

# Report of the Interim Director of Corporate Services to the meeting of the Corporate Overview & Scrutiny Committee to be held on 21 February 2018

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## **Subject:**

**Housing Benefit Appeals Build-up**

## **Summary statement:**

In 2017, a Housing Benefit claimant complained to the Local Government and Social Care Ombudsman (LGO) because the Council had delayed referring their case to the First Tier Tribunal Social Entitlement Chamber

Following its investigation, the LGO published a public interest report, which highlighted that a build-up of work prevented the complainant's case from being dealt with in a timely manner

This report sets out the role and functions of the Appeals team, the circumstances leading to the build-up of work, and the actions taken to reduce the build-up and to reduce the time taken to complete appeal cases

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Parveen Akhtar  
Interim Strategic Director Corporate Services

Report Contact: Martin Stubbs  
Assistant Director, Revenues,  
Benefits & Payroll  
Phone: (01274) 432056  
E-mail: [martin.stubbs@bradford.gov.uk](mailto:martin.stubbs@bradford.gov.uk)

## **Portfolio:**

**Leader of Council**

## **Overview & Scrutiny Area:**

**Corporate**

## 1. SUMMARY

- 1.1. In 2017, a Housing Benefit claimant complained to the Local Government and Social Care Ombudsman (LGO) because the Council had delayed referring their case to the First Tier Tribunal Social Entitlement Chamber.
- 1.2. Following its investigation, the LGO published a public interest report, which highlighted that a build-up of work prevented the complainant's case from being dealt with in a timely manner.
- 1.3. This report sets out the role and functions of the Appeals team, the circumstances leading to the build-up of work, and the actions taken to reduce the build-up and to reduce the time taken to complete appeal cases.

## 2. BACKGROUND

- 2.1. The Appeals team within the Revenues, Benefits and Payroll Department deals with disputes in matters relating to Council Tax liability, Housing Benefit, Council Tax Reduction, Discretionary Housing Payments, Disabled Parking Permits and Overpayments of Salary/wages.
- 2.2. Claimants that consider a decision, made in respect of their claim, is incorrect have the right to appeal that decision. The role of the appeals team is to examine the decision, and circumstances, leading to the dispute and consider if decisions are legislatively correct, in line with council policy or guidance, or should be revised in light of new information.
- 2.3. If the appeal is refused, the reason for the decision is explained to the claimant. They are also advised that if they consider that the decision is incorrect, or the appeal has not been handled correctly, they can put their case to an independent arbitrator under either council policies or the relevant legislation.
  - Disputes about Discretionary Housing Payments, are heard by a Panel of Elected Members
  - The Local Government and Social Care Ombudsman will consider cases in relation to Disabled Parking Permits
  - The Valuation Tribunal has the power to determine matters in relation to Council Tax Liability and Council Tax Reduction. The panel is made up of lay persons, completely independent of the Council. Once a submission is made it can then take up to 6 months for the Tribunal to list the case
  - The First Tier Tribunal Social Entitlement Chamber includes matters relating to Housing Benefit and Council Tax Benefit. This is heard by a tribunal judge. Once a submission is made it can then take up to 6 months for the Tribunal to list the case
- 2.4. The number of appeals received is not necessarily reflective of the accuracy or ability of decision makers within the different assessment teams. There are a number of reasons why claimants appeal a decision;
  - they consider that the decision is incorrect
  - they believe all the relevant information has not been taken into account

- appeals are submitted simply because the claimant does not like the decision
  - the claimant does not understand the decision, or how it was arrived at
- 2.5. There are also a considerable number of instances where a case reaches the appeal stage, and upon investigation, the claimant produces previously with-held evidence; which if supplied earlier would have led to a different decision. In these cases, a change in outcome is a new decision, not a successful appeal – the previous decision was correct based on the evidence supplied at the time.
- 2.6. Dealing with appeals in a timely manner has always been challenging. Changes to legislation and Government programmes to reduce fraud and error resulted in an increase in the number of disputes reaching the appeals team; and the time it took to deal with them.

### **3. OTHER CONSIDERATIONS**

#### Summary of the Case

- 3.1. The claimant appealed a decision not to award Housing Benefit and Council Tax Reduction. The appeal was refused on the grounds that her employment was not effective and that she did not meet the criteria for a right to remain in the UK.
- 3.2. On 25 November 2016, the claimant was informed of her right to have her case referred to the First Tier Tribunal Social Entitlement Chamber for Housing Benefit by the Council, and that she could appeal directly to the Valuation Tribunal regarding the claim for Council Tax Reduction. On 23 December, the claimant asked for her claim for Housing Benefit to be referred.
- 3.3. When referring a Housing Benefit case, the Council must produce a formal submission. Submissions to tribunals are very labour intensive to produce and must include a time line of events, all relevant evidence as well as discussion of legislation and its application in the specific circumstances and relevant case law used as guidance. It is not uncommon for submissions in respect of Housing Benefit decisions to be in excess of a hundred pages.
- 3.4. The Council delayed making the referral in this case for two main reasons. Older Housing Benefit appeals where the resident was facing eviction were being prioritised, and the claimant was awaiting the outcome of an application for permanent residence, which, if granted, may have allowed the appeal decision to be revised.
- 3.5. In February 2017, a claimant complained to the Local Government and Social Care Ombudsman (LGO) that the Council had not referred her case. The LGO undertook to investigate her complaint with regard to the delay - It cannot investigate the Housing Benefit or CTR decisions as they remain the purview of the relevant Tribunals.
- 3.6. A copy of the Ombudsman's report is attached at Appendix 1. The LGO investigation concluded that the Council was not at fault regarding the CTR referral as the claimant should have appealed directly. However, in respect of the Housing

Benefit referral, they concluded that;

- the First Tier Tribunal Social Entitlement Chamber rules say that the Council should make a referral as soon as reasonably practicable once the Council's decision is no longer subject to change
- the Council should not have waited upon the outcome of the claimants appeal for permanent residence - the decision had been made and so the case should have been referred
- a build-up of Housing Benefit appeals prevented the complainant's case from being dealt with in a timely manner

3.7. The Council has agreed with the LGO that;

- all appeals are processed within two months (in line with Council Tax appeal guidance)
- all existing Housing Benefit appeals that fall outside this time limit will have a decision, or be referred to the First Tier Tribunal, by 31/03/2018

#### How was the 'build-up' of work created?

3.8. Determining an appeal can be complex and resource intensive; and dealing with them in a timely manner has always been challenging. The workload of the appeals team in the years prior to 2016/17 increased significantly as a consequence of legislative and other changes, including;

- the introduction of the Local Government Finance Act 2012 removed certain exemptions for unoccupied properties, increasing the workload in relation to council tax
- legislative changes, introduced in 2014, limited access to means-tested benefits for European Economic Area nationals whose right of residence in the UK is based on their status as a jobseeker
- work to reduce fraud and error within the benefit system over recent years, through different Government schemes, identified a number of overpayments; the recovery of which led to a large number of appeals

3.9. The additional workload created by these changes was difficult to accommodate within the resource available - appeals is a specialised area of work. On top of that, the Council chose to prioritise assessing new claims for benefits over appeal cases (where, in most cases, benefits was or had been paid).

3.10. It is a statutory requirement that Council Tax and Council Tax Reduction appeals are dealt with within 60 days. Failure to do so means that the council tax payer can apply directly to the Valuation Tribunal to have their case considered without having to wait for the Council to make a decision (which would create further work for the appeals team). However, there is no statutory timeframe for Housing Benefit cases. Consequently, Council Tax and Council Tax Reduction appeals were prioritised.

3.11. The Council has continually sought solutions to the challenge this prioritisation has brought. Over the last few years, these have focussed on how to prevent cases becoming appeals and have included;

- improving the processing and the communication of decisions at all stages; designed to give claimants a better understanding of the decision, and reduce the number of unfounded appeals

- making greater efforts to ensure claimants understand the importance of submitting all relevant evidence to support their application
- ensuring timely feed back to decision makers where there has been a misinterpretation of legislation, policy or guidance
- allocating additional resource to new claims, rather than to appeals, to support implementation of the improved processing and the communication working practices – preventing disputes is a significantly better use of resources

3.12. Appendix 2 provides information on the Housing Benefit and Council Tax appeal caseload.

- The work to improve processes and communication reduced the number of disputes reaching the Appeals team from more than 4,000 cases in 2014/15 to 2,500 cases in 2016/17 (Table 1).The number of Housing Benefit cases reduced from 1,568 in 2014/15 to 1,054 in 2015/16 as a result of the work to improve processes and communication
- However, the number of appeals increased to 1,366 in 2016/17 as a consequence of the fraud and error work instigated by the DWP; which resulted in a number of benefit overpayments being identified.
- Table 2 (Appendix 2) shows the number of cases that go to Tribunal. Historically, the number of Housing Benefit cases going to Tribunal was significantly higher than the number of Council Tax cases. Again, the improvement work succeeded in reducing the number of cases going to tribunal.

3.13. This focus on reducing the number of appeals received, and the number of tribunal cases, allowed the appeals team to reduce the number of cases waiting to be dealt with. However, because of workloads and the prioritisation of Council Tax appeals, those cases waiting to be dealt with at the end of 2016/17 included a large number of Housing Benefit cases.

#### Accelerating Improvement in Performance

3.14. Despite our plans to tackle this problem, the Council had not made sufficient progress and the LGO felt the need to highlight this in the Public Interest Report. An improvement plan was put in place, which would ensure we would reduce the number of cases waiting to be dealt with more than two months, and to ensure that, from April 2018, all appeals would continue to be dealt with within two months.

- A full review of all cases was undertaken to ensure that all cases outside the two month timeframe were identified, other cases were prioritised chronologically, the 'complexity' of individual cases, and the impact the decision could have on the claimant
- Appeals work is a specialised area of work, so increasing capacity is problematical. Some additional resource was found from within the service to deal with the more straight forward cases. Temporary assistance was also provided by colleagues at Wakefield Council

- The Teams have been encouraged, in complex cases, to ring the customer up and explain the decision that has been made and answer any questions at that point rather than simply issuing letter and that being the first the customer knows about the outcome of their application
- In more complex cases, face to face meetings were arranged with the customer so that a full explanation could be provided with all their paperwork to hand and answer any questions raised
- Key messages were given to colleagues in Customer Services, about explaining the decisions rather than simply advising customers to appeal
- The standard letters issued to customers have been reviewed to make the explanations clearer
- We have, in some cases, reduced the written submissions we are making to the Tribunal to save on time

3.15. At the time of the LGO report (August 2017) there were 519 HB cases which fell outside this 'two month' requirement. As at 01 January 2018 the 'build-up' had reduced to 97 HB cases, and will be zero by 31 March.

#### **4. FINANCIAL & RESOURCE APPRAISAL**

- 4.1. A payment of £100 has been made to the complainant, for the time and trouble involved in pursuing the appeal, in accordance with the LGO's recommendation.
- 4.2. Working practices and procedures have been amended to ensure that all appeals are dealt with within statutory and advisory timescales.

#### **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

- 5.1. The LGO does not have legal powers to force organisations it investigates to follow its recommendations. However, failure to comply with LGO recommendations could result in the publication of a non-compliance notice; impacting adversely on the reputation of the Council, and risks bringing the Council into disrepute.

#### **6. LEGAL APPRAISAL**

- 6.1. The Local Government Finance Act 1992 establishes the requirement for the Council to deal with Council Tax Liability disputes within 60 days.
- 6.2. The Housing Benefit (Habitual Residence) amendment regulations 2014 limits access to United Kingdom (UK) means-tested benefits for nationals of European Economic Area (EEA) countries whose right of residence in the UK is based on their status as a jobseeker.

- 6.3. The Local Government and Social Care Ombudsman investigate complaints about 'maladministration' and 'service failure'. It operates under authority of the Local Government Act 1974 (as amended).

## **7. OTHER IMPLICATIONS**

### **7.1 EQUALITY & DIVERSITY**

None

### **7.2 SUSTAINABILITY IMPLICATIONS**

None

### **7.3 GREENHOUSE GAS EMISSIONS IMPACTS**

None

### **7.4 COMMUNITY SAFETY IMPLICATIONS**

None

### **7.5 HUMAN RIGHTS ACT**

None

### **7.6 TRADE UNION**

None arising from this report

### **7.7 WARD IMPLICATIONS**

None

### **7.8 AREA COMMITTEE ACTION PLAN IMPLICATIONS (for reports to Area Committees only)**

None

## **8. NOT FOR PUBLICATION DOCUMENTS**

None

## **9. OPTIONS**

N/A

## **10. RECOMMENDATIONS**

That Corporate Overview and Scrutiny Committee;

- Note the contents of the report and the work undertaken to reduce the build-up of appeal cases

## **11. APPENDICES**

- Appendix 1: LG&SCO Report
- Appendix 2: Housing Benefit and Council Tax Appeal Caseload

## **12. BACKGROUND DOCUMENTS**

- Local Government Finance Act 1992
- Local Government Act 1974

**Report by the Local Government and  
Social Care Ombudsman**

**Investigation into a complaint against  
City of Bradford Metropolitan District Council  
(Reference number: 16 016 533)**

**11 August 2017**



## The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

# Investigation into complaint number 16 016 533 against City Of Bradford Metropolitan District Council

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

## Key to names used

Mrs X - the complainant

## Report summary

### Housing Benefit Appeal

Mrs X's complaint relates to her appeal for Housing Benefit and a Council Tax reduction.

The Council has delayed referring Mrs X's Housing Benefit appeal to the First Tier Tribunal. It has also identified a further 519 appeals it needs to refer to the Tribunal.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

While the outcome of Mrs X's appeal and the other outstanding cases cannot be known the fault identified has caused a delay in Mrs X's right of appeal and that of 519 others. We recommend the Council should:

- apologise to Mrs X and pass her appeal to the Tribunal; and
- pay Mrs X £100 for her time and trouble in pursuing her appeal for such a length of time.

The Council has accepted these recommendations.

Within three months we recommend the Council should:

- review all outstanding appeals and pass the backlog to the Tribunal;
- review its procedures to ensure it complies with the Tribunal rules; and
- report back to us evidencing how it has changed its procedures and confirming how many of the outstanding appeals it has progressed.

The Council has explained this would be difficult due to the number of cases outstanding. The Council also wants to ensure it prioritises those appeals where the decision is impacting on a person's current entitlement to Housing Benefit. The Council has agreed to:

- pass the remaining backlog of appeals to the Tribunal by April 2018, prioritising those appeals where the decision impacts on the person's current entitlement to Housing Benefit; and
- review its procedures to ensure from April 2018 it processes all appeals within two months (in line with Council Tax appeal guidance).

The Council will report its progress to us every quarter until April 2018. It will also evidence how it has changed its procedures. We are satisfied this is a suitable response.

## Introduction

1. Mrs X complains the Council has delayed her appeal to claim Housing Benefit and a Council Tax reduction.

## Legal and administrative background

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
3. The law says we cannot normally investigate a complaint when someone can appeal to a Tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*)
4. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)

## Housing Benefit

5. Housing Benefit helps people on low incomes to pay their rent. It is a means tested benefit, taking both capital and income into account. Claimants are responsible for ensuring they update the council with any changes in their circumstances. Failure to do so can affect the Housing Benefit paid.
6. The council must make a decision about Housing Benefit in writing. The decision notice must also advise claimants of their rights to ask for more information and to appeal. If a claimant disagrees with a decision they can ask the council to reconsider it. The council must then review the decision again. (*Housing Benefit Regulations 2006*)
7. If a claimant remains unhappy after a review they can ask the council to pass their appeal to the Social Entitlement Chamber of the First-Tier Tribunal (the Tribunal). Claimants must send their appeal to the council within one month and the council will refer the appeal to the Tribunal. The council can consider appeals up to 13 months from the date of its original decision. (*The Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008*)
8. Where the council receives an appeal they can reconsider the decision before passing it to the Tribunal. If the decision remains unchanged they must pass the matter to the Tribunal "as soon as reasonably practicable". (*Rule 24(1A) of The Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008*)
9. In February 2004 we issued a special report offering advice and guidance to councils on arrangements for forwarding housing benefit appeals to the Tribunal. We found a pattern of excessive delays by some councils in passing housing benefit appeals to the Tribunal. We recommended that no more than four weeks should usually be needed before

passing an appeal to the Tribunal, a standard which many councils adopted. The report is no longer available on our website due to the legislation the report refers to being amended.

### **Council Tax reduction**

10. The Council Tax (Administration and Enforcement) Regulations 1992 SI 613 covers both the way councils collect payments of Council Tax and how they can recover Council Tax debt.
11. From 1 April 2013 Council Tax benefit was replaced by Council Tax Reduction Schemes (also known as Council Tax Support). Each council in England has its own scheme setting out who is entitled to a reduction in their annual Council Tax bill.
12. Any dispute about liability for Council Tax is a matter for the Valuation Tribunal. The tribunal is an expert unbiased body whose decisions are binding on a council. Unlike the First Tier Tribunal for Housing Benefit, complainants can appeal direct to the Valuation Tribunal.

### **How we considered this complaint**

13. We produced this report after examining relevant files and documents.
14. We gave the complainant and the Council a confidential draft of this report and invited them to comment. We took their comments into account before finalising the report.

### **Investigation**

15. Mrs X applied to the Council for Housing Benefit and Council Tax reduction on 4 August 2016. The Council responded on 14 September 2016 and refused the application. The Council said Mrs X's self employment "was not effective" as she did not earn enough. It also said Mrs X did not satisfy the criteria for a right to remain in the UK. In its decision notice the Council told Mrs X how to appeal the decision.
16. Mrs X appealed the Council's decision on 20 September 2016. The Council responded to Mrs X on 25 November 2016. The Council refused Mrs X's appeal. It told Mrs X of her right to appeal to both the Tribunal for Housing Benefit and the Valuation Tribunal for Council Tax.
17. Mrs X asked the Council for an appeal to the Tribunal on 23 December 2016. Mrs X said she made a profit from self employment and was applying for permanent residence.
18. In February 2017 Mrs X complained to us. She said the Council had not referred her appeal to the Tribunal. Following Mrs X's complaint the Council wrote to Mrs X. It said her appeal was waiting to be considered but it was prioritising older cases and cases where a resident was facing eviction.



19. Following our enquiries the Council said it had 519 appeals waiting to be passed to the Tribunal, the oldest of which was from 6 February 2015.

## Conclusions

### Mrs X's Council Tax Appeal

20. Mrs X had a right of appeal directly to the Valuation Tribunal about the Council Tax reduction. The Council told Mrs X of her right of appeal and we see no reason Mrs X could not appeal. The Council is not at fault.

### Mrs X's Housing Benefit Appeal

21. Mrs X asked the Council to pass her appeal about her claim for Housing Benefit to the Tribunal. As the Tribunal will consider Mrs X's Housing Benefit claim we have not investigated whether Mrs X is entitled to Housing Benefit. We have investigated the Council's handling of Mrs X's request for an appeal to the Tribunal.
22. The Tribunal rules say the Council should make a referral "as soon as reasonably practicable" once a council's decision is no longer subject to change. Our view is this should usually take no longer than four weeks. The Council says it has not passed the appeal on as it has older cases waiting to be considered. In addition, it is awaiting the outcome of Mrs X's application for permanent residence.
23. We do not consider it practicable for the Council to wait indefinitely for the outcome of Mrs X's residence application before referring her appeal to the Tribunal. The Council has already reviewed Mrs X's claim and should not use the appeals process as an additional review stage, delaying Mrs X's appeal. Mrs X asked the Council for an appeal to the Tribunal on 23 December 2016 and has since complained about the delay. Mrs X wants the Council to refer her appeal to the Tribunal and the Council has failed to do that.
24. Additionally, the Tribunal rules say its "overriding objective" is to deal with cases fairly and justly, including avoiding delays. The rules require the Council to help the Tribunal achieve this objective. Mrs X's appeal started when she sent her appeal to the Council. The Council has failed to comply with its duty to help the Tribunal achieve its overriding objective.
25. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. The Council has identified 519 appeals waiting to be referred to the tribunal. The oldest appeal is from 6 February 2015. The Council has failed to process appeals "as soon as reasonably practicable" and this is likely to have caused injustice to others.

## Decision

26. There was fault by the Council causing injustice to Mrs X.

## Recommendations

27. While the outcome of Mrs X's appeal and the other outstanding cases cannot be known the fault identified has caused a delay in the Mrs X's right of appeal and that of 519 others. We recommend the Council should:

- apologise to Mrs X and pass her appeal to the Tribunal; and
- pay Mrs X £100 for her time and trouble in pursuing her appeal for such a length of time.

The Council has accepted these recommendations.

28. Within three months we recommend the Council should:

- carry out a review of all outstanding appeals and pass the backlog to the Tribunal;
- review its procedures to ensure it complies with the Tribunal rules; and
- report back to us evidencing how it has changed its procedures and confirming how many of the outstanding appeals it has progressed.

29. The Council has explained this would be difficult due to the number of cases outstanding. The Council also wants to ensure it prioritises those appeals where the decision is impacting on a person's current entitlement to Housing Benefit. The Council has agreed to:

- pass the remaining backlog of appeals to the Tribunal by April 2018, prioritising those appeals where the decision impacts on the persons current entitlement to Housing Benefit;
- review its procedures to ensure from April 2018 it processes all appeals within two months (in line with Council Tax appeal guidance).

The Council will report its progress to us every quarter until April 2018. It will also evidence how it has changed its procedures. We are satisfied this is a suitable response.

### Housing Benefit and Council Tax Appeal Caseload

Table 1: Housing Benefit and Council Tax Appeals Processes

	2013/14	2014/15	2015/16	2016/17	2017/18*
All Appeal Processes**	4105	4035	3184	2509	1585
Of Which:					
Housing Benefit Appeal	1538	1568	1054	1366	571
Council Tax Appeal	165	261	228	277	185

\* To 31 December 2017

\*\* Appeal processes are not necessarily Appeals. In a large number of cases the claimant produces previously with-held evidence. This 'appeal' is then classed as a request to revise the decision based on new evidence (the original decision was correct based on the evidence supplied at the time)

Table 2: Housing Benefit and Council Tax Tribunal Cases

	2013/14	2014/15	2015/16	2016/17	2017/18*
<b>Housing Benefit - All</b>	<b>23</b>	<b>27</b>	<b>34</b>	<b>19</b>	<b>10</b>
Decision in Council's favour	22	24	30	14	10
Decision in claimant's favour	1	3	4	5	0
<b>Council Tax – All</b>	<b>10</b>	<b>8</b>	<b>23</b>	<b>14</b>	<b>9</b>
Decision in Council's favour	8	8	17	13	6
Decision in claimant's favour	2	0	6	1	3

\* To 31 December 2017