



Haringey Council

Agenda item:

[No.1

**General Purposes Committee
Cabinet**

**On 11 March 2008
On 18 March 2008**

Report Title: **Commission for Local Administration investigation report into complaint no 07/A/04966**

Forward Plan reference number: 21

Report of: **Assistant Chief Executive, Policy, Performance, Partnerships & Communication**

Wards(s) affected: not applicable

Report for: non key decision

1. Purpose

1.1 To receive and consider the attached investigation report of the Local Government Ombudsman, and to determine action to be taken in the light of the finding of maladministration, and the Ombudsman's recommendations.

2. Introduction by Cabinet Member for Community Cohesion and Involvement

2.1 Findings of maladministration against the Council are extremely rare, but one is one too many. We clearly failed to provide a proper service to Mr Oak. I therefore support the recommendation that we make a further compensation payment.

2.2 It is equally important that we learn from our mistakes and I am pleased that measures have already been put in place to ensure staff follow the proper procedures.

3. Introduction by Cabinet Member for Resources

3.1 It is unfortunate that this issue has arisen, but we now have a system in place to ensure this does not happen again. I concur with the recommendations of the Ombudsman.

4. Recommendations

4.1 That the findings of the investigation report be noted.

4.2 That the General Purposes Committee agree a payment to Mr Oak of £700 compensation and £150 (£50 of which has already been paid under the Council's complaints procedure) for his time and trouble in pursuing the complaint.

4.3 That with regard to the Ombudsman's recommendation that guidance be issued to officers who deal with disputes over direct payments to landlords, it be noted that interim guidance has already been issued to benefits assessment staff, pending introduction of new regulations relating to the Local Housing Allowance in April 2008.

Report Authorised by:
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5. Chief Financial Officer Comments

5.1 The Chief Financial Officer has been consulted over the contents of this report and has no further comments to make.

6. Head of Legal Services Comments

6.1 The legal implications are set out at paragraphs 10.1 and 10.2 below.

7. Local Government (Access to Information) Act 1985

7.1 No background papers were use in the preparation of this report.

8. Strategic Implications

8.1 This report is presented in order to comply with the statutory requirement for the Council to respond to a finding of maladministration within 3 months. The investigation report was issued on 30 January 2008.

9. Financial Implications

9.1 Any compensation payment approved will be charged to the Benefits and Local Taxation budget.

10. Legal Implications

10.1 The Local Government Act 1974 requires the Council to consider an investigation report and to determine action to be taken within three months of its receipt. The real names of the persons concerned are not used in the investigation report. A press announcement has been made and the investigation report has been made available for public inspection.

10.2 The Council has power to incur expenditure that it considers appropriate to compensate a complainant on a finding of maladministration. This has been delegated to the General Purposes Committee. If the Local Government Ombudsman does not receive notification from the Council within the time permitted, or is dissatisfied with the action taken, or does

not receive confirmation that action has been taken to his satisfaction, then a further report on the matter may be issued.

11. Equalities Implications

11.1 There are no specific equalities implications.

12. Background

12.1 The attached investigation report was issued on 30 January 2008 following the investigation by the Local Government Ombudsman of a complaint against the Council. The investigation involved an examination of documents and interviews with relevant Council officers.

12.2 'Mr Oak' complained that the Council failed to consider evidence he submitted regarding his tenant, 'Miss Beech'. The Council had decided to change the previous arrangements and pay housing benefit to Miss Beech, rather to Mr Oak. Miss Beech did not use the benefit to pay her rent for four weeks and Mr Oak therefore did not receive £700 of due rent. The complaint was upheld for the reasons given in the investigation report.

12.3 The Local Government Ombudsman recommends that:

- the Council Pay Mr Oak £700 compensation and £150 (£50 of which has already been paid under the Council's complaints procedure) for his time and trouble in pursuing the complaint, and that
- the Council issue guidance to its officers who deal with disputes over direct payments to landlords.

13. Comments of the Head of Benefits and Local Taxation

13.1 Housing Benefit is awarded to the claimant, but there are rules on who it can be paid to. When awarded to claimants renting in the private sector, it is deemed as 'rent allowance'. This does not mean that the Council takes responsibility for paying a tenant's rent; this always remains the responsibility of the tenant.

13.2 The Housing Benefit regulations state that Housing Benefit can be paid to a claimant's landlord if the claimant consents. With regard to this case the claimant withdrew consent.

13.3 The Housing Benefit regulations state that a local authority **must** pay Housing Benefit to a landlord -

- If the claimant has the equivalent of 8 weeks or more rent arrears

Housing Benefit **may** also be made payable to a landlord if,

- The claimant requests or consents to payments to the landlord, or
- The authority considers it to be in the best interest of the claimant,
or

- Benefit is owing to the claimant who has left the dwelling with rent arrears, or
- The authority has decided that the landlord is not a 'fit and proper person' to receive direct payments but considers that it is in the overriding interests of the claimant to pay the landlord direct

13.4 In this case, and on receipt of the claimant's request that payments be made to her, a check was made to establish whether the tenant was in rent arrears, most notably 8 weeks arrears. The check revealed that there were no such rent arrears.

13.5 This case rests on whether there was sufficient regard in deciding if it was in the claimant's 'best interest' to pay benefit to the landlord. Whilst due regard was paid to the issue of rent arrears, it is accepted that possibly insufficient regard was made to the evidence supplied by the landlords, on their concern that the tenant may not pay their rent should benefit payment be made to their tenant.

13.6 There is a basic requirement that the Benefits and Local Taxation Service take an objective stance when becoming involved in landlord/tenant disputes, particularly when required to make a judgement over 'best interest'. The guidance quoted in the report refers to issue of 'significant rent 'arrears (para 11). In this case there were no rent arrears. The Ombudsman decision requires that we go further than the quoted guidance suggests that we should.

13.7 Nonetheless, the Benefits and Local Taxation Service has issued interim guidance to benefit assessment staff. This instructs that, in the event of a landlord raising a concern that their tenant may not pay rent, that staff suspend benefit payments whilst enquiries are made to establish whether it would be in the tenant's best interest to pay the landlord. Factors to be taken into account would be the arrangements proposed by the tenant to ensure that the rent be paid to the landlord, evidence that these arrangements were being put in place and whether these arrangements would be appropriate. It would also be necessary to check whether there was a previous history of rent arrears.

13.8 Such interim guidance will be replaced as of April 2008 with the introduction to new regulations relating to the Local Housing Allowance. This will require amended guidance to reflect these regulation changes.

13.9 As of 7th April 2008 most new Housing Benefit claims will be paid to the claimant, and the provision to request or consent to payments to a landlord have been restricted. In future payments can only be made to a landlord –

- if a claimant is unable to manage their financial affairs, or
- where it is improbable that the claimant will pay their rent.

The requirement to pay the landlord benefit if the tenant is in 8 weeks or more rent arrears will remain.

14. Conclusion

14.1 Officers propose that the Local Government Ombudsman's recommendations be agreed. It should be noted that interim guidance has already been issued to benefit assessment staff.

15. Appendix

15.1 The Local Government Ombudsman's investigation report is appended.

Report

on an investigation into
complaint no 07/A/04966 against the
London Borough of Haringey

30 January 2008

Millbank Tower Millbank London SW1P 4QP

Investigation into complaint no 07/A/04966 against the London Borough of Haringey

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Key to names used

Mr Oak	-	The complainant
Miss Beech	-	The complainant's tenant
Officer A	-	Senior Council Benefits Officer

Report Summary

Payment of Housing Benefit to landlords

Mr Oak (not his real name for legal reasons) complains that the Council failed to consider evidence he submitted regarding his tenant. The tenant had a conviction for violence, was harassing Mr Oak, and had threatened to stop paying her rent. Prior to this the tenant's Housing Benefit had always been paid direct to Mr Oak.

Mr Oak told the Council that his tenant was under notice of eviction, and provided evidence from the Police. Mr Oak warned the Council that his tenant might ask for the Housing Benefit to be paid direct to her. The tenant then asked the Council to pay the benefit to her. The Council failed to consider the evidence provided by Mr Oak and decided to change the payment to the tenant.

The tenant received the Housing Benefit for four weeks and did not use it to pay her rent. She has since been evicted but Mr Oak never received the £700 which was due for the four weeks when benefit was paid to the tenant.

Finding

The Ombudsman found that the Council was at fault for failing to consider the evidence provided by Mr Oak. He also criticised the Council for failing to suspend benefit pending an investigation into who should receive the payment.

Remedy

The Ombudsman recommended that the Council pay Mr Oak £700 compensation and an additional £150 in recognition of the time and trouble spent in pursuing the complaint.

Introduction

1. Mr Oak, a landlord, complains that the Council failed to correctly administer the Housing Benefit claim of his tenant, Miss Beech. Following this error, which related to a change of payee from Mr Oak to Miss Beech, Mr Oak did not receive a direct payment of Housing Benefit amounting to £700.
2. For legal reasons, the names in this report are not the real names of the people involved.¹
3. One of my investigators has spoken to Mr Oak, interviewed Council officers and inspected the Housing Benefit records. Mr Oak and the Council were invited to comment on a draft of this report. I have taken account of their comments in preparing the final text and reaching my conclusions.

Legal and Administrative Background

- 4 The outline rules relating to Housing Benefit entitlement are contained in the Social Security Contributions and Benefits Act 1992 (as amended), and the Social Security Administration Act 1992 (as amended). The individual rules relating to Housing Benefit are contained in the Housing Benefit Regulations 2006 (SI 2006 No.213).
- 5 Regulation 95 (1) explains when direct payments of Housing Benefit must be paid to the landlord. The Housing Benefit must be paid to the landlord if the tenant has rent arrears of eight weeks or more.
- 6 Regulation 96 (1), (2) explains when direct payments of Housing Benefit may be made to the landlord: when the claimant requests, or consents to, such an arrangement; or the authority considers it to be in the interests of the claimant; or benefit is owing to a claimant who was left a dwelling with rent arrears; or the authority has decided that the landlord is not a 'fit and proper person' to receive direct payments but nevertheless considers that it is in the overriding interests of the claimant to pay the landlord direct.
- 7 In addition to the regulations the local authority must also consider case law. Social Security Commissioners are appointed to decide appeals on questions of law arising from the decisions of appeal tribunals. Commissioners' decisions on Housing Benefit form a body of case law.
- 8 Case law states that when there is a dispute about who should receive the Housing Benefit then payment should be suspended pending investigations into who should

¹ (Local Government Act 1974, section 30(3)).

- 9 receive it. This view was confirmed by Commissioner Jacobs in April 2007 (CH/1821/2006). Whilst this decision was made after the key events of this complaint, it relates to an appeal held in 2006 and confirms an existing view already operating elsewhere as 'Best Practice'. Other councils have a written policy of suspending benefit if there is a dispute as to who should receive it.
- 10 The Department for Work and Pensions (DWP) is the government department responsible for Housing Benefit policy. It produces the Housing Benefit and Council Tax Benefit guidance manual. The manual advises authorities on how to interpret the regulations and on administrative arrangements. The manual is for information only and is not binding in the same way as Commissioners' decisions. However, local authorities often cite DWP guidance in support of their decisions.
- 11 The Housing Benefit Guidance Manual states that requests for a change of payee should be assessed on an individual basis and decisions should not be based on administrative convenience.² The Manual also states that payment may be made to the landlord if it appears to be in the best interests of the claimant. Serious rent arrears, of £200 for example, may indicate that it is in the best interests of the claimant for payment to be made to the landlord.

Investigation

- 12 In March 2005 Mr Oak rented a property to Miss Beech.
- 13 During 2006 Miss Beech was convicted of violence against a neighbour and she was given a suspended prison sentence. Miss Beech then started to harass Mr Oak and his wife. The harassment was reported to the Police who advised Mr Oak to have no direct contact with Miss Beech. Due to these problems Mr Oak issued Miss Beech with a Notice to Quit, which required her to leave the property by 20 September 2006. Miss Beech did not leave so in February 2007 Mr Oak started legal proceedings to evict her. There was a delay in Mr Oak starting legal action because he was ill. Miss Beech was evicted by a bailiff on 9 May 2007. It cost Mr Oak £1100 in legal fees to evict her; he retained the £700 deposit towards these costs.

Housing Benefit

- 14 Since the start of the tenancy the Housing Benefit had been paid direct to the landlord, at the request of Miss Beech. During 2006 the relationship between Mr Oak and Miss

² Housing Benefit Manual Section 6.191

Beech broke down due to her harassment, her conviction for violence, and the fact she had been asked to leave the property.

- 15 On 24 January 2007 Mr Oak telephoned the Council to warn it that Miss Beech was threatening to prevent him from receiving the Housing Benefit. He sent a fax to the Council on 29 January explaining the history of violence and harassment, the involvement of the Police, and the fact that Miss Beech was facing eviction. He explained that she was under a suspended sentence for assault and her probation officer had advised her not to cancel the direct Housing Benefit payments. Mr Oak stressed that he was worried that if the Housing Benefit was paid to Miss Beech she would not then pay her rent. He also pointed out that the Police had advised him not to have any direct contact with Miss Beech, so he would have difficulty collecting the rent from her.
- 16 On 25 January the Council had received a request from Miss Beech to pay Housing Benefit to her rather than directly to the landlord. The Council checked to see if Miss Beech had eight weeks of rent arrears. Once it was established that she did not have any rent arrears the decision was made to pay the Housing Benefit to Miss Beech. During the investigation the Council said it did not consider the letters and phone calls from Mr Oak, nor did it consider any case law or the Guidance Manual.
- 17 Miss Beech received Housing Benefit of £700 for the period 12 February to 11 March 2007. She did not pay any rent to Mr Oak for this period. The decision to pay the benefit to Miss Beech was made on 16 February and a letter notifying Mr Oak was generated on 19 February. Mr Oak did not receive the letter until 12 October 2007. It is not known why it took so long for the letter to be delivered.
- 18 Mr Oak did not know that the Housing Benefit was being paid to Miss Beech until he checked his bank account on 12 March and discovered that he had not received a Housing Benefit payment. He immediately contacted the Council who agreed to reverse the decision so that the benefit was again paid directly to him. By this point Miss Beech was four weeks in rent arrears. Mr Oak received the Housing Benefit payments from 12 March until the tenant was evicted in May. Mr Oak never received the £700 in rent that Miss Beech owed him for the period 12 February to 11 March.
- 19 Mr Oak complained to the Council about its failure to consider the evidence he had submitted in January and the points he had made in subsequent phone calls. Whilst dealing with his complaint, the Council agreed that it had overlooked Mr Oak's letter of 29 January and stated that 'Best Practice' would have been to suspend payment of the Housing Benefit in January and carry out an investigation into who should receive it. The Council later denied that it had a policy of 'Best Practice' and said that it only needed to consider the Regulations. It paid Mr Oak £50 for its failure to consider his letter. Mr Oak felt that compensation of £50 was inadequate.

The Council's view

- 20 In January 2007 Miss Beech was not in eight weeks rent arrears because the Housing Benefit had always been paid to Mr Oak. Therefore, there was no statutory requirement for the Housing Benefit to be paid to the landlord. When the decision was made in March to change payment back to the landlord, the tenant was still not in eight weeks arrears. The Council told my investigator that it decided to reverse the decision as a gesture of goodwill. At a later date the Council said that it decided to change the decision because Mr Oak kept ringing the Council to complain about what had happened.
- 21 Officer A, a senior Housing Benefit officer, told my investigator that improved guidance is needed for benefit caseworkers regarding payment disputes between landlords and tenants. But he maintained that in this case there was no breach of the Housing Benefit Regulations. He is concerned that many landlords are under the mistaken impression that Housing Benefit is rent which they are entitled to receive.

Council's comments on the draft report

- 22 The Council now denies that it decided to change the payment back to the landlord after four weeks as a gesture of goodwill or because the landlord kept ringing to complain. The Council says it started to pay the landlord again because Mr Oak notified the Council that Miss Beech was in arrears and because it was in the overriding interests of the claimant to do so. The Council believes this shows that it considered the individual circumstances of the case.
22. The Council also believes that it did consider the relevant case law and the Guidance Manual, and considered suspending payment before making a decision. The Council maintains it was not necessary to suspend payment because it did not have any evidence to suggest that Miss Beech would refuse to pay rent to her landlord. The Council believes there was no reason not to agree to Miss Beech's request.
23. The Council denies that there was any breach of 'Best Practice'. The Council has no 'Best Practice' policy in relation to this issue; the term was simply used by an individual officer who was speaking from personal experience.

Conclusion

24. This report demonstrates how landlords can be caused an injustice if Housing Benefit is not properly administered. Clearly it is the tenant's responsibility to pay their rent and landlords should not expect that they can always receive direct payments from the local authority. But if the tenant qualifies for Housing Benefit then the Council should treat both parties fairly. In this case I am not persuaded that Mr Oak was treated fairly.

25. Mr Oak told the Council that his tenant was threatening to prevent him from receiving direct payments of Housing Benefit. He explained that Miss Beech was under threat of eviction, and that there was a history of violence and harassment. He made it clear that the Police had advised him to not to have any direct contact with his tenant unless he had a Police escort. In these circumstances it would be extremely difficult for Mr Oak to obtain the rent directly from Miss Beech. I have not seen any evidence to show that the Council considered Mr Oak's position before it decided to pay the benefit to Miss Beech.
26. The Council has said it was of the opinion that the tenant would not withhold her rent as it did not have any evidence to suggest otherwise. It seems to me that most people would conclude that the information provided by Mr Oak raised very real concerns about why Miss Beech wanted to cancel the direct payments and what she intended to do with the payments.
27. The Council has also been inconsistent in its explanations of why it changed the payment back to Mr Oak. Initially I was told it was a gesture of goodwill; then I was told it was in response to Mr Oak's persistent phone calls; and then, in response to the draft report, I was told that the payment was changed back to the landlord because this was in the overriding interests of the tenant. I have seen no evidence to support any of the explanations.
28. The way the Council has handled this complaint has also caused confusion. Mr Oak was told in a meeting that it would have been 'Best Practice' for payment to have been suspended pending an investigation. This view was also expressed in letters to my investigator. Later, the Council explained that there was no policy of 'Best Practice' but it was simply the personal opinion of a benefit officer. This confusion 'muddied the waters' and made it harder to work out what had happened.

Finding

29. The faults I have identified in paragraphs 24 to 27 are maladministration. When the Council received Miss Beech's request it should have considered the evidence already submitted by Mr Oak and then suspended payment pending an investigation into who should receive the Housing Benefit. This would have provided space for the Council to consider alternative options. There would be a documentary record of the process of consideration. After an investigation, the Council might still have decided to pay Miss Beech but I think it is more likely that payment would either have continued to be paid to Mr Oak or an alternative approach adopted such as giving the tenant a cheque made payable to Mr Oak. So I conclude that Mr Oak has been caused an injustice as a result of the Council's maladministration.
30. In the course of this investigation the Council agreed to pay £700 to Mr Oak. I recommend that it should do so now. I also recommend that it should pay him £150 (of which £50 has already been paid) in recognition of the time and trouble to which he has been put in pursuing the complaint with the Council and with me. Finally I recommend the

Council should issue guidance to its officers who deal with disputes over direct payments to landlords.

Tony Redmond
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30 January 2008