

15 June 2018

Complaint reference:
18 002 660

Complaint against:
London Borough of Havering

The Ombudsman's final decision

Summary: The Ombudsman cannot investigate this complaint about a housing benefit overpayment. This is because the complainant is appealing to the tribunal.

The complaint

1. The complainant, whom I refer to as Ms X, disagrees with the Council's decision that she must repay a housing benefit overpayment.

The Ombudsman's role and powers

2. The Local Government Act 1974 sets out our powers but also imposes restrictions on what we can investigate.
3. We cannot investigate a complaint if someone has appealed to a tribunal or a government minister or started court action about the matter. (*Local Government Act 1974, section 26(6), as amended*)
4. The Social Entitlement Chamber (also known as the Social Security Appeal Tribunal) is a tribunal that considers housing benefit appeals. (*The Social Entitlement Chamber of the First Tier Tribunal*)

How I considered this complaint

5. I read the complaint and got some information from the Council. This includes confirmation that the Council will send the case to the tribunal. I spoke to Ms X after she received a draft of this decision.

What I found

Housing benefit overpayment

6. If a council pays too much housing benefit to someone it will usually ask them to repay it. The law says an overpayment is recoverable unless it was caused by an official error and it was not reasonable to expect the person to realise they were receiving too much benefit. If someone disagrees with a decision that they must repay an overpayment they can appeal to the tribunal.

What happened

7. In 2017 the Council asked Ms X to repay a housing benefit overpayment of £3730. The Council said she had not disclosed that she was no longer paying for childcare. Ms X challenged this decision and said she had reported that the child care had ended.

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8. The Council revised its decision and reduced the overpayment to £2848. The Council said it had made an error but that for some of the overpayment period Ms X would not have been aware of the overpayment.
 9. Ms X disputes the outstanding overpayment and says it should be written off in full. She also wants compensation. The Council will pass the case to the tribunal because Ms X disputes the remaining overpayment. The Council will not recover the money pending the outcome of the appeal.

Assessment

10. I cannot start an investigation because Ms X is appealing to the tribunal. The law says the Ombudsman cannot investigate any matter that forms part of an appeal to the tribunal. The tribunal will decide if Ms X has to repay the remaining overpayment. The Ombudsman cannot intervene in this process. I also cannot ask for compensation because it is too closely linked to the matters under appeal. In addition, while Ms X has done nothing wrong, she has benefited from £882 that she was not entitled to.

Final decision

11. I cannot start an investigation because Ms X is appealing to the tribunal.

Investigator's decision on behalf of the Ombudsman