

Complaint reference:
14 012 705

Complaint against:
Gloucester City Council

The Ombudsman's final decision

Summary: I find there was fault by the Council because it delayed paying housing and council tax support to Mr Y for 6 months. This led to council tax recovery action and added costs. The Council has agreed to pay Mr Y £200.

The complaint

1. The complainant whom I shall refer to as Mr Y complains the Council delayed implementing a Tribunal decision regarding his housing and council tax benefit in December 2013 until January 2014. During this time the Council took recovery action for council tax arrears.

What I have investigated

2. I have investigated the Council actions from December 2013 when The Tribunal Service upheld Mr Y's appeal. I cannot investigate the matters subject to Mr Y's appeal and I do not consider I should investigate the new issues that he can appeal about. I have explained why in paragraphs 27 -29.

The Ombudsman's role and powers

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*).

How I considered this complaint

4. I have
 - considered the complaint and the copy correspondence provided by the complainant;
 - made enquiries of the Council and considered the comments and documents the Council provided;
 - discussed the issues with the complainant and invited his comments.

What I found

5. Mr Y first claimed housing and council tax benefit as a single person in January 2012.

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6. The Council refused to pay Mr Y housing benefit on 6 June 2012 because it said his tenancy was not commercial. Mr Y appealed to The Social Entitlement Chamber (also known as the Social Security Appeal Tribunal). This is a tribunal that considers housing benefit appeals.
 7. In September 2013 the Council received a notification from the Department of Work and Pensions (DWP). This confirmed Mr and Mrs Y were entitled to Pension Credit as a couple from 31 May 2013.
 8. The Tribunal upheld Mr Y's appeal on 5 December 2013.
 9. The Council says accepted the Tribunal's decision. But in order to pay housing benefit it needed to assess his income. The Council wrote to Mr Y on 10 December 2013 and asked for further information and evidence. This included a question regarding when Mrs Y moved in. Mr Y provided some information but the Council says it was not complete. Mr Y stated that Mrs Y had never moved into the property he was claiming for.
 10. The Council wrote again to Mr Y on 2 January 2014 and asked why he was claiming pension credit as a joint claim with his wife. It also asked for other evidence. Mr Y replied on 2 February 2014 that when he claimed pension credit he did not realise it was a joint claim with his wife. He said that the DWP may have made an assumption.
 11. The Council wrote to Mr Y again on 10 February 2014 and asked many questions regarding his rent, income and savings and requested evidence. It also asked about his wife. It said he stated his wife did not live with him, but he was receiving Pension Credit as a couple. It asked him when he separated from his wife and where she was living. Mr Y replied on 7 March 2014 and asked why the Council was asking so many questions and what right it had to ask. He said he had told the Council several times she lived elsewhere.
 12. On 13 March 2014 the Council wrote to Mr Y and explained that as he had not provided the information it requested it had cancelled his claim. It said that if he provided the required information within one month it would reopen his claim. The Council explained that it spoken to him by telephone and had discussed each item and advised what information was required. The Council gave Mr Y appeal information regarding its decision.
 13. Mr Y made a further claim on 21 March 2014. Once again the Council requested further information and evidence to support his claim. The Council cancelled his claim on 22 April 2013.
 14. Mr Y complained by email on 26 April 2014. He said that the Council was negligent and should pay housing benefit from May 2012 in line with the Tribunal's decision. He said he received pension credit and so his claim for housing benefit should be paid by the Council without further question. He said he would claim compensation from the Council for the damage to his health and the stress caused by bailiff visits.
 15. The Council replied on 10 June 2014. It said that it needed the further information requested and this was a separate issue to the Tribunal's decision which was about the non commerciality of his tenancy. The Council said with regard to pension credit, while it meant a claimant was entitled to housing and council tax benefit, in his case there were issues because his wife did not live with him but he claimed pension credit jointly with her. Mr Y had not answered the Council's questions about this.

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16. On 4 July 2014 the Council received a notification letter from the DWP which confirmed that Mr Y was entitled to Pension Credit and that his wife was no longer counted as part of his claim from the start. The Council did not act on this notification which meant that Mr Y was entitled to full housing benefit and council tax support because the Council did not need any further information about his income or capital. The Council should have assessed his housing benefit and council tax support.
 17. On 22 November 2014 Mr Y said he was making a complaint to the Ombudsman about the Council's failure to implement the Tribunal's decision on his appeal. He said he had complained about this many times. He said that the Council accused him of still being a company director, but it had no evidence. The tribunal awarded benefit from May 2012. However, since the hearing a year ago the Council had ignored tribunal's decision.
 18. In January 2015 the Council recognised it should have assessed Mr Y's housing and council tax support when it received the pension credit notification letter from the DWP. The Council apologised for its delay and on 9 January paid £7930 housing benefit to Mr Y for the period from 3 June 2013. The Council explained Mr Y's claim was complex and there was a large amount of correspondence. The Council said that throughout the period December 2013 to July 2014 the Council did not have sufficient information to assess Mr Y's claim. But in July 2014 it had received the DWP notification and it could have assessed his claim. The Council confirmed it had revised Mr Y's council tax support claim, but he was still liable for 2010 to 2014. The Council accepted that it should have treated his email of 26 April 2014 as a complaint and responded according to its procedure. It apologised for this. The Council said it had discussed the error regarding the handling of his complaint with managers and it would consider changing its processes to improve its service.
 19. During the period July 2014 to January 2015 the Council took recovery action against Mr Y for council tax arrears for the year 2014/15. It sent the council tax account to its enforcement agent. The agent sent a notice of enforcement to Mr Y, saying that it would visit to take goods to pay the outstanding arrears.

Analysis

20. There was fault by the Council because it delayed paying Mr Y's claim after it received pension credit proof in July 2014. The Council did not need further evidence regarding his income from July, because pension credit "passported" him onto housing benefit and council tax support. I consider the Council should have made payment within one month of receiving the notification from the DWP. Therefore there was an avoidable delay of five months.
21. The Council took recovery action for Council tax arrears for 2014/15, while it had sufficient evidence to pay Council tax support from July 2014. Therefore there was fault by the Council in sending the debt to its enforcement agent who sent an enforcement letter to Mr Y on 28 July 2014. The recovery action by the enforcement agent caused distress to Mr Y.
22. There was fault by the Council in not recognising Mr Y's complaint of April 2014. However the Council did respond to the substantive issues raised in his letter in June 2014. The Council also apologised for failing to recognise the complaint when it responded in December 2014.
23. I have considered whether there was fault by the Council between December 2013 and July 2014 regarding its requests for evidence and information. While the

tribunal upheld Mr Y's appeal, the Council was required to assess his income and circumstances before making payment. I note that by January 2014 Mr Y had clearly stated his wife was not resident but he received pension credit as a joint claim. This was a significant issue as potentially all the other questions by the Council were not relevant. I was concerned the Council did not apparently consider contacting the DWP about this discrepancy. The Council has replied that as it had recently checked Mr Y's entitlement with the DWP it believed it was accurate. I do not find there was fault by the Council in this respect.

Agreed action

24. I recommended the Council paid £150 to Mr Y for the delay in paying housing benefit and council tax support between July 2014 and January 2015. The Council should also pay £50 for the enforcement agent letter sent on 28 July 2014. The Council has agreed.
25. I consider this recovery action could have been avoided if it were not for the delay in paying housing benefit and council tax support between 4 July 2014 and January 2015.

Final decision

26. The Council agrees with the remedy I have recommended, so I have completed my investigation and closed the complaint.

Parts of the complaint that I did not investigate

27. The Ombudsman cannot investigate a complaint if someone has appealed to a tribunal. (*Local Government Act 1974, section 26(6)(a)*). As Mr Y appealed regarding the Council's decision to refuse housing benefit on 6 June 2012, I cannot investigate this part of his complaint.
28. The law says the Ombudsman cannot normally investigate a complaint when someone can appeal to a tribunal. However, she may decide to investigate if she considers it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a)*).
29. The Council decided to cancel Mr Y's claim from May 2012 (the Tribunal's decision on non commerciality) on 22 March 2014 because he did not provide the information it requested. Mr Y can appeal about this decision. I consider it would be reasonable to expect him to use this right of appeal. He should do this as soon as possible because there is a maximum time limit of 13 months to make an appeal. The tribunal must also be satisfied that there are good reasons for the appeal being late.

Investigator's decision on behalf of the Ombudsman