

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

**Investigation into a complaint against  
London Borough of Haringey  
(reference number: 18 015 518)**

**07 October 2019**

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## The Ombudsman's role

For more than 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.

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
C	Her eldest son
D	Her youngest son
Officer 1	Council officer
Officer 2	Council officer

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## Report summary

### Benefits and tax

Ms X complains the Council miscalculated her housing benefit and council tax entitlement, leading to her eviction by her private landlord. She also says that the Council failed in its duty to house her, causing her and her family distress.

### Finding

Fault found causing injustice and recommendations made.

### Recommendations

The Council should apologise for the distress caused.

At our request, the Council has contacted Ms X to take a homelessness application. It should continue to do what it can to help in finding suitable housing for her and her family.

To remedy the injustice caused we recommend within a month of the date of this report, the Council should pay Ms X:

- £1,000 for the distress caused by denying her chance to appeal its housing benefit decision in October 2017, its initial miscalculation and for, without authority, informing her landlord that she was over £8,000 in debt with the Council;
- £1,300 to recognise she was in unsuitable accommodation from the end of November 2017 to the end of May 2018, while she was actively seeking help from the Council or while the Council should have kept her case open; and
- £500 for storage costs she incurred when she had to leave her rented property. Or, if Ms X can provide receipts for storage costs and for any furniture or possessions she had to dispose of, reimburse her for any loss she can evidence.

If Ms X still wants to submit her case to the tribunal, the Council should submit her application immediately.

Within three months of the date of this report, the Council should:

- review this case to investigate why it made calculation errors. It should report its detailed findings to us. If Ms X wants to submit her case to the tribunal, the Council's submissions to the tribunal (providing they include sufficient detail) may stand as a response to this recommendation; and
- audit cases where it calculated overpayments and applied the two-child restriction, between July 2017 and March 2018 and report its findings to us. Where mistakes were made, it should correct those mistakes. If the audit reveals the Council calculated incorrectly in a majority of cases, it should complete a further review of all cases during that period or consider what other steps it should take to detect and remedy any systemic fault. The Council should inform us of any steps it has taken and explain why it considers its actions are proportionate and appropriate.

The Council has accepted our recommendations.

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## **The complaint**

1. Ms X complains that the Council:
  - miscalculated her housing benefit several times and wrongly suspended it without notice;
  - blocked her attempts to appeal numerous benefits decisions at an independent tribunal;
  - caused her to be evicted from her home; and
  - failed to address her homelessness application properly.

## **The Ombudsman's role and powers**

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. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, 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*)
5. 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*)
6. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How we considered this complaint**

7. We have spoken to the complainant and made enquiries with the Council. We have researched relevant, law, guidance and policy. We have given both parties an opportunity to comment on the draft report.
8. We have considered events that happened more than 12 months ago. We consider there is good reason to because the complainant was not fully aware of the fault that occurred with her original housing benefit calculations until more recently.
9. Both the Council and the complainant have had the opportunity to comment on a draft of this report. We have made amendments to reflect the consideration given to their observations.

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## What we found

### Relevant law

10. The Children Act 2004 requires all local authorities, including local housing authorities, to discharge their functions having regard to the need to safeguard and promote the welfare of children. (*section 11(2), Children Act 2004*)

### Housing benefit suspensions and appeals

11. Councils can suspend housing benefit payments if they have doubts about whether the conditions of entitlement for that benefit have been fulfilled. There is no right to appeal a decision to suspend housing benefit, but if a person is unhappy with a housing benefit decision there is a right of appeal to an independent tribunal.
12. Appeals about housing benefit decisions are made to a first-tier tribunal, (“the tribunal”). The tribunals are independent of the council. If someone is unhappy with a decision about an overpayment decision, they can appeal this decision or the revised decision to the tribunal.
13. The appeal must be signed and sent to the council. It must say what decision is being appealed and why the person considers it is wrong.
14. When the council receives an appeal, it should first consider whether it agrees with it. If it does agree with an appeal (in whole or in part), it must alter its decision and send a decision notice awarding any arrears due. If this happens, the appeal, ‘lapses’ and it isn’t forwarded to the tribunal.
15. Councils can revise decisions at any time if they find that a decision arose from a council mistake or was made without having all the relevant information.
16. In any other case, the council must forward the appeal to the tribunal with a submission saying why it does not agree with it and enclosing the relevant documents. It should give its response to the tribunal as soon as is reasonably practicable. The Department for Work and Pensions suggests a normal time scale of four weeks except for more complex cases. (*Housing Benefit Decisions and Appeals Regulations 2001*)

### Housing benefit overpayment – the ‘underlying entitlement’ rule

17. An overpayment of housing benefit is any amount which has been paid where there was no entitlement to that payment. (*Housing benefit overpayments guide, 2015*)
18. Government guidance says that overpayments should be calculated accurately and in good time. It says this is important to provide a quality service to claimants and landlords, to meet regulatory requirements and to ensure the correct overpayment amount is recovered from a debtor. (*Housing benefit overpayments guide 2015*).
19. The Housing Benefit Regulations say that when councils are calculating the amount of a recoverable overpayment, the council should establish the customer’s true circumstances over the overpayment period and calculate entitlement based on those circumstances, as if the council had been informed of them at the correct time. (*Housing Benefit Regulations 2006, 104*)
20. Underlying entitlement is housing benefit that someone would have been entitled to if the authority had known the facts of the case throughout and if it had been notified of all changes of circumstances on time.

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21. Councils must always apply the ‘underlying entitlement’ calculation. The underlying entitlement must be deducted from the gross overpayment amount. There are very few exceptions to this mandatory rule. (3.10, 3.31, 3.34, *Housing benefit overpayments guide 2015*)
  22. It is the council's responsibility to request details of the claimant's correct circumstances over the overpayment period, not the claimant's responsibility to apply for underlying entitlement to be considered. (3.33, *Housing benefit overpayments guide 2015*)
  23. If authorities already have the information they need to make this calculation they should do so. In all cases, unless there is no possibility of underlying entitlement, the authority should invite the customer to provide information and evidence to establish underlying entitlement.

### **Housing benefit calculations – the two-child limit**

24. From 6 April 2017 the child addition which formed part of the housing benefit calculation was limited for some new births. Those who already had two or more children were not entitled to a child addition for any subsequent children born after 6 April 2017, when calculating housing benefit. Existing claimants could still receive a child addition for more than two children if the children were born before 6 April 2017.

### **Council's homelessness duties**

25. Homelessness legislation has recently changed but before April 2018, the Council should have been acting in accordance with the Housing Act 1996 (Part 7), as amended by the Homelessness Reduction Act 2017. This legislation, statutory guidance and relevant case law says that:
  - councils must provide relevant advice suitable to the needs of the people seeking advice (*s.179(1) Housing Act 1996*);
  - some of the considerations that can lead councils to consider someone has priority need are:
    - if they have dependent children who they live with, or
    - if a person who is vulnerable as a result of mental illness or handicap or physical disability or other special reason or with whom a person resides or might be expected to reside. (*s.189, Housing Act 1996*)
  - The courts held that decision-makers must take steps to take account of any disability or any other protected characteristic in the Equality Act 2010 which may be relevant to the decision being considered. (*Pierett v Enfield London Borough Council [2014] EWCA Civ 359.*)
  - an applicant cannot be treated as having accommodation unless it is accommodation which it would be reasonable for him or her to continue to occupy. (*s 175(3) Housing Act 1996*);
  - if a council has reason to believe that an applicant may be homeless or threatened with homelessness, they must make such inquiries as are necessary to satisfy themselves if the person is eligible for assistance, and if so, what duty is owed. (*s.184(1) Housing Act 1996*) Case law adds that the duty to make inquiries cannot be postponed. (*Robinson v Hammersmith & Fulham London Borough Council [2006] EWCA Civ 1122*);
  - if a council has reason to believe that an applicant may be homeless, eligible for assistance and have a priority need, they must ensure accommodation is

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available pending notification of a decision on the application (*s188(1) Housing Act 1996) and English Code, para 6.5*). The threshold is very low. The council need only have 'reason to believe' that the applicant 'may' be homeless, 'may' be eligible for assistance and 'may' have a priority need. If in doubt, interim accommodation should be provided.

- the council should consider whether the applicant (or a member of his or her household) has a disability, the extent of that disability, the likely effect of it on the applicant and the member of his or her household;
- The English Code encourages councils to carry out their inquiries 'as quickly as possible'. It suggests that councils should aim to complete their inquiries and notify the applicant of their decision within 33 working days, counted from the date on which the application was received. (*English Code, para 6.16*)
- The courts have said that in many cases inquiries should take significantly less than 33 days. (*R (IA) v Westminster City Council [2013] EWHC 1273 (QB)*)
- If the council conclude their inquiries and decide that a person does not have a priority need they must notify the person in writing. (*s184 Housing Act 1996*)
- Statute indicates it would be proper for every application to result in a decision even if the decision is that, on the material available to the council, it is not satisfied that the applicant is homeless or threatened with homelessness. This is because statute makes special provisions for notice of decisions on applications to be retained for later collection at the housing authority's offices. (*s184 (6) Housing Act 1996*)
- there is a legal obligation to protect the applicant's possessions (*s.211 (Housing Act 1996)*). If a council becomes subject to a duty towards the applicant to provide interim accommodation, for instance, it should take reasonable steps to prevent the loss of the property or prevent or mitigate damage to it;
- The English Code recommends that local housing authorities may want to consider an application as 'closed' where there has been no contact from the applicant for three months or longer and that any further approach after that time may be treated as a fresh application. (*English Code, 6.26*).

However, it also says that when a housing authority has completed its inquiries it must notify the applicant in writing of its decision on the case. (*English Code, 6.21*)

- A person becomes homeless intentionally if he deliberately does or fails to do anything in consequence of which he leaves the accommodation which it would have been reasonable for him to continue to occupy. (*s 191 and 196(1) Housing Act 1996*)

### **Considerations for Councils when tenants are facing possession.**

26. Landlords cannot lawfully obtain possession of tenanted premises without obtaining an order for possession. Case law has set out that if the tenant is anxious to leave before a court hearing, it might be a reasonable thing to do, but there still may be a finding that he or she became homeless intentionally if it would have been reasonable to remain in occupation.
27. If a tenant is issued with a Section 8 notice relying on Ground 8, Schedule 2, it means the landlord is seeking possession based on a tenant having reached eight weeks rent arrears. If, at the time of the hearing, the tenant is still in eight weeks or more rent arrears, the court has to make a possession order. It may choose to suspend enforcement of the possession order so the tenant has the

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opportunity to address any arrears but it can only do this if it is shown that the tenant can afford to maintain payments and make a reasonable payment towards the arrears.

28. Councils should consider if, in all the circumstances, it is reasonable for a person to remain in occupation.

### **Background**

29. Ms X is a mother of three children, one of whom the Council knew was disabled. All her children were born before April 2017. She moved into a three-bedroom private property in February 2015.

### **Council suspend housing benefit payments**

30. In May 2017, the Council suspended Ms X's housing benefit payments. It asked her to produce information about her childcare costs.
31. The records show Ms X provided information to the Council, but this did not completely answer all the questions the Council had about her application.
32. The Council says Ms X failed to inform it of changes to her circumstances since 2015, which became apparent when it asked her to provide the information it needed to assess her claim.
33. While the Council and Ms X corresponded about her reassessment, Ms X's landlord, (Landlord B), was not paid rent. He issued a Section 8 notice on 16 August 2017 on the grounds that Ms X was in rent arrears.
34. The records show that by 18 September 2017 the Council had the relevant information it needed to reassess her claim.
35. Records show the Council was aware on 25 September 2017 that Ms X had 'massive rent arrears'. A note from an officer asks that this be looked into.
36. There is a record showing that Landlord B and Ms X visited the Council about the outstanding arrears on 3 October 2017. An officer made a note on the file that Ms X said the Council had had the relevant documents for 10 weeks. He wrote, "Please assess claim. Claimant advised to allow more time for assessment."

### **The Council's first overpayment decision**

37. On 9 October 2017 the Council completed its assessment. It decided it had overpaid her because:
- her childcare costs had not been as much as it had understood;
  - she had been self-employed from October 2016 but did not tell the Council until July 2017. Using Housing Benefit Regulations, it applied the section that says if a change has occurred and the Council was not informed within a month, the change would be treated as having happened from the date of notification; and
  - it had become aware that Ms X had another child. But it did not provide an allowance for her third child because, at the time, it considered the two-child restriction applied to Ms X's account.
38. The Council wrote to Ms X and said she had been overpaid housing benefit and owed the Council £8,638.57.
39. When calculating her overpayment, it did not apply the 'underlying entitlement' rule.
40. Within a month of the Council's overpayment decision, Ms X asked for a review.

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### **Ms X's landlord is informed of overpayment claim**

41. A similar letter was sent to Ms X's landlord on the same day. It said Ms X owed the Council £8,638.57 because she had failed to disclose information.
42. The Council accept it should not have written to Landlord B. It did not have the authority to disclose the overpayment to him.
43. Shortly after this letter was sent, the Council paid Landlord B £3,820.40. Council records show it was paid as Ms X had reached over eight weeks rent arrears. Ms X said her landlord continued to ask her to leave.
44. On 12 November 2017 Ms X says Landlord B messaged, telling her to leave the property. She said she felt she had no choice and that Landlord B demanded she hand over her keys.

### **Ms X says she was made homeless**

45. Ms X and her family went to stay with her mother. The next day Ms X visited the Council offices. An emergency housing advice interview was set up for 24 November 2017.
46. The notes taken at the meeting say Ms X did not want to return to Landlord B's property and had given her keys back. Ms X says she told the Council she could only stay with her mother for a couple of weeks. The officer did not make a record of this.
47. The officer who took the notes said that, "...this sounds like an unlawful eviction." Ms X says the Council made a decision that she was not intentionally homeless and so she expected the Council would help her.
48. The Council says there is no evidence anyone told Ms X she was not intentionally homeless. It says it would not have been the officer's role to make that type of decision. It says officers would normally explain the role of the Solutions Officer and may advise that intentionality could be considered, but there is no record, it says, of that in this case.
49. The Council officer contacted Landlord B to see if there was any hope of reconciliation, but this was not possible.
50. The officer noted that he would refer Ms X's case to 'solutions'. He noted that Ms X said her mother had two spare rooms, that Ms X had good support. He said they discussed alternative parts of the country which could provide a settled better solution.
51. It was noted that one of Ms X's sons is disabled.
52. The officer did not make a note of the next steps to be taken.
53. Ms X said she had to put her furniture in storage. She says this cost £240 a month and she could not afford to pay it for very long. She says she had to throw away a lot of furniture.

### **Contact after homelessness interview**

54. Ms X says she was told a housing officer would contact her in two weeks. She said she heard nothing. She said she called the Council in December 2017. She said she told whoever she spoke to that she was homeless with three children.
55. She said she was told someone would be in contact in eight weeks.

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### **Council review its overpayment decision**

56. On 10 January 2018 the Council told Ms X it had reviewed her housing benefit application but had not changed its decision. Following our enquiries, the Council has accepted that as it had upheld its decision against Ms X, it should have referred her case to the tribunal.

### **Ms X contacted housing department again**

57. On 31 January 2018 Ms X wrote to the housing department. She said she was desperate, and no one had contacted her to address her homelessness. She said she was no longer able to live at her mothers and was of no fixed abode. She said that since her call to the housing department in December 2017 she had been moving from place to place as her family members could not house her permanently.
58. An appointment was made for her to visit the Council on 5 February 2018. She was told she would need to bring identification documents. She said she had already done so. She was told there was no record of this on the system.
59. Ms X was not able to attend the appointment as she had a chest infection. She wrote to the Council to explain. She mentioned that fortunately her ex-partner said she could stay with him permanently. But she said that as he was a council tenant she needed to know if that would be acceptable.
60. On 7 February 2018 the Council told Ms X that as she had not been in contact, it had closed her homelessness case down. However, after she contacted it again, it accepted it should not have closed her case and reopened it.
61. The officer said no decision had been made on her case as the Council needed to make further inquiries to establish whether she was intentionally homeless or not.
62. The officer said that Ms X's ex-partner should speak to his housing officer to make sure he would not be in breach of his tenancy for allowing her and her family to stay with him.
63. On 8 February 2018 Ms X wrote to the Council, asking why her housing status was under review. She said the contact numbers she had for housing officers did not work.
64. The Council made an appointment for her to visit on 12 February 2018. Ms X said she could not attend and asked for an appointment to be made on the first open date after 20 February 2018.
65. There is no evidence the Council contacted her to arrange another appointment. We have not seen any evidence Ms X contacted the Council about her circumstances again, but in July 2019, she said she was still homeless, and her situation had worsened.

### **Council recalculates applying 'underlying entitlement' rule**

66. On 15 January 2018 an officer, (Officer D), asked for further information about Ms X's youngest child. He told Ms X he was looking at ways of reducing her outstanding overpayment.
67. On 5 February 2018 Ms X queried why her case had not been sent to the tribunal. Officer D said it had not been sent, "...simply because I am in the process of trying to reduce your outstanding overpayment. Once I have re-assessed your claim and advised you of the decision you can submit your appeal and we can look at sending it across to the appeals tribunal".

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68. On 12 April 2018 the Council recalculated her housing benefit, reducing her overpayment by £4,337.93.
  69. The Council removed Ms X's previous employment earnings using the applicable underlying entitlement rule. It added her third child to the household and provided an additional child allowance up until the 5 April 2017, when it considered the two-child restriction would apply.
  70. It added the additional childcare costs that would have applied for her other two children if it had previously calculated using the underlying entitlement rule.

#### **Further recalculations**

71. In May 2018 Ms X responded to the latest recalculation. She said these calculations did not include her youngest son's childcare costs.
72. She said she was "...baffled that with no new evidence the claim that I was once written to and told I owed £8000 for...has now reduced to £4000...this was a huge mistake....that cost my family my home!"
73. She complained that her request to take her case to tribunal was denied and that, "...the stress and hardship this has placed myself and my family under is inconceivable."
74. She said she was formally requesting that the decision should be appealed.
75. She also complained that she had been hounded by bailiffs over council tax arrears and asked that this be put on hold while this dispute was ongoing. The Council put the account on hold for 28 days, although after this period, she was visited by bailiffs on four occasions.
76. A further recalculation in July 2018 reduced her bill to £3,692. She was told she could ask for a review of this decision or appeal it.
77. In September 2018, Ms X said she wanted to appeal the decision to address the 'remaining errors'. Officer D wrote to her asking what remaining errors she meant.
78. Around the same time the records show a 'priority log' was sent to the housing benefit high risk team. By November 2018 another officer noted that it was still outstanding.
79. In December 2018, Officer D wrote to Ms X again. He said he could not forward her appeal to the tribunal until she explained exactly why she felt the Council had not assessed her application correctly. He said she had said the childcare costs were incorrect but had not said how.
80. On 4 February 2019 Officer D reconsidered the decision of July 2018. He said he upheld the previous decision. The Council accept it should have referred Ms X's case to tribunal again at this stage but did not.
81. The same day another officer, Officer R, asked Ms X to disregard Officer D's decision. She said she was now addressing the issues.

#### **The Council write off the overpayment**

82. The next day, Officer R wrote to Ms X saying the Council had written off the overpayment. She said the overpayment was not recoverable because it was created by Council error and Ms X could not reasonably have known that she was overpaid.
83. Internal notes say Ms X had never claimed housing benefit with childcare costs and had no experience of how the system worked. The notes said the Council

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failed to ask her for proof of the amount that she had been paying and added that, “Although a few notification letters were issued our letters are complex and difficult to understand.” It was noted that Ms X has a disabled child.

84. At the same time, Ms X’s council tax benefit was also reviewed. She was told she only owed £22.35. Recovery costs were cancelled. A further benefit adjustment has been applied since we made enquiries about this complaint. The Council now says Ms X does not owe any council tax.
85. Ms X was told she could appeal both decisions. She did. The Council revised its calculations again. It told her she had been underpaid housing benefit. It says that it was decided the two-child restriction, ‘did not apply in this instance.’ Therefore, Ms X had also been entitled to a third child allowance from 6 April 2017. This changed the amount of benefit she had been due and resulted in Ms X having been underpaid £1809.39.
86. It paid this into her account shortly thereafter. Ms X said she did not want to accept the sum in order to close her case. She said she wanted to continue to complain about how the Council’s many errors had caused her extreme hardship.
87. The Council says that if Ms X still wants to appeal to the tribunal, once she has set out the reasons why she disagrees with the most recent decisions, it will submit her case to the tribunal.
88. The Council accepts that it failed to apply the correct rules and to assess her claim correctly when it had received the correct information from Ms X. It offers £100 compensation for its failings.

## **Findings**

### **Failure to progress request for appeal to tribunal**

89. The Council has accepted that it failed to refer her case to the tribunal on 10 January 2018. This is fault. Ms X complained about this numerous times. She was at one point told the Council would, “...look at sending it across to the appeals tribunal” when it should have already sent it to the tribunal.
90. The Council failed to calculate her benefit correctly and it is likely this would have been noted at a much earlier stage if her case had been passed to the tribunal. This was also fault that caused Ms X an injustice. If the tribunal looked at the Council’s calculations it is likely Ms X would have been spared a lot of the distress she went on to undergo.

### **Failure to calculate her overpayments using the underlying entitlement rule.**

91. We would not usually investigate calculations of housing benefit. That is ordinarily considered by the tribunal. However, in this case, as set out above, the Council failed to progress her case to the tribunal and so it is necessary for us to look at the Council’s failures in calculation.
92. The Council failed to calculate Ms X’s overpayment using this mandatory rule. There are only exceptional cases where councils can decide not to calculate in this way. This is not one of them. This is fault. It caused Ms X an injustice. The Council accept it should not have informed her landlord of her debt. This is fault. It would have been fault if her landlord was informed of any debt. But, while we are not able to say for certain if Ms X’s landlord would have continued to press for eviction if he had been informed of a small debt, it is likely that because he was told she owed the Council the significant sum of over £8,000, this information persuaded him to press for eviction.

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93. In any case, it is understandable if, faced with this incorrect calculation, Ms X felt she had to leave her property, unable to address high rent arrears and a looming large repayment to the Council.
94. The Department for Work and Pensions has expressed concern that some authorities do not consider underlying entitlement when calculating recoverable overpayments. In a 2013 bulletin it reminded councils that, "...underlying entitlement is mandatory and must always be considered."
95. If Ms X had assumed the Council's initial calculations were correct, she might have engaged in paying back a debt much larger than was owed.
96. If it was the Council's normal practice not to calculate using underlying entitlement initially, this could have affected other service users. We have made recommendations to address our concerns about this fault.

#### **Failure to apply the two child restriction rules properly**

97. By the time the Council produced its decision in October 2017, it was aware of Ms X's third child. It is unlikely that the tribunal, if she had been afforded the opportunity to set her case before it, would have misapplied the rule.
98. The Council says it later decided that the rule did not apply in this instance. However, it should never have been applied to Ms X's case. Her youngest son was born before 6 April 2017 and she was an existing claimant. She should always have had a third child allowance. If the Council had made proper enquiries, as it is required to do before it calculates overpayment, and had applied the underlying entitlement rule, her account could have been corrected much quicker.

#### **Did the Council's actions cause Ms X and her family to become homeless?**

99. Ms X says the Council's action led to her eviction from her property. She says while the Council continued to miscalculate her benefit entitlement, she was not able to find a new property to rent. She says this caused her and her family distress.
100. The Council says it did not make her homeless. It says Landlord B did not evict her and that she left of her own accord, handing the keys back. It says if Landlord B tried to evict her using the courts, she would have been able to defend the case but she did not wait for Landlord B to take her to court.
101. This might be the case. Nonetheless, we disagree. Ms X had lived at the property since February 2015. There is no evidence she had a difficult relationship with her landlord *before* she got into rent arrears, which were brought about through the Council's serious miscalculation. Landlord B sought possession because of rent arrears. It was reasonable for Ms X to consider that she and her young children could not continue to stay at a property which she could no longer pay for after having also been told she owed the Council over £8,000. We consider it is understandable if Ms X felt immense pressure by circumstances that were created by Council error.
102. The Council is right to say Ms X could have tried to defend herself in court but at the time she left, she did not have a good chance of success. Her arrears were high and she had no way of paying them within a reasonable period. On our understanding of the figures, even after the Council made a payment to her landlord in late October 2018, early November 2018, she was still either in eight weeks rent arrears or just about to enter into eight weeks rent arrears again.

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103. The Council also accept that it should not have informed Landlord B that Ms X owed the Council over £8,000. It also told her landlord that this overpayment was brought about by Ms X's failure to disclose information, which would have given him a poor impression of Ms X. I consider this fault would almost certainly have contributed to the pressure that Ms X said Landlord B put her under to leave the property. The Council's fault caused her and her family significant injustice.

### **Homelessness application**

104. The Council is also at fault for the way it handled her application. She presented to the Council as someone who was homeless or threatened with homelessness. She was staying at her mother's because she had nowhere to go. We accept her evidence that she told the housing officer this. She also told the housing officer she had a disabled child. As someone with three children, one of whom was disabled, she should have been recognised as someone who was possibly in priority need and she should have been offered accommodation immediately. This is fault causing injustice.
105. There is some evidence the Council began making inquiries into Ms X's case but it did not pursue them. The officer she first met considered it was probable she had been illegally evicted but this was not pursued. The Council closed her case prematurely. This was fault. However, it opened it up again very quickly so there was no significant injustice.
106. The Council made a number of appointments for Ms X to meet and discuss her situation with housing officers but she was not able to attend. As she was a potentially homeless person, the Council should have taken steps to contact her after 20 February 2018. It did not. It was fault not to have done so. It was further fault for the Council to close her case again without notifying her of its decision on her homelessness application.
107. If Ms X had not been in contact at all and had not asked for an appointment, it might have been reasonable for the Council, after three months, to consider closing her case. But she had done so. She had complained about her case being prematurely closed before. She had recently contacted the Council setting out the precariousness of her position and that of her young children. The Council should have concluded its inquiries, reached a decision and notified her. This is fault.
108. She says this fault has caused her a serious injustice. We accept this.

### **Lost property**

109. When the Council should have taken on a duty to provide interim accommodation to Ms X, it should also have taken on a duty to protect her possessions. It did not and Ms X says that she paid a significant amount of money every month for storage and eventually had to throw away a lot of possessions. This is fault causing injustice and we have made a recommendation to address this.

### **Recommendations**

110. The Council must consider this report and confirm within three months the action it has taken or proposes to take. The Council should consider the report at its full Council, Cabinet, or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
111. At our request, the Council has contacted Ms X to take a homelessness application. It should continue to do what it can to help in finding suitable housing for her and her family.

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To remedy the injustice caused we recommend within a month of the date of this report, the Council should pay Ms X:

- £1,000 for the distress caused by denying her chance to appeal its housing benefit decision in October 2017, its initial miscalculation and for, without authority, informing her landlord that she was over £8,000 in debt with the Council;
- £1,300 to recognise she was in unsuitable accommodation from the end of November 2017 to the end of May 2018, while she was actively seeking help from the Council or while the Council should have kept her case open;
- £500 for storage costs she incurred when she had to leave her rented property. Or, if Ms X can provide receipts for storage costs and for any furniture or possessions she had to dispose of, reimburse her for any loss she can evidence.

112. If Ms X still wants to submit her case to the tribunal, the Council should submit her application immediately.

113. We welcome that, within three months of the date of this report, the Council has agreed to:

- review this case to investigate why it made calculation errors. It should report its detailed findings to us. If Ms X wants to submit her case to the tribunal, the Council submissions to the tribunal (providing they include sufficient detail) may stand as a response to this recommendation; and
- audit cases where the Council calculated overpayments and cases where it calculated overpayments and applied the two-child restriction, between July 2017 and March 2018. It should report its findings to us. Where mistakes were made, it should correct those mistakes. If the audit reveals the Council calculated incorrectly in a majority of cases, it should complete a further review of all cases during that period or consider what other steps it should take to detect and remedy any systemic fault. The Council should inform us of any steps it has taken and explain why it considers its actions are proportionate and appropriate.

114. The Council has accepted our recommendations.

## **Decision**

We have completed our investigation into this complaint. We have found fault causing injustice to Ms X. The Council should take the action identified above to remedy that injustice.