then took no enforcement action to recover the overpaid housing benefit.
10. On 12 July 2010 the Council issued a reminder for non-payment of the council tax instalment due. Mr Z paid the council tax in full for the current year but disputed the arrears created by the removal of earlier benefits. On 9 August 2010 the Council issued a summons for non-payment of council tax.
11. The Council realised its decision about "non-commerciality" was incorrect in relation to council tax benefit only. It revised that decision to take account of Mr Z's excess capital. The Council says its revision of the council tax decision was sent to Mr Z on 12 August 2010 but this was returned from his address, so the Council sent it to Mr Z's parents' address. Mr Z says that neither he nor his solicitor received this letter. Although Mr Z had instructed solicitors I have seen no evidence the Council was told to deal with them in August.

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12. On 16 August 2010 the Council revised the court summons amount due to take account of the payment Mr Z had made and its revised decision which allowed him some council tax benefit. It obtained a liability order on 1 September 2010.
 13. Mr Z was given new appeal rights for the council tax benefit decision with the Council's further letter of 13 September 2010. This letter said its earlier letter had been returned marked gone away, it said Mr Z's appeal relating to housing benefit would now be sent now and asked if he intended to appeal the revised council tax benefit decision so that documents for this could be included with the housing benefit appeal. Mr Z asked the Council to write to his solicitors on 16 September. The Council put recovery action for the Council tax on hold then. Mr Z appealed the revised decision on 1 October 2010. On 7 October the investigating officer sought the remainder of documents he had asked for in June. Mr Z said he checked with the investigating officer that all documents were supplied by 1 November 2010. The Council submitted both appeals to the Tribunal Service on 4 November 2010. It asked again for documents it said Mr Z had not supplied.
 14. Mr Z had asked for the Tribunal in Birmingham to hear his appeal because of his disability which it did in January 2011. The form did not require him to supply medical evidence. In March the Tribunal Service sent a hearing date in Stoke on Trent. A customer service officer of the Tribunal has told me that its usual practice for housing benefit appeals, where a Council's presenting officer intends to attend, is to list the hearing at a venue where the Council is. As there was an initial conflict a judge decided that it should be listed in Stoke on Trent. Mr Z's solicitor's request for an adjournment was refused. The Tribunal Service administrative staff told Mr Z's solicitor that the administrative staff could not alter the venue (which was a judge's decision).
 15. At the hearing in April the judge decided for other reasons to adjourn the matter. In November 2011 the Tribunal in Birmingham decided that Mr Z did not have capital nor was there evidence of non commerciality that would disentitle him to the benefits paid between 2000 and 2008. Mr Z complained after the decision.
 16. In response to my enquiries the Council said about delay: benefit decisions based around commerciality were complex. The benefits decisions were linked with the fraud investigation that was ongoing and Mr Z had made attempts to stop the Council speaking to his parents about commerciality, but no further information came to light so the appeals were submitted to the Tribunal. It said it would not have been practical to go ahead with the housing benefit appeal separately and had two separate Tribunal hearings. The Council said about enforcement that it acknowledged it should not have sent reminders for the housing benefit overpayment once Mr Z had appealed this but put the matter on hold until a decision was reached. For council tax it said it had no specific enforcement procedures as it used the options the law permitted as appropriate. It explained that legal action was not unlawful if an appeal had been made. The Council elected to obtain a liability order then put the matter on hold.
 17. The Council made a number of comments about what the Tribunal judge had said. It said although the judge said its papers were confused there was a large number of documents to put into a submission, which also supported the delay. Although the judge accepted the evidence of a witness for Mr Z and facts on the forms he had submitted, the Council had sufficient doubt when it reached its decisions but now accepted the Tribunal decision. It considered it had made a handful of mistakes that could occur on any claim. It did not propose and did not appear to have implemented any procedural changes.

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18. In response Mr Z said the Council should have had sufficient information to submit an appeal because it had reached benefit decisions with evidence it had then. He said the investigations officer told him the fraud investigation ceased once the appeal was made and that this officer was satisfied it was not necessary to speak with his parents in 2009. He said the Council still sought information right up to the point of submission. He said the Council had not shown clearly in its response that those responsible for collection had been aware of his appeals and made informed decisions. He pointed out that the majority of the papers filed at the Tribunal were submitted by him after the Council submission and that the judge had faulted the six page submission the Council had made. He said the Council had ignored the judge's reference to its deliberate misrepresentation of facts to the Tribunal. Mr Z was disappointed that the Council had found no reason for practical improvements following the judgement. He considered the Council had avoided some of my questions about process.

What should have happened

19. The Ombudsman considers it good practice for Councils to submit appeal requests to the Tribunal within four weeks. Regulations do not require this although Mr Z refers to a Tribunal case where it was considered a requirement. The Ombudsman's focus report considers it is poor practice to seek additional information at a late stage.
20. The Ombudsman considers it good practice for Councils to have procedures to assess the appropriateness of using bankruptcy to enforce collection. The Ombudsman's focus report sets out factors a council should consider. It states that it is likely that maladministration will be found if a Council has no Debt Recovery Policy to address the more draconian enforcement measures and to demonstrate compliance with equality legislation. The Council has provided copies of its policies adopted in March 2012.

Analysis of fault and injustice

21. We consider Councils should submit benefit appeals to the Tribunal in four weeks. Here there were two benefits, one received a revised decision, and the Council wished to know if Mr Z intended to appeal that decision before it could submit an appeal for that revised decision. Although the Council could have submitted the appeal for housing benefit alone it was not utterly unreasonable to submit the two together in my view. An amount of the evidence would be the same and the advantages of having only one hearing applied for Mr Z as well as the Council.
22. The Council's letter in September 2010 indicated it was going to submit the housing benefit appeal but also suggested that Mr Z should say if he intended to appeal the revised decision so that matters could proceed together. The Council could have been clear about its intentions as Mr Z and his solicitor expected the housing benefit appeal to proceed then. If they had known what the Council intended they could have put their view against this if they wished.
23. The Council took five weeks to submit the appeals to the Tribunal after Mr Z had submitted his appeal to the revised decision. I do not consider the further week to amount to an unreasonable delay. Although it was not good practice for the Council to be pursuing further information through fraud investigation or letters at a late stage, I do not consider this altered Mr Z's position so as to cause a significant injustice to him because I have not found that this caused delay.
24. With regard to recovery action, the Council issued several letters to recover the housing benefit overpayment but took no further action. So Mr Z did not suffer

significant injustice as the Council effectively informed him of the amount it considered due, subject to an appeal.

25. For council tax the Council followed an automated process through to issuing the summons. Although Mr Z had said he was going away, he wrote to the Council during that period asking the Council to stop contacting his parents. It was not unreasonable for the Council to write to Mr Z at his home address to collect outstanding council tax in these circumstances because it was his last known address. The Council said correctly that it is not obliged to stop enforcement when an appeal is made. Although Mr Z did not receive the revised decision he was notified and the Council's reliance on this decision for its enforcement process is not unreasonable.
26. Officers must have been involved in the recalculation before the liability order was sought. The Council halted recovery action after it obtained the liability order. I have asked who reached enforcement decisions but the Council did not answer. The Council said it had no debt recovery policy. It has recently clarified that it has a policy but that the use of enforcement when an appeal has been made is considered on a case by case basis. It has shown that when significant enforcement might occur additional authorisation is required. Its policy indicates that other legislative requirements have been considered. The Council's policies were approved by Cabinet after the events in this case so the Ombudsman does not need to suggest a remedy about policy now.
27. The judge criticised a confused submission by the Council. She found deliberate misrepresentation had occurred and that what Mr Z said before the appeal had not been properly considered. The Council considers its officers are appropriately experienced and that this was a particularly difficult matter. In questioning how the Council learned lessons from the Tribunal judge's decision, I cannot go behind that judgement to the evidence, as the Ombudsman has no jurisdiction to do so. I do not consider I could achieve more in pursuing this aspect of the complaint further as it is for the Council to manage its appeals officers and to have due regard to the judgements that are made against it.
28. In response to my provisional view Mr Z made a number of comments. I have altered facts and analysis to reflect those where appropriate. He said
 - a) The Council took 12 weeks to revise the Council Tax decision. But Mr Z had said he would be unavailable for a significant part of that period so I do not consider the period the decision took caused him a significant injustice.
 - b) The Ombudsman appeared to consider it reasonable for Council's to continue with enforcement despite an appeal being in progress. As the law permits this it is not unreasonable for the Council to decide to do so.
 - c) The Council has not proven it had a debt recovery policy at the time relevant to the complaint. But it has provided a draft one now, and Mr Z was not subject to draconian recovery processes.
 - d) He wished to know who was responsible for investigating the Council's internal procedures into deliberate misrepresentation by officers in the course of their work. I previously stated that this was a matter for the Council.
 - e) The Council should be encouraged to adopt its draft enforcement policy. I agree and will ask the Council to provide a copy of the adopted policy to Mr Z and to the Ombudsman within three months.

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- f) He had seen no evidence of the Council actively complying with the Disability Equality Duty. The Ombudsman does not advise about a Council's general policy in the absence of specific fault and injustice. Mr Z can approach the Equalities Commission if he has general concerns or about good practice.

Agreed action

29. That the Council apologises to Mr Z for its unclear communication as to when it would submit his housing benefit appeal, as described in paragraph 22, and for continuing to seek investigation at a late stage as described in paragraph 23.

Decision

30. I conclude that:
- a) The Council did not unreasonably delay submitting the appeals to the Tribunal, but its communication about this could have been clearer and it should not have continued to investigate at a late stage;
 - b) The Council did not unreasonably pursue recovery of benefits or cause a significant injustice to Mr Z, although there were shortcomings I have identified;
 - c) I should not investigate the complaint about general mismanagement further as this would require further consideration of evidence before the Tribunal which is outside the Ombudsman's jurisdiction and would not achieve more for Mr Z.

Parts of the complaint that I did not investigate

31. Complaint b) relates to the matters which were either before the Tribunal or are not severable from the issues considered by the Tribunal. The Ombudsman cannot investigate a complaint if someone has appealed to a tribunal. Mr Z has done so. (Local Government Act 1974, section 26(6)a).
32. Complaint d) relates to the Council's actions in connection with information about or provided by Mr Z. The Ombudsman normally expects someone to complain to the Information Commissioner if they have a complaint about data protection. Mr Z has made complaints to the Information Commissioner so the Ombudsman cannot consider this issue further. (Local Government Act 1974, section 24a)).
33. Complaint f) relates to Mr Z's concerns that the Council did not properly take account of his disability when seeking the hearing. I have established the hearing venue is determined by the Tribunal Service which has a usual process when a Council intends to send a representative to a housing benefit appeal. I cannot investigate this issue further as the Tribunal Service is not a body within the Ombudsman's jurisdiction (Local Government Act section 25).