

Scottish Parliament Region: West of Scotland

Case 200502116: Renfrewshire Council

Summary of Investigation

Category

Local government: Policy/Administration

Overview

The complaint concerned Renfrewshire Council's (the Council) recovery of alleged overpayment of Housing Benefit payments.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) overpayments were made to the tenant's previous landlord but were recovered from Mr C (*upheld*);
- (b) Mr C was not advised that overpayments had been made when the tenancy commenced and money was taken from him without consultation (*not upheld*);
- (c) there was delay between the overpayments being made and the money being recovered (*no finding*); and
- (d) the Council failed to advise Mr C of their complaints procedure (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) offer Mr C appropriate apologies, reinforced by a payment of £250, in recognition of his time and trouble in pursuing the situation with regard to overpayments; and
- (ii) clarify procedures in relation to representations made by landlords where housing benefit payments are concerned.

Main Investigation Report

Introduction

1. The complainant, Mr C, runs a property letting company (the Company). Many of his tenants are on housing benefit and they chose to have their Housing Benefit payments made directly to him as their landlord. The payments are made to the Company. The tenant concerned in this complaint became Mr C's tenant on 17 November 2003 and her subsequent notice to quit took effect on 8 September 2005.

2. In November 2005, Mr C submitted a complaint to the Ombudsman because he had been informed that overpayments of housing benefit to his tenant were to be directly recouped from the payments he received. He said that this was unfair and that any overpayments must have been made before the tenancy commenced. He said that when he entered into the tenancy no indication had been given to him by the Council when they were advised of the creation of the tenancy. He was also aggrieved that it took some time after the tenant had taken up occupancy before the Council started pursuing him for money they said was outstanding; and that, although he tried to complain about this and other complaints, he was not properly advised of the Council's procedures. Mr C felt that he was being unjustly pursued for a debt for which he was not responsible and that his business was suffering as a consequence.

3. The complaints from Mr C which I have investigated are that:

- (a) overpayments were made to the tenant's previous landlord but were recovered from Mr C;
- (b) Mr C was not advised that overpayments had been made when the tenancy commenced and money was taken from him without consultation;
- (c) there was delay between the overpayments being made and the money being recovered; and
- (d) the Council failed to advise Mr C of their complaints procedure.

Investigation

4. The investigation of the complaint involved obtaining and reading all the relevant documentation, including correspondence between Mr C, his assistant and the Council. I have also had sight of the Council's notes of Mr C's telephone

calls and the appropriate sections of The Housing Benefit (General) Regulations 1987 (the Regulations). On 9 March 2006, detailed enquiries were made of the Council, who replied on 4 April 2006.

5. While I have not included in this report every detail investigated, I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

(a) Overpayments were made to the tenant's previous landlord but were recovered from Mr C

6. In their reply of 4 April 2006, the Council said that, since researching the circumstances of Mr C's complaint, they had now established that the invoice issued in relation to the overpayment was issued in error, following an incorrect calculation of benefit. It transpired that Mr C did not owe the Council any money in respect of the tenant's housing benefit overpayment. The Council said that:

'Deductions were being made from the tenant's benefit cheque being paid to [Mr C] for overpayment of benefit which had arisen for prior benefit periods. [The tenant] is no longer a tenant of [Mr C]. The Revenues Manager has written to [Mr C] advising him of this and apologising for any inconvenience or distress caused...'

7. In relation to the specific terms of this aspect of the complaint, the Council advised that when overpayments occurred as a result of a change in a tenant's circumstances, they sought recovery from the tenant concerned. However, the tenant may have requested (as he or she is entitled to do in terms of the Regulations) that housing benefit payments be made directly to the landlord. Nevertheless, the situation was that it was the claimant's housing benefit entitlement which was being reduced. They confirmed that this type of overpayment was always recovered by reducing the weekly housing benefit entitlement by £8.55 per week and the cheque sent to the landlord was amended accordingly. The Council said that it was then the tenant's duty to pay the landlord the difference and the landlord's responsibility to ensure that full rent was received on the property.

8. I am aware, from a letter dated 28 November 2005 between the Council's Director of Finance and a Councillor making representations on Mr C's behalf, that

it was the Council's policy and practice that all landlords receiving housing benefit cheques on behalf of claimants sign a declaration accepting the applicable legislation. Thus, the landlords accept that any overpayment of benefit may have to be repaid by them and that the local authority can recover the monies due from their four-weekly cheques. I have had sight of such an agreement signed by the tenant and authorising the Council to pay housing benefit directly to Mr C. The document is countersigned by Mr C, agreeing to accept the tenant's rent in this way and confirms that overpayments can be deducted from the benefit he received. I am satisfied that all of this is in terms of the applicable Regulations (see paragraph 4).

(a) Conclusion

9. I am content that, where such an agreement exists, the Council are entitled to deduct overpayments from cheques payable to landlords. However, in this case, the Council made a mistake in seeking to do so. In replying to this office, they admitted their error and confirmed that on 29 March 2006 they made their apologies to Mr C. The Council's failure to deal properly with this matter amounts to maladministration. Despite the fact that they acknowledged this error, the situation was further compounded by another demand letter being sent to the complainant on 20 April 2006. Accordingly, I uphold the complaint.

(a) Recommendation

10. The Ombudsman recommends that a further, fulsome apology be made to Mr C, reinforced by a payment of £250 in recognition of the time and trouble he required to take to pursue this aspect of his complaint.

(b) Mr C was not advised that overpayments had been made when the tenancy commenced and money was taken from him without consultation

11. In their reply of 4 April 2006, the Council confirmed that at no time had Mr C been advised that his tenant had received an overpayment of housing benefit. They referred to the declaration (see paragraph 8) signed by Mr C, agreeing that if he is overpaid benefit in respect of any tenant, he may have to repay it and that the amount overpaid can be taken from the benefit he receives for any other tenant. They take the view that the landlord is not entitled to be given any financial information relating to any tenant, as this is a private matter between the Council and individual concerned.

12. With regard to the matter of consultation, the Council confirmed that, in line with their policy in handling similar cases, the landlord is sent an invoice advising of the amount s/he is required to repay. This is followed by a reminder and then a final reminder. As a last resort, a letter is sent to the landlord advising him/her that if payment is not made then the housing benefit cheques s/he receives in respect of other tenants will be reduced accordingly. I have been informed that this was the procedure followed in the case which is the subject of complaint.

(b) Conclusion

13. Mr C was aggrieved that he had not been told, in advance of him agreeing the tenancy, that his new tenant had been overpaid. I am satisfied that it was not his right to be given this information. Furthermore, he had signed an undertaking allowing the Council to deduct such overpayments from him. All of this was in accordance with the appropriate Regulations. Similarly, it was not the case that money was demanded from him without notice, although no 'consultation' took place. Such consultation is not required. Taking all of the foregoing into account, I do not uphold this complaint.

(c) There was delay between the overpayments being made and the money being recovered

14. It has been established that the Council sought to claim an overpayment of benefit from Mr C in error (see paragraphs 6 to 9). Therefore, while Mr C made a complaint of delay between an overpayment being made and the money being reclaimed, I did not consider it appropriate to look further into this matter as the Council had erred in seeking the overpayment from him in the first place. Accordingly, I make no finding on this aspect of the matter.

(d) The Council failed to advise Mr C of their complaints procedure

15. In their reply of 4 April 2006 the Council confirmed that, in this particular instance, Mr C was not advised of the existence of the Council's complaints procedure. They said that he was fully aware of the procedure, having used it in the past. However, they now wished to apologise for their service failure.

16. There was also confusion about Mr C being advised of any appeals process, with regard to the Council's efforts to seek overpayments from him. The Council

explained that landlords are unable to appeal against the recovery of overpayments, therefore, no such advice was given. Conversely, I am aware from sight of correspondence provided by Mr C that, on 14 November 2005, he received information from the Council's Department of Finance and Information Technology regarding his tenant, detailing the amount of overpayment made and saying:

'As long as you get in touch within one calendar month of the date of this letter, you can ask us to revise the decision to recover the overpayment from yourself. You must state why you want the decision to be revised.'

(d) Conclusion

17. The Council have accepted that they failed to advise Mr C of their complaints procedure. I, therefore, uphold this complaint.

18. In conclusion, the Council said that the standard letter sent to Mr C on 14 November 2005 was issued in error as a result of a processing mistake. This is maladministration, as is the lack of clarity in correspondence concerning the appeals process. In fact, there are three stages to this process: a statement of reasons can be requested asking why a certain decision has been made; a revision of a decision can be requested for a decision to be revised and amended (as referred to in paragraph 16); and an appeal can be made which is submitted to The Appeals Service (a body separate from the Council). The Council said that, in correspondence with landlords, they inform them of the first two stages to 'allow them to raise any issues'.

19. It is unclear to me whether the standard letter, dated 14 November 2005, was specific to landlords or was an adapted copy of a standard letter to tenants (that is, it was given a heading and re-addressed), referring as it does to part of the appeals process. If the Council are happy to receive representation from landlords up until the stage a matter may go to The Appeals Service, it should say so more clearly. If the landlord is not entitled to make any sort of appeal it should also make this clear.

(d) Recommendation

20. The Ombudsman recommends that the Council apologise to Mr C for their failure to advise him of their complaints process and also for issuing the letter of 14 November 2005 in error. They have agreed to do so. Furthermore, they should

clarify the situation with regard to representations being made by landlords: that the Council will consider their views but that they do not have a right of appeal which is reserved for the tenant.

26 September 2006

Annex 1

Explanation of abbreviations used

Mr C	The complainant
The Council	Renfrewshire Council
The Company	Mr C's property company

Annex 2

List of legislation and policies considered

The Regulations

The Housing Benefit (General) Regulations 1987