

Report for: Cabinet 21st January 2020

Title: **Report by the Local Government and Social Care Ombudsman into complaint by Ms X against Haringey Council.**

Report authorised by: Bernie Ryan, Monitoring Officer and Assistant Director Corporate Governance

Lead Officer: Bernie Ryan, Monitoring Officer and Assistant Director Corporate Governance

Ward(s) affected: N/A

**Report for Key/
Non Key Decision:** Non Key decision

1. Describe the issue under consideration

- 1.1 Ms X complained about the Council to the Local Government and Social Care Ombudsman (“the Ombudsman”). Her complaint related to the way the Council dealt with her housing benefit and subsequent homelessness.
- 1.2 On 7th January 2020, the Ombudsman published a report finding fault with the Council and making recommendations as to the steps to be taken by the Council as a result.
- 1.3 It is for Cabinet to note the steps taken so far and decide what further steps should be taken.

2. Cabinet Member Introduction, Cllr Amin , Cabinet Member for Corporate and Civic Services

- 2.1 The Ombudsman has made a report finding fault with the Council in relation to a complaint made by Ms X and has asked the Council to take certain steps to remedy that fault.
- 2.2 This report summarises the Ombudsman’s report and the steps that have been taken to date. It also proposes further steps to be taken by the Council in response to the report.
- 2.3 Cabinet must consider the Ombudsman’s report (shown at Appendix 1) and the steps it is proposed to take in response.

3. Recommendations

That Cabinet:

- 3.1 Accept the findings and recommendations of the Ombudsman in the report shown at Appendix 1.
- 3.2 Authorise officers' compensatory payments to Ms X totalling £5,587.94, as set out in paragraphs 4.7 and 4.10 below.
- 3.3 Adopts this report as the Council's formal response under s.31 Local Government Act 1974, to be communicated to the Ombudsman.
- 3.4 Adopts this report as the Cabinet's formal response as required by s.5A Local Government and Housing Act 1989, for distribution to all members and the Monitoring Officer.

4. Reasons for Decision

Overview

- 4.1 The Ombudsman's report is dated 7th October 2019 but was not published until 7th January 2020. This is because publication was delayed due to purdah around the general election held on 12th December 2019.
- 4.2 As set out in the Ombudsman's report, Ms X has been found to have suffered injustices as a result of faults on behalf of the Council. In summary:
 - Ms X's housing benefit was calculated incorrectly and communicated to her landlord, leading to Ms X feeling pressured to leave the property.
 - Ms X was also not immediately offered alternative accommodation on the basis of priority need or protection for her possessions that required storage, leading to her being placed in unsuitable accommodation for approximately 6 months and having to pay for storage of her property.
- 4.3 The Ombudsman has recommended that action be taken to remedy this. In essence, the recommendations seek to:
 - Compensate Ms X and ensure her case is now being dealt with appropriately.
 - Ensure that any similar past faults are identified and remedied.
 - Ensure the fault is not repeated in the future.
- 4.4 The Ombudsman's findings are accepted. The service is sorry for the mistakes made and is determined to learn from them. An apology has been given to Ms X, as set out at paragraph 4.10 below and the Council is seeking to remedy the mistake for Ms X by following the Ombudsman's recommendations. Officers are also reviewing all similar cases in order to ensure that any similar mistakes in other cases are identified and corrected.

4.5 The Ombudsman's recommendations are considered to be appropriate because:

- The Council must ensure Ms X's case is now being dealt with appropriately in order to comply with its legal obligations in respect of housing.
- It is right to offer compensation to Ms X given the Ombudsman's findings of injustice.
- The Council must identify both the errors that led to these faults and any similar past faults in order to remedy them and ensure it is now complying with its legal duties towards other service users. This will help prevent any similar injustices occurring in the future.

The Ombudsman's recommendations

4.6 The Council should apologise to Ms X for the distress caused.

4.7 The Council should pay Ms X within 1 month of the report:

- £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.

4.8 The Council should submit Ms X's case to the first-tier tribunal if she still wants this to be done.

4.9 The Council should within 3 months of the report:

- Review the case to investigate why it made calculation errors and report the detailed findings to the Ombudsman.
- Audit cases where the Council calculated overpayments and applied the two-child restriction between July 2017 and March 2018 and report the findings to the Ombudsman. 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 considered its actions are proportionate and appropriate.

Action already taken

- 4.10 Officers have apologised to Ms X for the distress caused and made compensatory payments to Ms X totalling £5,587.94. This sum represents:
- £1,000 for the distress caused by denying her chance to appeal the Council's 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
 - £3,287.94 for storage costs and loss of possessions incurred when Ms X had to leave her rented property. Ms X has evidenced these costs and items.
- 4.11 Ms X wished to pursue her appeal and so officers referred Ms X's case to the First-tier Tribunal in the Summer of 2019. The First-tier Tribunal has since determined the appeal. The appeal was upheld but it was found that the Council has since correctly assessed Ms X's housing benefit entitlement.
- 4.12 A review of Ms X's case concluded that:
- The Council's housing service was going through significant changes at the time as a result of preparation for and implementation of the Homelessness Reduction Act 2017 from 4th April 2018. As part of those changes, there was a large number of new and inexperienced staff in the service. Different teams were responsible for progressing each step for a case and so cases were transferred between different teams accordingly. Three separate officers may have been involved.
 - Ms X was not immediately offered alternative accommodation because it was recorded that she was living with her mother and this was not followed up or checked again with Ms X as it should have been.
 - It had previously been identified that the use of multiple teams in the housing service could lead to difficulties in communication and service users falling between the gaps. Therefore, since 3rd April 2018, service users have been allocated a Housing Needs Officer; a single point of contact who is accountable for managing the case throughout the assessment period.
 - Her housing benefit entitlement was calculated incorrectly because the Council did not:

- apply the 'underlying entitlement' rule as it was obliged to do. (I.e. it did not deduct from the overpayment the amount Ms X would have been entitled to if the Council had known the facts of the case throughout and had been notified of all changes of circumstances on time.)
 - provide an allowance for Ms X's third child because it considered the two-child restriction applied. (This restriction applied to children born after 6th April 2017 but Ms X's children were born prior to that date.)
- There was a delay in applying the underlying entitlement rule because the requisite information was not provided until February 2018 and, due to backlogs, it was not processed until April 2018.
 - An allowance was not provided for Ms X's third child because, although the child was born before 6th April 2017, his birth was notified to the Council after 6th April 2017. Regrettably, it was not recognised that the child's date of birth pre-dated 6th April 2017 and this meant that the two child restriction did not apply.
 - The backlog has now been eliminated as the new staff brought on prior to April 2018 now have significantly more experience and the new system has been in place for nearly two years.
 - Staff have been reminded both of the general procedures and policies and the specific rules regarding the two child restriction. This will help ensure staff are aware of what they should be looking for in similar cases in the future.
- 4.13 Officers have audited 54 randomly selected housing benefit cases where the Council calculated overpayments and applied the two-child restriction between July 2017 and March 2018. The findings have been duly reported to the Ombudsman. The results showed that an error was made in one of the cases, resulting in an under rather than overpayment to the relevant claimant. This has been corrected and the claimant's entitlement has been re-calculated so as to award the correct sum. The claimant has been notified and the amount of the underpayment paid to their bank account.
- 4.14 The service was audited by Mazars in March 2019 and was concluded with a finding of 'substantial assurance'. The performance is in the top quartile of London boroughs.
- 4.15 Two public notice advertisements were placed in newspapers: (i) the Enfield and Haringey Independent on 8th January 2020 and (ii) the Ham and High on 9th January 2020, stating that copies of the Ombudsman's report were available to inspect by the public at the Council's offices for a period of three weeks.

Action it is proposed to take

- 4.16 The Ombudsman report recommended a review of all cases only if the audited revealed the Council calculated incorrectly in a majority of cases. Although the audit has shown an incorrect calculation in only one case, officers are

nevertheless keen to ensure the correct action has been taken. Therefore, officers are currently undertaking a further review of all 2,056 housing benefit cases where the Council calculated overpayments and applied the two-child restriction between July 2017 and March 2018. Any mistakes that are identified will be corrected. This is expected to be completed by 31st March 2020 and the results will be reported to the Ombudsman.

- 4.17 All cases with households with more than two dependent children will also be reviewed on a monthly basis for a further three months in April, May and June 2020, to ensure any similar errors are identified and corrected promptly.

Views of senior officers

- 4.18 The Monitoring Officer has consulted with the Chief Executive and Chief Finance Officer, and they agree with the recommendations within this report.

5. Alternative Options Considered

- 5.1 The Ombudsman cannot force the Council to follow its recommendations, but local authorities generally do follow them.
- 5.2 If the Ombudsman is not satisfied with the Council's response, he will make a further report explaining this and making recommendations. He can also require the Council to make a public statement about the matter.
- 5.3 Therefore, Cabinet could choose to reject any of the recommendations made by the Ombudsman.
- 5.4 However, this alternative is not recommended because the Ombudsman's recommendations represent an appropriate remedy for the reasons set out above.

6. Background Information

- 6.1 The full background is set out in the Ombudsman's report, as shown at Appendix 1.
- 6.2 Ms X is a mother of three children, one of whom is disabled. She moved into a 3-bedroom private property in February 2015 and was awarded housing benefit from 21 February 2015.
- 6.3 Ms X did not notify the Council of any changes in her circumstances between March 2015 and May 2017, and so housing benefit continued to be awarded at £303 per week.
- 6.4 In May 2017, the Council suspended Ms X's housing benefit payments and asked her to produce information about her childcare costs. Ms X provided information to the Council, but this did not completely answer all the questions the Council had about her application. On the basis of the information that was

provided, the Council considered Ms X had failed to inform it of a change in circumstances.

- 6.5 Whilst the Council and Ms X corresponded about the issue, housing benefit was not paid and so Ms X's landlord was not paid rent. On 16 August 2017 the landlord gave notice to evict Ms X on the ground that she was in arrears of rent.
- 6.6 On 9 October 2017 the Council decided Ms X had been overpaid housing benefit in the sum of £8,638.57. Letters were sent to both Ms X and her landlord setting out this sum.
- 6.7 However, when calculating this sum, the Council mistakenly:
- Did not apply the 'underlying entitlement' rule as it was obliged to do. (I.e. it did not deduct from the overpayment the amount Ms X would have been entitled to if the Council had known the facts of the case throughout and had been notified of all changes of circumstances on time.)
 - Did not provide an allowance for Ms X's third child because it considered the two-child restriction applied. (This restriction applied to children born after 6 April 2017 but Ms X's children were born prior to that date.)
- 6.8 Ms X asked for a review of the overpayment decision. On 10th January 2018, the Council reviewed its decision but reached the same conclusion. Ms X's case should then have been referred to the first-tier tribunal but unfortunately this was not done.
- 6.9 Shortly after sending letters to Ms X and the landlord, the Council paid £3,820.40 to the landlord because Ms X was in rent arrears. However, Ms X says that the landlord continued to ask her to leave and so she felt she had no choice but to do so in November 2018. She had to pay to put her furniture into storage and move in with her mother temporarily.
- 6.10 Ms X informed Homes for Haringey that she was homeless. In early 2018, Ms X informed the Council she could live with her ex-partner in his council house but wanted to check whether that was acceptable to the Council. The Council advised that her ex-partner should speak to his housing officer to ensure he would not be in breach of his tenancy agreement.
- 6.11 The Council arranged appointments with Ms X for 5th and 12th February 2018. Ms X informed the Council that she could not attend these appointments and asked for an appointment on the first available date after 20th February 2018.
- 6.12 Thereafter, the Council did not contact Ms X to arrange another appointment and Ms X did not contact the Council again about an appointment.
- 6.13 The Council subsequently recalculated Ms X's housing benefit to take into account her underlying entitlement, reducing it to £4,300.65 on 12th April 2018 and £3,692 in July 2018. Ms X said she wished to appeal this decision because she felt her childcare costs were incorrect but could not say how. Ms X's case should then have been referred to the first-tier tribunal but unfortunately this was not done.

6.14 In early 2019, the Council informed Ms X that:

- It had written off the overpayment of housing benefit on the basis that it was created by Council error and Ms X could not have reasonably known that she was overpaid.
- It had recalculated the amount of housing benefit on the basis that the two child restriction did not apply to Ms X and concluded that Ms X was underpaid £1,809.39. This amount was paid to Ms X shortly afterwards.

6.15 In July 2019 Ms X reported that she was still homeless. The Council accepted its housing duty towards her and she was placed in interim accommodation in August 2019. The 'effective date' for her housing register application was backdated to 11th January 2018; this would have been the date if the case had been correctly processed at the time. The practical effect of this is that Ms X will have a higher position on the waiting list than if her effective date was more recent.

7. Contribution to Strategic Outcomes

7.1 There is a legal obligation to consider such reports from the Ombudsman. Therefore, this report is necessary.

7.2 It is also part of the good administration of the Council to learn from any mistakes.

8. Statutory Officers Comments

Finance Comments

8.1 The Chief Finance Officer notes the contents of this report and supports the proposed recommendations. Taking action and amending processes in response to this type of investigation will help minimise the likelihood of similar complaints in the future.

8.2 The compensatory payment to Ms X of £5,587.94 has been paid by Homes for Haringey and is funded from their compensation claims budget.

Legal Comments

8.3 The Council is required to give public notice by advertisements in newspapers stating that copies of the Ombudsman's report will be available to inspect by the public at the Council's offices for a period of three weeks (s.30 Local Government Act 1974).

8.4 Where a report such as this is made by the Ombudsman, it must be laid before the authority (s.31 Local Government Act 1974). In cases such as this where the Council is operating executive arrangements, "the authority" means the executive, i.e. Cabinet (s.25(4ZA) Local Government Act 1974).

- 8.5 The monitoring officer is obliged to consult with the head of paid service and chief finance officer, and prepare a report to Cabinet. This report must be sent to each member of the authority and Cabinet must meet within 21 days thereafter. Implementation of the proposal or decision must be suspended until after the report has been considered by Cabinet (s.5A Local Government and Housing Act 1989).
- 8.6 Where Cabinet considers an Ombudsman's report and it is considered that a payment should be made or other benefit given to a person who has suffered injustice, such expenditure may be incurred as appears appropriate (s.31(3) Local Government Act 1974).
- 8.7 The Ombudsman must be informed of the action taken by the Council and any action it is proposed to take within 3 months of the date on which the Council received the report, or such longer period as may be agreed by the Ombudsman in writing (s.31(2) Local Government Act 1974).
- 8.8 If the Ombudsman does not receive notification of such action or is not satisfied with it, he will make a further report explaining this and making recommendations. He can also require the Council to make a public statement in any two editions of a newspaper circulating the area within a fortnight (s.31(2A) and (2D) Local Government Act 1974).
- 8.9 An Ombudsman's report should not normally name or identify any person (s.30 Local Government Act 1974). Therefore, the complainant is referred to as 'Ms X' and officers have not been identified.

Procurement Comments

- 8.10 There are no specific procurement implications that arise from this report.

Equality Comments

- 8.11 The Council has a Public Sector Equality Duty under the Equality Act 2010 to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act;
 - Advance equality of opportunity between people who share those protected characteristics and people who do not; and
 - Foster good relations between people who share those characteristics and people who do not.

The three parts of the duty applies to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status applies to the first part of the duty.

- 8.12 The report outlines the plan to adopt the Ombudsman's recommendations for Ms X, taking into consideration distress suffered through the breach of the Data Protection Act and decision to start bankruptcy.

- 8.13 The Ombudsman's report did not find the Council to be in breach of the Equality Act 2010. The Equality Act 2010 legally protects people from discrimination on the basis of protected characteristics (including age and sex) from discrimination in the workplace and wider society.
- 8.14 In response to the Ombudsman report and recommendations, the Council has committed to learn from and improve the practice for housing benefit and homelessness, in line with the principles of the Equality Act 2010.

9. Use of Appendices

- 9.1 Appendix 1: Report by the Local Government and Social Care Ombudsman, Investigation into a complaint against London Borough of Haringey (reference number: 18 015 518).

10. Local Government (Access to Information) Act 1985

- 10.1 N/A