

Local Government &
Social Care
OMBUDSMAN

***Focus on Housing
Benefit***



Focus report: learning lessons from complaints
January 2020
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Ombudsman's foreword



We have published this report to highlight some of the common issues we see with councils delivering housing benefit services.

While housing benefit (for working age people) is in the process of being replaced by Universal Credit, this isn't happening as quickly as first thought. The latest Government statement says Universal Credit will now be fully implemented by 2023. This means a significant number – almost 3.6 million – of some of England's poorest and most vulnerable households still rely on housing benefit to help with living costs.

It also means councils, who previously expected housing benefit to have ended by now, still need to plan for resourcing and delivering the service for some time yet.

Throughout this transition period we have continued to investigate complaints about how councils administer housing benefit appeals. Last year (2018-19) our uphold rate rose to 78%, which is significantly higher than our average for all complaints (58%).

Using case studies based on the real-life experiences of the people who come to us, this report highlights some of the common issues we are seeing. These include families struggling to exercise their right to appeal a council's decision about their housing benefit entitlement.

We have also seen councils recovering money, which they think they have overpaid to claimants, before the window to appeal has closed. In some examples, they have even started to recover funds while still in the process of deciding the person's appeal.



Scenarios like this are contrary to the spirit of the legislation and can unnecessarily deprive vulnerable households of vital support. I encourage councils to think hard about the consequences of their actions in situations like this.

Mistakes in benefit administration can only add to the pressures households face. A delay in processing an appeal, later upheld, can lead to rising rent arrears. Many of the people who complain to us face the threat of losing their homes.

In one case we tell the story of a man who was left in limbo for two years, not knowing the amount of support he should receive and how much the council would pursue him for. A simple administrative error combined with an inability to update records meant the council could no longer work out why it had overpaid his housing benefit. All the while it sent him letters threatening recovery action every fortnight.

In this case, we made sure there was a positive outcome. By agreeing to review its procedures, the council ultimately decided it needed to recruit more staff to process appeals and go some way to avoid others suffering a similar fate. But how can we avoid this happening elsewhere?

All the case studies in this report include key learning points and help to show what good practice looks like when it comes to administering appeals and recovering overpayments. To help encourage local accountability and scrutiny, we also provide some suggested questions councillors can ask of their own authority.

We recognise officers dealing with housing benefit appeals are navigating a complex system, further complicated by rule changes to entitlement. So, I hope councils will welcome this report as a way to help them learn from the mistakes others have made and ensure all their residents claiming housing benefit are treated fairly and in line with regulations.



Michael King

**Local Government and
Social Care Ombudsman**

January 2020



Our role in housing benefits complaints



We investigate complaints about how councils administer housing benefit, including the administration of appeals. This might include things like delays in the process, not following policy or procedure, and failing to offer appeal rights. We are a free service, and totally independent. Anyone can come to us for a review of their complaint about a council service, and councils must tell people of this right within their complaints processes.

It's not for us to rule on whether someone is entitled to housing benefit or not. If someone disagrees with a council's decision on a claim, we would expect them to use the independent tribunal (Social Entitlement Chamber of the First-Tier Tribunal).

In 2018-19, we carried out 74 detailed investigations about housing benefit, and upheld 78% of these. This is significantly higher than our average uphold rate of 58% across all investigations.

These detailed investigations are part of a larger number of complaints and enquiries we receive. These include instances where the person has

either not yet complained to the council or is complaining to us about the council's decision on their entitlement to housing benefit – something which only the Tribunal can independently decide on. We received 491 complaints and enquiries in 2018-19.

This report offers advice on best practice and sets out learning points for authorities including:

- > Identifying challenges to housing benefit decisions and how these should be processed in line with regulations as appeals. This includes correctly passing appeals to the tribunal where necessary.
- > Ensuring allocation of sufficient staff and resources to manage appeal requests and taking action to deal with backlogs in appeals.
- > Ensuring recovery of overpayments does not begin until appeal rights have expired or appeals have been completed.
- > Suggested questions to help elected members ensure good oversight of housing benefit appeals.



How housing benefit is administered

Councils have administered 'housing benefit' since 1992. It is a means tested social security benefit which supports low income households living in rented accommodation. The Housing Benefit Regulations 2006 set out the procedure for making decisions on housing benefit entitlement and appeals.

The Regulations state that a council must issue a decision about housing benefit in writing. The decision notice must also advise claimants of their rights to ask for more information (a statement of reasons) and rights of appeal.

If a council decides it has overpaid housing benefit then it must:

- > notify the claimant in writing;
- > tell the claimant how much they have been overpaid and why;
- > explain how it intends to recover any money owed, and;
- > give claimants a right to appeal both overpayment decisions and any decision about recovery.

So, for example, if a claimant agrees they have been overpaid benefit but considers that overpayment only arose through the council's official error, they can appeal its recovery.

If a claimant receives an adverse benefit decision or notice they have been overpaid, they can ask for one of three things – an explanation of the decision, a review of the decision by the council, or an appeal. Claimants must ask for a review or appeal within one month of a decision. **(The Tribunal Procedure (First-Tier Tribunal) (Social Entitlement Chamber) Rules 2008)**

Government guidance refers to 'challenges' to decisions which can include both review and appeal requests. Where someone expresses

general dissatisfaction with a decision and does not specify whether they want a review or appeal, the council must decide how to treat that correspondence.

If a claimant appeals a housing benefit decision the council can reconsider it before passing it to the Social Entitlement Chamber of the First-Tier Tribunal ('the Tribunal'). If the council reconsiders a decision on appeal (or reviews it on the invitation of the claimant) and this results in a new decision which is partially in the claimant's favour, this carries fresh appeal rights. The council should then tell the claimant of those rights. So, the claimant can still have an appeal heard by tribunal where they remain unhappy with the revised outcome.

If a decision on appeal remains unchanged the council 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)**

Government guidance says where the council has offered more explanation for its decision it "*should make sure the claimant is satisfied with the explanation and is not challenging it*". **(DWP Housing Benefit Guidance Part C6)**

If the council receives an appeal but does not believe it contains all the information needed it may write to the complainant asking for more information. Government guidance recommends allowing a minimum of 14 days for this. **(DWP Housing Benefit Guidance Part C7)**

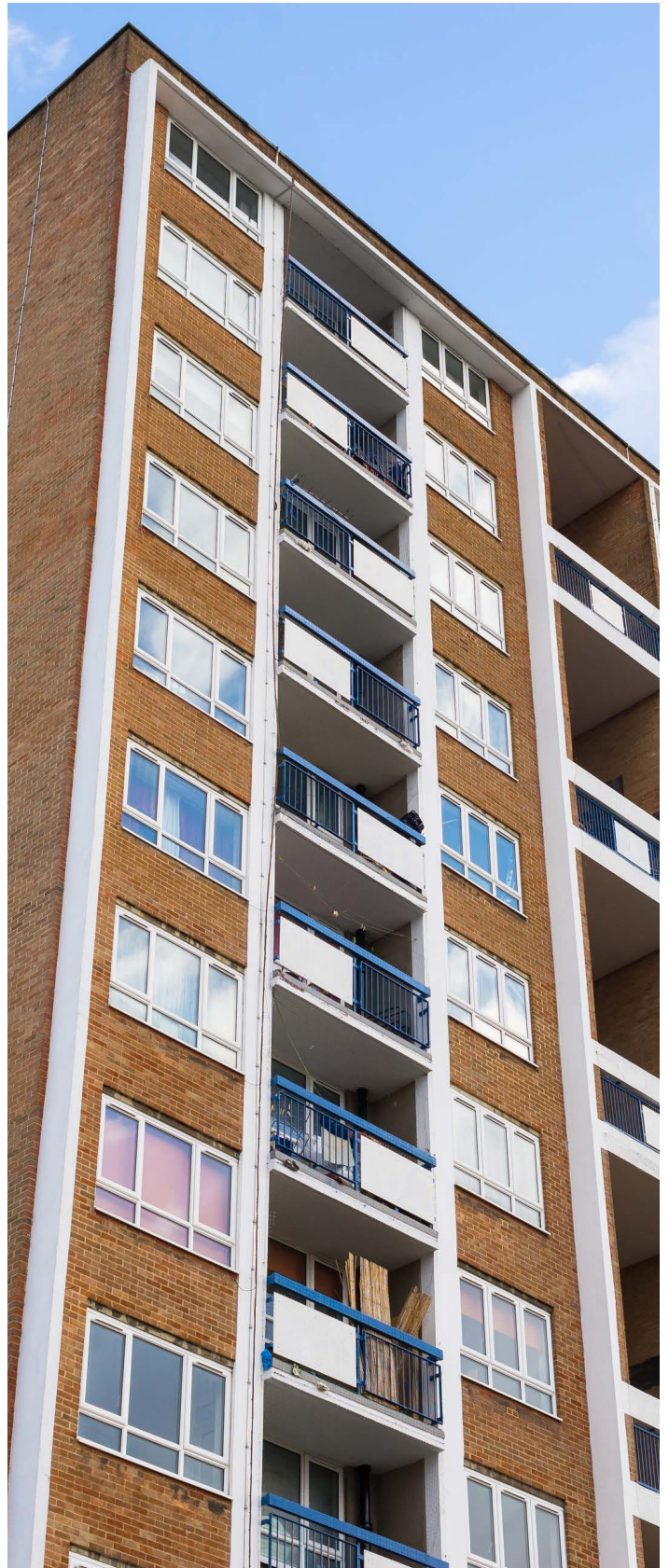
The Housing Benefits Overpayments Guide notes there is no legislative requirement for a council to halt overpayment recovery where it receives an appeal, but it considers it good practice to do so. It also recommends recovery action should not start until the appeal rights have expired. However, the guidance accepts



that in some cases, such as when a council receives a late appeal, this might be unavoidable (*Housing Benefit Overpayments Guide section 6.30*)

In 2010 the Government announced its intention to replace housing benefit for working age claimants with Universal Credit, legislated for in the Welfare Reform Act 2012. Universal Credit merges six benefits paid to working age families into one.

The Government predicted a gradual decline in the number of housing benefit claimants, with all working age people originally anticipated to have moved onto Universal Credit by 2017. The latest Government statement says Universal Credit will now be fully implemented by 2023.



Common Issues

Failing to identify an appeal

Not every challenge a council receives to a decision will be clearly marked as a review request or an appeal. Claimants should not be expected to understand complex regulations, or it assumed they have access to advice services. Sometimes they will simply believe their council has got something wrong and express that in simple terms. Even when a council thinks it has made the correct decision, it must not deprive people of their right to an independent appeal.

Julie's story

Julie and her adult son became homeless when their private landlord ended their tenancy. The council found them temporary accommodation in a hotel. Julie was entitled to claim housing benefit for her room. But shortly after moving in, the hotel told the council Julie and her son had swapped rooms. The council asked Julie to complete a change of circumstances form to confirm this, and to ensure she could continue to receive housing benefit.

Julie said the hotel was wrong, so she refused to complete the form. She asked the council to continue to pay her benefit. For three months, she challenged the council's understanding of events by telephone and in writing. She did not explicitly mark any of her letters as a 'review request' or an 'appeal', but it was clear she did not agree with the council's version of events.

The council decided Julie's letters did not require it to treat them as a review request or an appeal. Later, it explained this was because it did not think they contained enough information for it to do so.

As the council refused to reinstate Julie's housing benefit, she began to run up a debt to its housing services who were paying for her accommodation at the hotel. This increased to more than £1,000, adding to an already stressful time in her life when she was homeless, through no fault of her own.

What we found

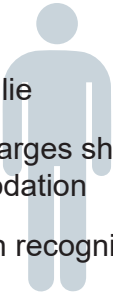
We found the council at fault for not treating Julie's contacts as a review or appeal request, or alternatively not asking her for the information it needed to review her case or pass it to tribunal. We decided the council's actions contributed to Julie's distress in finding herself running up a debt she could not pay without receiving housing benefit.



The council agreed to:

Individual remedy:

- > apologise to Julie
- > write-off the charges she incurred for the hotel accommodation
- > pay her £250 in recognition of her distress



Service improvements for all:

- > train its staff to respond properly to challenges not clearly marked as review requests or appeals



Learning points

Councils:

- > must identify where they receive challenges to housing benefit decisions. Challenges may not use the words “review request” or “appeal”
- > must give clear advice to staff on how to respond to such requests. Those responses must say if the council has treated the challenge as a review or appeal request
- > must tell claimants about further appeal rights, for example when the council does not change its decision or finds only partly in the claimant’s favour
- > can ask for further information if they believe a challenge is too vague to be treated as a review or appeal request. But they must write to claimants to explain how they have reached this view and set out what further information they want them to provide
- > must not ask for further information unnecessarily or waste time repeatedly asking the claimant for information they say they cannot provide
- > must tell people who raise concerns, of their right to come to us for an independent review of their complaint



Failing to process an appeal

Regulations sometimes allow councils a choice in who they recover overpaid housing benefit from. If a council pays housing benefit directly to a landlord, it can recover any overpaid housing benefit from that landlord. This often means the landlord recovers the difference from the tenant and puts the tenant in arrears. So, in choosing this method of recovery, councils must still allow the claimant to appeal the overpayment and/or its recovery. The claimant has one month to appeal. In exceptional circumstances this can be extended up to 13 months.

Beverley's story

Beverley lived in private rented accommodation. In working out her housing benefit, the council calculated her 'eligible rent' incorrectly. 'Eligible rent' is the maximum amount of housing benefit someone can receive, considering factors like the size and location of their home. It is often lower than their actual total rent, with the onus on the claimant funding the difference. Before the council realised its error, Beverley was already struggling to pay the shortfall and had arrears of around £600.

The council's miscalculation meant it had overpaid Beverley around £1,600 in housing benefit, which it had paid direct to her landlord. The council chose to recover this money from the landlord who then added that debt to Beverley's existing rent arrears. With the overall arrears now at more than £2,000, Beverley's landlord began repossession proceedings, serving her with a 'Notice Seeking Possession'. This left Beverley anxious about the prospect of becoming homeless.

The council's decision letter, which informed Beverley of the overpayment, told her she could appeal its decision. She wrote to the council within four weeks saying she wanted to appeal. Beverley argued the overpayment only occurred because of the council's error, so it should not seek to recover it.

The council refused to recognise this as a valid appeal and implied this was because it was recovering the overpayment from her landlord. When Beverley rang the council to question this, a customer service advisor wrongly said the landlord would not recover the money from her.

Beverley complained but the council still did not recognise she had made a valid appeal request within four weeks. It neither reviewed its decision, changed it nor forwarded Beverley's appeal to the tribunal. This left Beverley angry and upset that no one would hear her appeal.



What we found

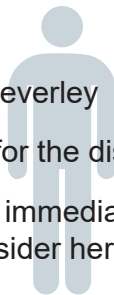
We found the council at fault for repeatedly failing to recognise Beverley had made a valid appeal against the decision it had overpaid her housing benefit. The council should have either reviewed its decision or, if it did not agree the overpayment arose from an official error which it should write-off, then it should have passed the case for appeal to the tribunal. It should have done this even if it believed Beverley had not made a valid appeal, as that would be for the tribunal to decide. The council eventually passed Beverley's case to the tribunal, but only after we began our investigation.

Failing to take this action sooner caused Beverley unnecessary distress and uncertainty that she might lose her home. We decided the landlord would most likely not have started possession proceedings without the council's actions, because Beverley's existing arrears had not caused it to do so previously.

The council agreed to:

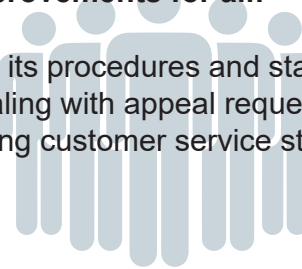
Individual remedy:

- > apologise to Beverley
- > pay her £250 for the distress caused
- > pass her case immediately to the tribunal service to consider her appeal



Service improvements for all:

- > review its procedures and staff training on dealing with appeal requests, including customer service staff handling calls



Learning points

Councils should:

- > be able to identify valid appeals against overpayments, including circumstances where they make recovery from landlords
- > embed knowledge of dealing with housing benefit appeals within all teams dealing with customer enquiries. Teams should, as a minimum, be capable of recognising where appeals have not been properly processed and understand a landlord's power to recover rent arrears from tenants – and the threat of homelessness which can ensue
- > forward appeals to the tribunal service, which they believe are not within the tribunal's jurisdiction. These are ultimately decisions for the tribunal service



Delays in appeal

Regulations do not specify how long councils should take to reply to housing benefit appeals. But they must do so as soon as is reasonably practicable. So, complaints about delay in processing appeals raise a matter of good administrative practice. Our [Principles of Good Administrative Practice](#) encourage councils to make timely decisions and proactively explain the reasons for any delays.

Sonia's story

When Sonia made a claim for housing benefit, the council decided within one month that she was not entitled. Within a month Sonia appealed. The council reviewed its decision promptly but did not change it, maintaining Sonia had no entitlement to housing benefit. So, Sonia appealed again, writing to the council within a month of its reviewed decision.

After several weeks, the council acknowledged Sonia's appeal, but said it would prioritise other people's cases before it dealt with hers. Our investigation discovered around 500 other claimants had made appeals against the council's decisions and were waiting for them to be dealt with. The oldest of these appeals had been waiting two years for the council to act.

What we found

We found the council at fault for not dealing with Sonia's appeal in a reasonable time, and those of many other housing benefit claimants in its area. We said that, as a benchmark, the council should aim to process appeals within four weeks.

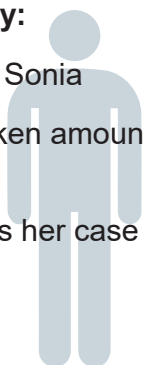
The council was also wrong to make Sonia appeal again after it reviewed her case (and in good time). Its review decision did not change, so the council should have passed Sonia's case to the tribunal at that point.

We do not decide whether people are entitled to housing benefit, so cannot say the council's delay had implications for Sonia's rent arrears. But we decided its actions caused distress and uncertainty over whether she could receive housing benefit to help towards her rent.

The council agreed to:

Individual remedy:

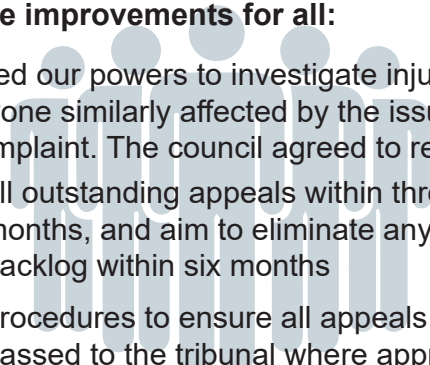
- > apologise to Sonia
- > pay her a token amount for the distress caused
- > urgently pass her case to the tribunal



Service improvements for all:

We used our powers to investigate injustices for anyone similarly affected by the issues in the complaint. The council agreed to review:

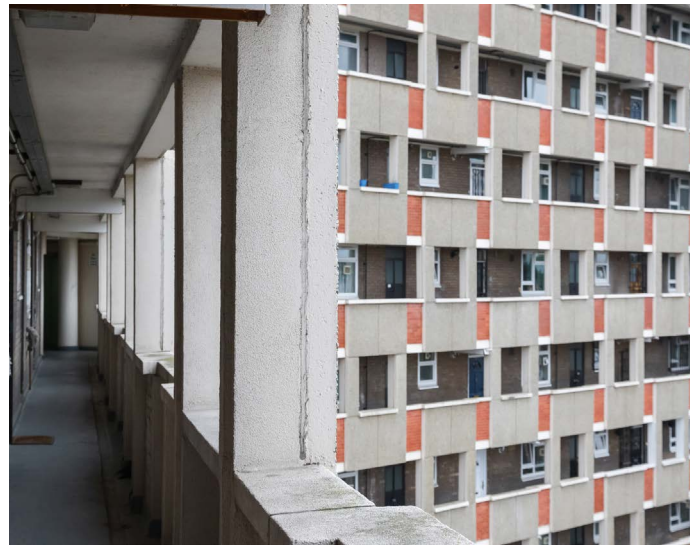
- > all outstanding appeals within three months, and aim to eliminate any backlog within six months
- > procedures to ensure all appeals are passed to the tribunal where appropriate



Learning points

Councils:

- > must pass cases, which they have already reviewed and have not resulted in a more favourable outcome for the claimant, to a tribunal to hear an appeal
- > must allocate appropriate personnel and resources to manage appeal requests, and aim to consider them, or pass onto tribunal, within four weeks
- > must have sufficient oversight of housing benefit appeals to identify any delays. Regular reporting of the appeal volumes and the processing speeds may help
- > should introduce plans for tackling any backlogs. These should include systems to identify particularly urgent cases; for example, where a claimant faces imminent eviction and a successful appeal could remove that risk



Failure to act in response to new evidence or change of circumstances

Housing benefit is paid weekly. It is important claimants promptly tell their council of any changes affecting their entitlement. For example, the composition of their household or wages may change. It is equally important councils have procedures in place to react to changes in circumstance. Delays in updating a claim are a frequent cause of overpayment.

David's story

David rented a one-bedroom property from the council, but the council wrongly believed he occupied a two-bedroom home.

David alerted the council to its error and both its housing service and benefits service recognised it needed to correct his account, as he was also being charged too much rent. However, it took around eight months for both services to correct and co-ordinate their records. In that time, David went into rent arrears despite having an entitlement to maximum housing benefit, which met the full rent he was charged. Despite the housing service knowing about David's situation, it sent him letters every two weeks threatening recovery action if he did not clear the arrears.

Just before the council corrected its records, the Department of Work and Pensions told the council David's income had changed. He had been unemployed but had now found work. This meant he was no longer entitled to full housing benefit.

It took another six months for the council to re-assess David's housing benefit based on his earnings. When it did so, the council realised it had overpaid David's housing benefit by around £1,500. It told David it intended to recover this from his rent account. David appealed that decision. There was by now confusion about what overpayment was from the council applying the wrong rent and what was from David's change of income.

It took the council 14 months to consider David's appeal. When it did so, it confirmed its earlier decision and said it would pass the case to tribunal. The tribunal then ruled the council could not recover any overpayment from David via his rent account.

For more than two years David experienced considerable uncertainty about the housing benefit he could receive and whether any housing benefit overpayment was recoverable.



What we found

We decided the council had made a series of errors in administering David's housing benefit, culminating in the long delay in deciding his appeal against the recovery of overpaid housing benefit. He said it was distressing to receive letters from the council threatening possession of his home. He was also very frustrated with the time it took to resolve each issue.

The investigation also indicated the council was struggling to process appeals, which suggested systemic problems similar to Sonia's case above. The Government had trialled Universal Credit from an early stage in this council's area, which had led housing benefit claims and appeals to fall, but not to the numbers the council had expected.

The council agreed to:

Individual remedy:

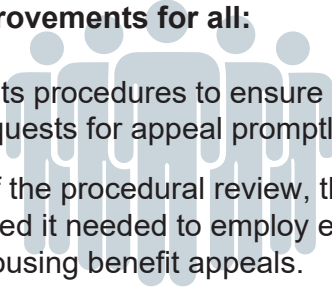
- > apologise to David
- > pay him £250 to recognise the distress caused



Service improvements for all:

- > review its procedures to ensure it dealt with requests for appeal promptly

As a result of the procedural review, the council decided it needed to employ extra staff to process housing benefit appeals.



Learning points

The facts of David's case are not typical of all housing benefit investigations, but there are lessons that can be drawn from it.

Councils:

- > must act promptly to changes in circumstances to avoid multiple changes affecting benefit entitlement. If they do, it becomes harder to understand the root cause and to recover overpaid sums fairly
- > should consider how its benefit and housing teams could liaise to minimise disruption for the claimant, when the claimant is also a council tenant. This would be appropriate when benefit services are aware of pending changes or have received an appeal that has not yet been dealt with
- > must have a system to identify outstanding appeals older than four weeks, even if they are an exception to the norm



Overpayment recovery while an appeal is outstanding

Where the council has overpaid housing benefit it must give the claimant the opportunity to appeal both the decision which has created the overpayment and any decision to recover overpaid benefit from them. Recovery can take various forms but often involves a reduction in the claimant's ongoing housing benefit. While the regulations do not prohibit councils from applying such reductions straight away, we think it is poor administrative practice to do so. This is supported by Government guidance.

[Hussain's story](#)

Hussain's housing benefit was reassessed by his council, and it decided it had overpaid him around £2,000. Hussain remained entitled to ongoing housing benefit, so when the council told Hussain its decision, it said it would recover the overpayment through deductions of his ongoing benefit at a rate of around £20 a week. This was in addition to the reduced housing benefit Hussain received following the reassessment.

Hussain appealed the council's decision straight away. He argued he should not have to pay because the overpayment was the council's error. Less than a month after making its decision, and before considering Hussain's appeal, the council started to recover the overpaid housing benefit.

Hussain did not hear about his appeal for two months, at which point he decided to complain. The council apologised for the delay but still did not consider his appeal for another two months. It eventually agreed Hussain could not have realised he had been overpaid housing benefit previously. It wrote off the overpayment and returned to him around £340 recovered from his ongoing housing benefit.

Hussain told us the council's actions caused him significant difficulties.

What we found

We found the council at fault for starting to recover the overpayment without first considering Hussain's appeal. The appeal was also delayed.

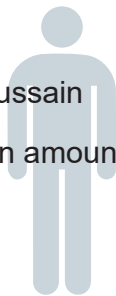
The case highlights the hardship that can be inflicted when recovery action is started before considering an appeal.



The council agreed to:

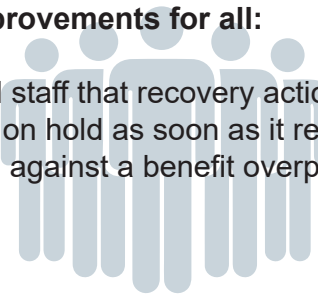
Individual remedy:

- > apologise to Hussain
- > pay him a token amount for his injustice



Service improvements for all:

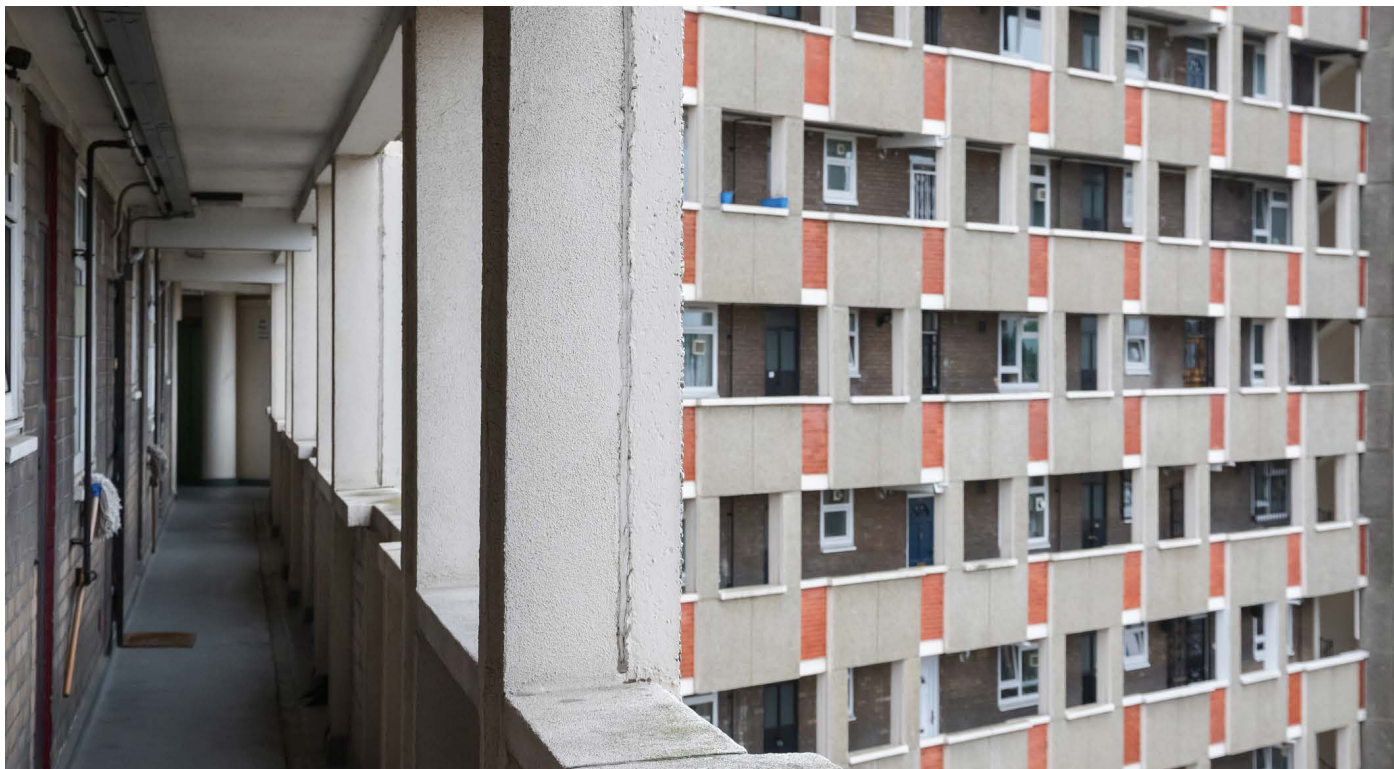
- > remind staff that recovery action should be put on hold as soon as it receives an appeal against a benefit overpayment



Learning points

Councils should:

- > not recover overpayments until the one month time limit for appeals has passed (unless the recipient agrees and says they won't appeal). This includes when a council has partially upheld a review in the claimant's favour, but an overpayment remains outstanding
- > not try to recover overpayments until a submitted appeal has been decided



Putting things right

Where a council is at fault and causes injustice to the complainant, we will always recommend how it should put things right. We may also recommend how to improve services to avoid similar issues affecting other people.

Our [Guidance on Remedies](#) sets out our principles for remedying complaints. We apply these to complaints about housing benefit as follows:

- > We always aim to put the complainant back in the position they would have been but for any fault. So, if a council needs to decide an appeal or pass an appeal request to the tribunal then we will recommend that.
- > We will always expect a council to apologise if a fault has resulted in injustice to a complainant.
- > We will recommend a financial remedy to take account of any distress caused to the complainant by fault. For example, if a failure to act has resulted in a threat to the complainant's tenancy. Payments for distress are usually within the range of £100 to £300 but may be higher – for example, if a complainant has lost a home as a result of the fault.
- > We will consider a financial remedy for any time and trouble caused to the complainant. For example, if a council delayed acting on an appeal request and the complainant had to chase several times over many months. This would be even if the outcome of the appeal ultimately made no difference to their benefit entitlement.
- > We expect councils to consider reviewing their policies or procedures if a complaint reveals problems in a particular area. For example, if it becomes apparent a council is not deciding appeal requests in accordance with the law and is not passing cases for tribunal hearings when it should.
- > We expect councils to review staff training and resources if a complaint reveals problems in these areas. For example, if there are large backlogs in processing appeals because a council does not have sufficient qualified staff to deal with them.



Encouraging local accountability

We want to share lessons from complaints brought to us with locally elected councillors who have the democratic mandate to scrutinise the way councils carry out their functions and hold them to account.

We believe complaints raised by the public can be an important tool and source of information to help councillors identify issues affecting local people. Complaints can therefore play a key part in supporting local public service scrutiny.

Our experience has highlighted several key questions councillors could ask officers when scrutinising housing benefit services around appeal issues.

- > How many appeals does the council receive on a quarterly basis? How long does the council take to process these?
- > Does the council have enough suitably trained and skilled officers to deal with the volume of appeals that it receives? If not, what is it doing to address this?
- > How is the council planning for the rollout of Universal Credit in its area? Is it keeping under review its assumptions about the implications this has for housing benefit case numbers and appeals given any delay in rollout?
- > How is the council monitoring whether appeals are being dealt with properly? Is there any evidence claimants are being refused appeals but their cases are not being passed to the tribunal, as the law requires?
- > How does the council monitor whether it is waiting at least one month before beginning overpayment recovery, to allow opportunity for an appeal?
- > How does the council ensure it is putting a hold on recovery action when it receives an appeal against a housing benefit overpayment?

We would encourage councillors to look at the issues highlighted in this report, as well as complaints raised locally, to ensure benefit appeals are receiving proper and effective scrutiny and that service is accountable to local people.

We now publish our complaints data for each council on an [interactive map](#) which helps to encourage further local accountability. We also publish [weekly alerts](#) for the latest Benefits and Taxation decisions which anyone can sign up to receive.



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