

Report

on an Investigation into
Complaint No 03/B/13808 against
Leicester City Council

20 September 2004

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Key to names used

Miss Paul	Complainant
Mr Bryan	Complainant's adviser
Officer A	A Senior Housing Benefit Officer
Officer B	A Housing Officer
Officer C	A Senior Housing Officer
Officer D	A Review Officer
Officer E	A Senior Housing officer

Report Summary

Housing Benefit

Payment of housing benefit to the complainant ceased on 31 July 2001 because the Council had not received a fully completed application with supporting documents. The Council had experienced computer software problems and a backlog of work built up. Notice of Seeking Possession was served by the Council on the ground of rent arrears and the complainant applied for backdated benefit on 21 March 2002. Housing benefit was again suspended from 2 September 2002 after an abortive visit by a verification officer. The complainant was evicted on 2 December 2002. She and her family had to move several times after the eviction. The Council refused her claim for backdated benefit on 27 March 2003 and she appealed. On 1 October 2003 the Council found the complainant to be homeless intentionally. This decision was upheld after a review. Following guidance from the Department of Work and Pensions, the Council reviewed a number of benefit claims, including the complainant's and awarded housing benefit from 2 September 2002. The Council sent the appeal papers to the Tribunal Service on 19 January 2004. On 28 April 2004 the Tribunal said that backdated benefit should be allowed from 30 July 2001. The complainant then made another homelessness application and she has been rehoused by the Council.

Finding

Maladministration causing injustice

Recommended remedy

The Council should make a payment of £3000 to the complainant, review its procedures and credit court and enforcement costs to the complainant's rent account.

Introduction

1. Miss Paul complains that the Council failed to determine her claim for housing benefit, did not deal with a later request that the claim be backdated and delayed referring the subsequent appeal to the Appeals Tribunal Service. In addition, the Council did not take the opportunity, when the matter went to court because of arrears of rent, to investigate the complainant's circumstances and resolve the outstanding housing benefit claim issues properly. She also says that the Council failed to recognise the above factors when dealing with her claim for assistance as a homeless person. Finally, she says that as a result of the Council's maladministration she and her children were evicted from their home and refused rehousing.
2. One of the Commission's officers has interviewed the complainant and her advisor and Council officers. She also examined the Council's files.
3. The complainant and the Council were invited to comment on a draft of this report, before the conclusions were written. I have taken account of their comments in preparing the final text and reaching my conclusions.
4. For legal reasons, the names used in this report are not the real names of the people or places concerned.¹

Legal and Administrative Background

5. Housing benefit is a means-tested benefit to help people pay the rent on their home. The detailed rules on entitlement and adjudication are set out in the Housing Benefit (General) Regulations 1987, as amended ("the Regulations"). All claims must be in writing and the Council is not under a duty to decide a claim until it has received all the relevant information. Claimants can ask for their claim to be backdated for up to 52 weeks if they can show "good cause" for failing to claim promptly (regulation 72 of the Regulations).
6. The government first introduced the verification framework in 1998 as a measure to help detect and prevent benefit fraud. It does not, however, change the statutory basis on which housing benefit is administered. The Council can suspend and then cancel a claim if required information is not supplied. First of all, however, the Council has to give the claimant one month to provide the information or such longer period as the Council considers necessary (regulation 13 Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001).

¹ Local Government Act 1974 S.30(3)

7. Since July 2001 all housing benefit appeals beyond the Council's internal appeal stage proceed to a Social Security Appeal Tribunal. At 30 April 2004, the Council had 197 appeals outstanding which had not been submitted to the Tribunal; 77 of these were made prior to 1 January 2004.
8. During 2001, 2002 and 2003, the Council built up a backlog of housing benefit work as a result of computer software problems and the introduction of the verification framework into the authority. The Council has experienced many problems with its document imaging system which was essential to its processing of claims. The Council has taken steps to address the backlog and the amount of items of work outstanding has reduced from 12,747 on 10 March 2003 to 4,770 on 15 May 2004.
9. Councils have a duty to secure that suitable accommodation is made available for applicants found to be homeless, eligible for assistance and in priority need of accommodation, as long as they have not become homeless intentionally and they are not referred to another local authority (section 193 Housing Act 1996).
10. A person becomes homeless intentionally if he/she deliberately does or fails to do anything in consequence of which he/she ceases to occupy accommodation which is available for occupation and which it would have been reasonable to continue to occupy (section 191 (1) Housing Act 1996). An applicant has a right to seek a review of a decision that he/she is intentionally homeless and to appeal to the county court on a point of law if dissatisfied with the outcome of such a review. Section 26 (6) (c) Local Government Act 1974, provides that I shall not investigate a complaint if a remedy is available in a court of law unless I am satisfied that it was not reasonable to expect a complainant to use that right.
11. Officer B, a housing officer, told the Commission's officer that the Council's practice is not to evict tenants if it is known that there is an unresolved housing benefit issue.

Investigation

Events relevant to the Complaint

12. Miss Paul's tenancy with the Council started on 4 August 1997. She was in receipt of income support at that time. She applied for and received housing benefit. She has two children, a daughter born on 4 May 1997 and a son born on 15 December 1999.
13. On 18 July 2001 the Council received a housing benefit renewal form from Miss Paul. According to the Council's records, the form was returned to her on 19 July 2001 because it was incomplete and lacked supporting documentation. Miss Paul told the Council subsequently that she did not receive the returned form. The Council's housing benefit post is sent out in envelopes marked 'do not re-direct'

and undelivered post is returned to the Council. Miss Paul's form was not returned to the Council as undelivered. Payment of housing benefit ceased on 31 July 2001 after a notification letter was sent to Miss Paul on 27 July. An adjusted council tax bill was sent to Miss Paul on 2 August.

14. There is no record of Miss Paul contacting the Council until November 2001. The view of Mr Bryan, Miss Paul's advisor, is that her failure to contact the Council's housing benefit section for four months was readily understandable since at that time it was widely known that housing benefit renewals, especially for Council tenants, were taking many months to process.
15. On 12 November 2001 a housing officer wrote to Miss Paul to tell her that her rent arrears were £627, her housing benefit had been cancelled on 30 July 2001 and that she should attend an appointment on 14 November. On 14 November 2001 Miss Paul visited her housing office as requested. She says that while at the housing office she made contact with the housing benefit section and was informed that their computer system was not available but her housing benefit would eventually be reinstated. There is a record on the Council's rent accounting system that Miss Paul told her housing officer that she had received the housing benefit form in August and had returned it in the envelope provided. Miss Paul agreed to make a payment towards the rent arrears.
16. Notice of Seeking Possession was served on Miss Paul on 16 November 2001. Miss Paul did not keep to the arrears repayment agreement and the Council sent her a warning of court proceedings on 8 January 2002. A further letter was sent to her on 14 February stating that if the rent arrears were not paid by 22 February, a court summons would be issued. On 4 March the Council wrote to Miss Paul to tell her that the court hearing would be on 18 April 2002.
17. Miss Paul attended an appointment at her housing office on 14 March and she again agreed to make payments towards the outstanding arrears. She completed a housing and council tax benefit application form, which the Council received on 21 March 2002. She also applied for backdated benefit from 30 July 2001. Benefit was awarded from 25 March 2002, which covered the whole of the rent payable to the Council, but no decision was made on the application for backdating at that time. Officer A, a housing benefit operations manager, told the Commission's officer that this was because the claim form had to be returned to Miss Paul as it had not been signed. When the form was returned on 19 April and processed, the housing benefit officer did not look back through all the documents and find the backdating request.
18. The Council obtained a suspended Possession Order on 18 April 2002. The rent arrears on that date were £1,288.66. Miss Paul met one of the Council's officers at

court just prior to the hearing and agreed to pay the current rent plus £2.70 a week. She did not therefore appear in court. Miss Paul telephoned the housing office on 14 May following the receipt of a card left after an unsuccessful visit on 7 May. She was advised to bring in a receipt to confirm to the housing officer that her new housing benefit claim had been received by the housing benefit section and was therefore due to be processed.

19. On 14 August 2002 the Council wrote to Miss Paul to inform her that a verification officer would be visiting her at her home between 9.00am and 2.00pm. The letter told her what to do if the date and time were inconvenient. Miss Paul did not contact the Council so the visit went ahead. The Council says that the verification officer found no one at home and a visiting card was left to advise Miss Paul that she must arrange a convenient time to visit. Miss Paul had to go out between about 9.00am and 9.30am and she says that no one called between 9.30am and 2:00pm. According to the records of the verification officer, the visit took place at 9.40am and a card was left. Miss Paul says that she did not find a card. She recalls a visit about one week later by an officer from the housing benefit section and that she showed him her benefit order forms and signed a form, which she believes was to confirm that there had been no change in her income or other circumstances. The Council denies that such a visit took place. In its comments on a draft of this report, the Council says that all home visits are recorded for health and safety and financial control reasons.
20. Housing benefit was suspended with effect from 2 September 2002 and the Council wrote to Miss Paul on 13 September to inform her that she could appeal within one month. Miss Paul says that she did not receive this letter and that she experienced other difficulties with her postal delivery. On 17 September the Council wrote to Miss Paul to tell her that she was in breach of the court order. No benefit payments were made after 22 September. On 8 October the Council wrote to Miss Paul to tell her that she was threatened with eviction. On 11 October the Council wrote to her to tell her that she had been overpaid council tax benefit from 2 September 2002. On 14 October the Council advised her in writing that a recoverable housing benefit overpayment had been made in September 2002. Officer B told the Commission's officer that several unsuccessful attempts were made to visit Miss Paul to discuss her rent arrears.
21. Prior to evicting Miss Paul, the area office asked the housing benefit section why housing benefit was suspended. The housing benefit section's reply was that Miss Paul's claim was cancelled on 2 September 2002 because she had not replied to the letter advising her that payments were suspended. Miss Paul's outstanding backdating application was not mentioned. Officer B told the Commission's officer that it is unlikely that the eviction would have gone ahead if it was known that there

was an unresolved housing benefit issue. Had he known of the problem he said he would have tried to get it resolved.

22. On 21 November Miss Paul visited her housing office bringing the court eviction notice. She was advised to clear her rent account in full plus costs and £82 bailiff fee or to contact the county court to lodge an application to suspend the eviction. On 25 November Miss Paul visited the Council's legal advice centre and was advised to apply for the warrant of eviction to be suspended and to seek advice from the money advice unit. Miss Paul applied for the warrant to be suspended but her application was dismissed by the Judge. She paid the Council £58 between the date of her court hearing in April 2002 and her subsequent eviction. At the date of her eviction, her rent arrears were £1,527.
23. Miss Paul was evicted on 11 December 2002. Officer B was present at the eviction. Miss Paul took all the possessions that she could load into her friend's small car. Officer B told the Commission's officer that it was his understanding that Miss Paul agreed to the rest of her possessions being disposed of. Miss Paul's recollection is that they were stored for a time by the Council before being disposed of. Miss Paul says that she went to live with her sister. On 17 December, she requested a form from the Council to apply for backdated housing benefit but did not return it at that time.
24. Miss Paul subsequently instructed solicitors to act for her. Her solicitors wrote to the Council on 18 March 2003 asking whether her request in April 2002 for backdated benefit had been resolved, for information about the backdating request made in December 2002 and whether housing benefit was paid from 25 March to December 2002.
25. On 27 March the Council wrote to Miss Paul, care of her solicitors, to tell her that her request for backdated benefit for the period 30 July 2001 to 24 March 2002 had been turned down because she had not shown good cause for her late claim. She was advised of her right of appeal. Her solicitors asked for an appeal form on 2 April and the Council received her appeal on 15 April. On 30 June the Council wrote to Miss Paul to tell her that the decision to refuse backdated benefit for the period 30 July 2001 to 24 March 2002 and to stop her benefit from 2 September 2002 had been reconsidered but the original decisions had been upheld. The Council said that her appeal would be forwarded to the Appeals Tribunal Service as soon as possible.
26. On 15 August Miss Paul again became homeless after her sister asked her to leave and she moved into temporary accommodation with her children. The family had the sole use of one room and shared a kitchen, bathroom and lounge/dining area with another family. Miss Paul applied to the Council for assistance under the provisions

of the Housing Act 1996 Part VII on 15 August. She was placed in hostel accommodation by the Council where she shared a room with her children and the rest of the facilities with other families.

27. The Council reached a decision on Miss Paul's homelessness application on 1 October 2003. It was decided that she was eligible for assistance, that she was homeless and in priority need but that she had made herself homeless intentionally. It was found that her unwillingness to resolve her rent arrears and not to respond to the housing benefit department was a deliberate act and omission falling within the provisions of section 191 Housing Act 1996.
28. Miss Paul sought advice from a voluntary organisation. Mr Bryan from the organisation wrote to the Council's housing benefit section on 20 October 2003. He said that two matters in particular appeared to have caused difficulties for Miss Paul. She had not received the returned application form and was not aware that her claim was not being processed and a home visit appointment had not taken place. On Miss Paul's behalf, Mr Bryan applied for backdating of housing benefit to 20 October 2002 and he asked a number of questions in relation to the gaps in her claim. The Council replied on 23 October 2003 enclosing copies of relevant correspondence and to inform Mr Bryan that the backdate-refusal decision and the decision to cancel the claim on 2 September 2002 were at the point of being prepared for an appeal tribunal hearing.
29. On 20 October Mr Bryan also requested a review of the decision that Miss Paul was intentionally homeless. Officer C, a senior housing options officer, wrote to Mr Bryan's organisation on 14 November 2003. She said in her letter that, following careful consideration, temporary accommodation would not be provided for Miss Paul beyond the date of the notice of revocation served on her which expired on 10 November 2003. Officer C said that, in her opinion, it was unlikely that the decision on Miss Paul's application would be overturned on review.
30. Mr Bryan replied to Officer C's letter on 24 November 2003. He said that the Council's decision was premature, it took into consideration incorrect information, it was based on insufficient enquiries and it failed to give the benefit of the doubt to Miss Paul. He asked the Council to reconsider its decision not to provide temporary accommodation.
31. Officer D, a reviewing officer, reviewed the Council's decision of 1 October 2003. He wrote to Mr Bryan on 2 December to say that he was minded to uphold the original decision but for different reasons. He said in his letter that he was minded to find that Miss Paul was intentionally homeless because she deliberately failed to keep to the terms of the possession order, she had accepted that the arrears were her

responsibility by entering into an agreement to repay them and she did not follow the Council's advice to make an application to suspend the proposed eviction. Officer D invited further representations within seven days. Mr Bryan asked Officer D for further information on 16 December 2003. This was sent to him on 19 December. In his letter of 19 December, Officer D confirmed that Miss Paul had made an application to suspend the warrant but it was dismissed by the Judge.

32. Mr Bryan submitted representations on behalf of Miss Paul to Officer D on 4 January 2004. He said that, had Miss Paul obtained independent legal advice, he did not doubt that she would not have been immediately evicted. He said that he understood it to be the Council's policy that it would not evict tenants with unresolved housing benefit claims. Miss Paul's claim for backdated benefit had not been dealt with and the amount claimed was almost £1,000. Mr Bryan said that if Miss Paul was evicted as a result of delays in the housing benefit system, she could not properly be found to be intentionally homeless. He also made a number of other points in support of his view that Officer D's letter of 2 December 2003 was flawed and he asked for the decision to be reconsidered. He also said that he had received nothing in writing regarding the proposed withdrawal of temporary accommodation.
33. Following receipt of guidance from the Department of Work and Pensions, the Council reviewed a number of housing benefit claims that had been cancelled following unsuccessful verification visits. On 6 January the Council decided to award Miss Paul housing benefit from 2 September 2002 to 15 December 2002. This was because, when preparing the case for appeal, it was found that she should have been given longer to respond before her claim was cancelled following the unsuccessful visit in August 2002. It had not previously been clear to the Council's housing benefit officers that regulation 13 of Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001 should be applied in such circumstances.
34. The Council started court proceedings to evict Miss Paul from the hostel on 7 January.
35. On receipt of Mr Bryan's letter of 4 January 2004, Officer D undertook a complete review, reconsidered all the issues and instigated further enquiries. He wrote to Mr Bryan to explain his findings on 16 January. He found that Miss Paul was homeless as a result of her eviction and not as a result of being asked to leave her sister's home subsequently. He accepted there had been delays in dealing with Miss Paul's backdating requests but he found that if she had pursued her claim when prompted, she would not have been evicted and that she had failed to abide by the terms of the possession order. He therefore found her to be intentionally homeless. Officer D said that Miss Paul had 21 days from the date of his letter to lodge an

appeal with the county court. Miss Paul did not lodge an appeal with the county court.

36. The Council sent the papers relating to Miss Paul's housing benefit appeal to the Appeals Tribunal Service on 19 January 2004.
37. The Council replied to Miss Paul's complaint to me on 4 February. It confirmed that, as a result of the 6 January 2004 decision, £323.10 was paid to Miss Paul's rent account which reduced her arrears to £1026.20. The Council apologised for the problems and inconvenience caused by the delays in dealing with Miss Paul's backdating request and the appeal and proposed a payment of £50 in settlement of her complaint. On 10 February one of the Commission's officers sent a copy of the Council's letter of 4 February to Miss Paul and she asked Mr Bryan to reply on her behalf.
38. Mr Bryan replied on 17 February. He said that Miss Paul had only become aware of the Council's decision of 6 January 2004 regarding her housing benefit as a result of the Commission's letter to her. He said that the period between 30 June 2003 and 10 February 2004 was crucial because during that period Miss Paul became homeless and moved into temporary accommodation (15 August 2003); she was found to be intentionally homeless; she was threatened with the withdrawal of temporary accommodation; she was, on review, still found to be intentionally homeless and the 21-day time limit to appeal to the county court had expired on 6 February 2004. Mr Bryan's view is that had the Council realised its error in June 2003 or earlier then Miss Paul would not have been found to be intentionally homeless and her stay in temporary accommodation might well have been shorter. He says that Miss Paul has been under threat of eviction from the hostel since 14 November 2003 and this was causing her distress. Mr Bryan says that if the decision not to backdate Miss Paul's housing benefit had been made within a reasonable period of time, say one month after it was requested, i.e. by 15 April 2002, then the appeal would have been determined before the intentional homeless decision in October 2003 and possibly prior to her eviction in December 2002. He criticises the Council's failure to draw to the court's attention Miss Paul's request for backdated benefit and says that the Council was more likely to recognise the implications of this than Miss Paul. In these circumstances, Mr Bryan said that the local settlement proposed was not acceptable to Miss Paul.
39. Miss Paul says that she was evicted from the hostel around the beginning of March 2004. She was placed in bed and breakfast accommodation by Social Services.

40. On 28 April the Appeal Tribunal accepted that, on the balance of probabilities, Miss Paul had continuous good cause for her failure to make an earlier claim. Housing benefit should therefore be allowed for the period 30 July 2001 to 24 March 2002. The backdated housing benefit payment was actioned on 7 May.
41. Miss Paul made a new homelessness application on 29 April and she was again placed in the Council's hostel. She stayed there four days and then she was moved to a temporary self contained flat. On 12 May the Council wrote to her to say that it accepted her as homeless and that it had a duty to secure accommodation for her. On 13 May the Council offered Miss Paul the tenancy of a three-bedroomed Council property and Miss Paul has agreed to accept this offer. Officer E, a team leader in the Council's housing options section, told the Commission's officer that if all the housing benefit information known in May 2004 had been available at the time the original homelessness decision was made and when that decision was reviewed, the decision would probably have been different.
42. Miss Paul and Mr Bryan have explained to the Commission's officer the injustice that they feel she and her children have suffered in addition to the loss of their home in December 2002. Miss Paul's daughter has had to move schools twice and may have to move again. Her son had a nursery place from January 2003 but Miss Paul could not take it up after her eviction. During November and December 2003 and from January 2004 to the middle of May she had to meet the costs of getting her children to school, and this was £12.65 per week. Her moves between the hostel and the bed and breakfast accommodation required her to take her possessions in bags on two buses. She had assistance from family and friends during her earlier moves. Her son in particular has been very unsettled as a result of the family's moves. He wet the bed after the moves and has been crying every morning before school. Miss Paul has recently started suffering from depression. She has suffered a considerable period of uncertainty about where she was going to live. Her current rent arrears are £182.55, water rates arrears are £151.78; court costs of £189.50 and enforcement costs of £32.25 have been cleared by the housing benefit payments received. If these costs had not been cleared by housing benefit and had been credited against the rent due, Miss Paul would not have any rent arrears.
43. In a letter dated 20 July 2004 to the Commission's officer, the Council said that it wished to apologise to Miss Paul for the delays that occurred and to offer her a payment of £1096.75 to resolve her complaint.

Conclusions

44. The Council failed to deal with Miss Paul's March 2002 application for backdated housing benefit until March 2003. This appears to have been due to inadequate checking of the file and the error was not identified for 12 months. This was maladministration. She submitted an appeal on 15 April 2003 but the Council did not send the relevant papers to the Appeals Tribunal Service until 19 January 2004. I recognise the Council's difficulties but this was an excessive delay which was also maladministration.
45. Had the Council dealt with Miss Paul's application for backdated benefit and prepared her case for appeal more promptly, I think it is likely that her appeal would have been heard before her eviction and she would not have been evicted on 11 December 2002. Even if the appeal had not been heard by 11 December 2002, it should have been heard by the time the Council considered the complainant's homelessness application and it is likely that the Council would have accepted a rehousing duty in October 2003. Miss Paul would not then have had to stay as long as she did in the Council's hostel. The Council's delays have caused significant injustice to Miss Paul and her children. They lost their home and some possessions, they did not have permanent accommodation between 11 December 2002 and May 2004, they have had to stay in a hostel and bed and breakfast accommodation, the children's schooling has been affected and the family has suffered a good deal of distress and upset. Miss Paul has also incurred court and enforcement costs which have been cleared by housing benefit. Had she not incurred court and enforcement costs, her rent arrears would have been cleared by housing benefit.
46. When the Council considered Miss Paul's first homelessness application, officers concluded that she could have done more to resolve her rent arrears. Had she advised her housing officer of the lack of a decision on her application for backdated housing benefit, it is likely that he would have tried to resolve it. But the Council's decision was to refuse the application for backdated benefit and it is doubtful that an appeal against that decision or an appeal against the decision to suspend benefit in September 2002 would have been heard prior to the proposed date of her eviction. It is possible that the eviction would not have gone ahead in these circumstances but I agree with Mr Bryan's point that the implications of the unresolved housing benefit issues were more likely to be recognised by the Council than Miss Paul. She did in any case apply to the Court for the warrant of eviction to be suspended but her application was dismissed.

Finding

47. For the reasons given in paragraphs 44 to 46 I find that there has been maladministration by the Council which has caused injustice to the complainant.
48. To put things right the Council should:
- a) make a payment of £3,000 to Miss Paul;
 - b) review its procedures to ensure that thorough checks are made to identify and address all outstanding housing benefit issues before possession proceedings and evictions go ahead;
 - c) credit the court and enforcements costs cleared by Miss Paul (£221.75) to her rent account.

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20 September 2004