

## Scottish Parliament Region: Highlands and Islands

### Case 200501241: The Highland Council

#### Summary of Investigation

##### **Category**

Local government: Finance; Council Tax Benefit

##### **Overview**

The complainant (Mr C) complained of misleading advice given to him and his ex-wife (Mrs A) on 1 June 2004 by a finance officer of The Highland Council (the Council) which he said led Mrs A to regard Mr C's house as her main residence and to sell her house to their financial detriment.

##### **Specific complaint and conclusion**

The complaint which I have investigated is that a council finance officer at an interview in Mr C's home on 1 June 2004 gave Mr C and Mrs A misinformation which led Mrs A to sell her home at a price less than she expected and for Mrs A, Mr C and their adult son (Mr B) to sustain financial loss (*not upheld*).

##### **Redress and Recommendations**

Although not upholding the complaint, the Ombudsman recommended that the Council review the circumstances of the complaint to establish whether in similar circumstances an earlier conclusion could be reached on the question of residence for benefit purposes and whether there were additional steps they could take to help ensure that claimants are fully advised about regulations and entitlement.

The Council have accepted the recommendations.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mr C) and his ex-wife (Mrs A) previously lived in separate properties. Mrs A owned a property in Caithness (the Caithness property) and Mr C, with their adult son (Mr B), was joint tenant of a two bedroom housing association property in Inverness (the Inverness property). Council finance officers had doubts as to whether Mrs A was permanently residing in the Caithness property and sought a meeting with her which was held in the Inverness property on 1 June 2004. The complaint centres on the advice given at that interview, which Mr C maintains, led to Mrs A subsequently selling the Caithness property at a price less than she expected to realise, and to move in with Mr C and Mr B in the Inverness property which he maintained also had a financial detriment on their entitlement to housing benefit.

2. The complaint from Mr C which I have investigated is that a council finance officer at an interview in Mr C's home on 1 June 2004 gave Mr C and Mrs A misinformation which led Mrs A to sell her home at a price less than she expected and for Mrs A, Mr C and Mr B to sustain financial loss.

### *Background*

3. The Highland Council (the Council) administer claims for council tax benefit (CTB) and housing benefit (HB) on behalf of the Department for Work and Pensions (DWP) and require to comply with relevant legislation in the form of the Social Security Contributions and Benefits Act 1992 and the Local Government Finance Act 1992, related statutory regulations (The Housing Benefit (General) Regulations 1987), and the HB/CTB Guidance Manual which is subject to periodic update by circulars issued by the DWP.

4. Section 99(1) of the Local Government Finance Act 1992 defines 'resident', in relation to a dwelling as 'an individual who has attained the age of 18 years and his sole or main residence is the dwelling'. Clarification of the nature of occupation is given in Regulation 5 of the Housing Benefit (General) Regulations 1987 and includes 'special circumstances' which prevent the claimant actually living in the property and 'temporary absence'.

5. With reference to 'temporary absence' a claimant can continue to receive HB/CTB if they are temporarily absent from their home for up to 13 weeks provided the absence is not intended to exceed the specified limits, and, the

property is not sublet during their absence. If, however, it becomes clear at any stage that the claimant is likely to be absent for longer than the specified time limit then HB entitlement ends immediately. If the claimant returns to the home, even for a short time, the allowable period of temporary absence starts again. In some instances HB/CTB can continue to be paid for temporary absences of up to 52 weeks. In such cases there should be an intention to return to the property and it should not be sublet during their absence.

6. In cases where a determination is made in respect of entitlement to HB/CTB, a claimant can seek details of the basis of the determination and may be able to refer the matter to the Appeals Service.

### **Investigation**

7. The investigation is based on information provided by Mr C and the Council's response to my enquiry. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mr C and the Council were given an opportunity to comment on a draft of this report.

**Complaint: A council finance officer at an interview in Mr C's home on 1 June 2004 gave Mr C and Mrs A misinformation which led Mrs A to sell her home at a price less than she expected and for Mrs A, Mr C and Mr B to sustain financial loss**

8. Mr C and Mr B were joint tenants of a housing association property in Inverness until the property was bought in October 2005. Prior to that they had been in receipt of CTB and HB.

9. Mrs A was the owner of a property in Caithness until she sold that property with effect from 9 June 2005. Prior to 1 June 2004 she was in receipt of a 25% single person's discount for council tax and, on the basis of her income, was in receipt of CTB.

10. Around 1999 or 2000 Mrs A had health problems. Because of her condition, Mrs A stayed with Mr C and Mr B at the Inverness property for extended periods in order that Mr B could take care of her. Mr C stated that Mrs A always returned to the Caithness property within 13 weeks of her first day of absence. Mr C understood that this ensured compliance with the criteria for the receipt of CTB.

11. The Council stated that Mrs A applied for CTB on 4 October 2002. On 7 April 2003 and 7 May 2003 council finance officers visited the Caithness property. On both occasions they observed a large pile of mail inside the doorway and there was no reply when they knocked. No immediate action, however, was taken in relation to the council finance officers' observations. The Council said that the Caithness Area Office subsequently asked the Council's Finance Investigation Team to enquire into the circumstances. Mrs A's CTB continued in payment for 2003/04. Mrs A's payment of her liability for water and sewerage charges was not paid on time.

12. In early April 2004, Mr C spoke to the Area Finance Officer in Caithness and advised him that Mrs A was residing in the Inverness property. The Area Finance Officer wrote to Mrs A at the Inverness property. He informed her of the council finance officers' visits to the Caithness property in the previous year. He informed her that her claim for CTB had been withdrawn. He enclosed forms for her to claim a 50% zero occupancy discount in respect of the Caithness property.

13. Mr C wrote on 3 May 2004 to the Finance Service at the Council's Headquarters in Inverness seeking advice. This letter did not receive a reply until 14 July 2004, that is, after the meeting on 1 June 2004 (see paragraph 21).

14. In May 2004, the Inverness Finance Office also asked the Finance Investigation Team to visit the Inverness property since they noted that Mr C and Mr B had not declared Mrs A as living with them in their claim forms for CTB and HB. Payment of their HB and CTB was suspended from 1 April 2004 pending clarification of Mrs A's position.

15. Two officers of the Council's Finance Investigation Team (Officers 1 and 2) arranged by telephone a visit to the Inverness property on the morning of 1 June 2004. The Council stated that their effective remit from both the Caithness and Inverness Area Finance Offices was to establish whether Mrs A's main or sole residence was in Caithness or Inverness.

16. Mr C stated that on 1 June 2004 he was visited by Officer 1 and her colleague, Officer 2. Mr C said he made it clear that Mrs A, while a regular visitor to his home, 'frequented back to her house and home', within the specified period of 13 weeks. He alleged that Officer 1 had informed him a new rule now required that a decision on choice of residence should be made after

66 weeks. He alleged that had he not been told of this purported new rule, and that Mrs A could not continue to move between his Inverness property and her Caithness property, he and Mr B would not have agreed to signing statements drafted by Officer 1, which she insisted they should sign. He had maintained that Mrs A's home was in Caithness but because of her failing health and disablement it had been necessary for her to stay with Mr C and Mr B more than she did in her own home.

17. Officer 1 confirmed that she and Officer 2 visited the Inverness property on 1 June 2004. Mr C, Mr B and Mrs A were all present. Mr C did most of the talking. Mrs A, who appeared quite ill, spoke very little. Officer 1 stated that at no time during the interview did she or Officer 2 mention any 'new legislation' or a '66 week rule'. Officer 1 said she tried to explain the Absence from Home rule. She had stated that it was not renewable indefinitely even with Mrs A returning to the Caithness property for a short period during each 13 week period. Officer 1 stated that at no time was Mr C or Mr B put under any duress to sign any document.

18. Mr C and Mr B signed separate declarations on pro-formas dated 1 June 2004. The statements were in Officer 1's handwriting, and were witnessed and counter-signed by Officers 1 and 2.

'This statement consisting of 1 page (each) signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true ...

I [Mr B/Mr C] confirm I have been interviewed today regarding my claim for benefits at the above address. I confirm that with effect from today [Mrs A] is a resident of my household until further notice. I am aware that if any of my circumstances change in the household I will inform [the Council]'

19. The Council informed me that Officer 1 and Officer 2's visit was not followed up by a confirmatory letter. They stated that this was adopted as standard practice following consideration of a DWP good practice guide and documentation from an investigators' professional body. It had been concluded that any letter sent following an investigation team interview might prejudice the outcome of the investigation including any subsequent court case.

20. Officer 1 reported to the Assistant Area Finance Manager on 11 June 2004. She stated that after explaining to the parties that the Absence from Home rule was not renewable indefinitely and the criteria for claiming their benefits, they had agreed that with effect from 1 June 2004 the benefit paid to Mr C and Mr B be suspended, and that a new award would be calculated based on the new household to include Mrs A. Mrs A would also make a claim for 50% council tax discount on the Caithness property.

21. On 14 July 2004, the Caithness Area Finance Manager wrote to Mr C. He apologised for the delay in responding to his letter of 3 May 2004. He stated that some of the issues Mr C had raised had been addressed at Officer 1 and Officer 2's visit on 1 June 2004. He indicated that Mrs A's claim for CTB for the Caithness property would continue up to 31 May 2004. Once the claim had been processed, revised council tax bills would be sent to Mr C's address at the Inverness property. From 1 June 2004, Mrs A would, on receipt of completed forms, be entitled to a 50% discount on the Caithness property. The Area Finance Manager noted that the Caithness property had been advertised for sale in the local Caithness paper on 16 April 2004. He asked Mr C to keep him advised on the progress of the sale since council tax liability would cease from the date of the sale.

22. The Council stated that it took some time to work out Mrs A's CTB for the Caithness property and to issue revised bills. Mrs A was informed by letter of 13 August 2004 that she was not entitled to full council tax discount on the Caithness property as a disabled person receiving care elsewhere. The Area Finance Manager wrote to Mrs A on 9 December 2004 apologising for the delay and set out the revised position. He decided to give her time to sell the Caithness property before pursuing the outstanding amounts (up to the date of sale these amounted to £663.31).

23. The Council explained that there were consequent changes to Mr B's and Mr C's HB (but their CTB was not affected). It took some time to work these out. In that process, Mr C met Officer 1 and another council officer on 2 September 2004. Mr C indicated then that the Caithness property had not been sold. On 25 October 2004 Mr B and Mr C's HB claims were re-assessed and de-suspended. In the interim, they had accumulated rent arrears to the housing association and the association had in turn threatened eviction. (A payment from the Council to the housing association on 8 November 2004 averted any further action).

24. The Council informed me that they regretted that Mr C and Mr B had been pursued for rent arrears by the housing association but stated that that situation arose due to delay by Mr C in providing necessary information about Mrs A's affairs which was necessary to reassess Mr C's and Mr B's HB.

25. Mr C had a meeting with the Local Taxation and Benefits Manager (Officer 3) in Inverness and the latter wrote to Mr C on 17 March 2005. She advised him that Mr B, who was receiving job seekers allowance, and Mrs A should seek advice to entitlement for carer's allowance and attendance allowance without delay (Mrs A and Mr B subsequently applied for and received attendance allowance and carer's allowance respectively from March 2005 from the DWP).

26. On 11 April 2005, the Caithness Area Finance Manager, at Mr C's request, updated the amounts outstanding by Mrs A for council tax on the Caithness property. He also advised that, from 1 April 2005 (in exercise of powers conferred by the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005), second home discount would reduce from 50% to 10%. He confirmed that a hold had been put on debt recovery action on the Caithness property account to allow the property to be marketed.

27. Mrs A sold the Caithness property with an entry date of 9 June 2005. At the time of sale, £663.31 was calculated by the Council to be outstanding in council tax.

28. On 19 October 2005 Mr C, Mr B and Mrs A purchased the Inverness property from the housing association. The Council stated that for the period 1 April 2005 to 18 October 2005 £43.47 was owing in council tax on the Inverness property in the names of Mr C and Mr B and from 19 October 2005 to 31 March 2006 £102.74 was owing in the names of Mr C, Mr B and Mrs A. At 28 August 2006 the sum of £129.12 remained to be paid on the 2006/07 account. An outstanding balance of £663.31 had then yet to be paid by Mrs A for council tax for the Caithness property (see paragraph 27).

#### *The Council's Comments*

29. The Council accepted that Mr C and Mr B had assisted Mrs A's recuperation in the Inverness property. For the purposes of determining Mrs A's application for CTB they had applied the temporary absence rule of up to

52 weeks where a claimant was undergoing medically approved convalescence but intended to return to their normal home. As time passed, it became obvious to the Council that Mrs A was not going to be able to return to the Caithness property to live independently, and the 52 week ruling no longer obtained. The purpose of the visit on 1 June 2004 had been to establish Mrs A's sole or main residence for CTB purposes and to clarify Mr C and Mr B's claim for CTB on the Inverness property. This had had financial consequences for the parties. The Council did not accept, however, that they had responsibility for the sale price of the Caithness property being less than valuation.

### *Conclusion*

30. The Council became aware of a possible issue about Mrs A's place of residence in May 2003, but took no further action until April 2004. The meeting on 1 June 2004 was a necessary but belated attempt to sort out the issue and its consequences. The visit was arranged by telephone. I am unable to ascertain what was explained beforehand to Mr C, Mr B and Mrs A about its purpose. I cannot also establish what was said at the visit because there were no independent witnesses and no agreed note. In particular, it is not possible to confirm what may have been said about the regulations on place of residence. My own research has established that the regulations on absence from home are not new and the only reference I could find to a 66 week rule relates to maternity benefit which is not applicable in this case. I note that the statements were drafted in Officer 1's own handwriting, but reach no view on whether the signing of the statements by Mr C and Mr B were free and informed acts.

31. If the statements were not coerced, then the Council were entitled to make decisions on entitlements to benefit. I consider it would have been preferable for the Council to have alerted Mr B and Mrs A earlier to seek advice on their entitlement to carers allowance and attendance allowance respectively.

32. I do not regard the Council to have any responsibility for the delay of some 15 months in the Caithness property being sold. The initial marketing on 16 April 2004, took place some six weeks before the interview on 1 June 2004. This suggests to me that Mrs A was at that time contemplating giving up the Caithness property, but not necessarily that she wished to move to Inverness or to take up residence with her Mr C and Mr B. I do not uphold the complaint put to the Ombudsman.



*Recommendation*

33. Although not upholding the complaint, the Ombudsman recommended that the Council review the circumstances of the complaint to establish whether in similar circumstances an earlier conclusion could be reached on the question of residence for benefit purposes and whether there are additional steps they could take to help ensure that claimants are fully advised about regulations and entitlement.

34. The Council have accepted the recommendations.

19 September 2007

**Explanation of abbreviations used**

Mr C	The complainant
Mrs A	Mr C's ex-wife
Mr B	Mr C and Mrs A's son
The Caithness property	A two bedroom bungalow in Caithness of which Mrs A was owner occupier until 9 June 2005
The Inverness property	The former housing association property tenanted jointly by Mr C and Mr B which was purchased by Mrs A, Mr C and Mr B in October 2005
The Council	The Highland Council
CTB	Council Tax Benefit
HB	Housing Benefit
DWP	Department for Works and Pensions
Officer 1	An officer in the Council's Finance Services Investigation Team who visited Mr C, Mr B and Mrs A in Inverness on 1 June 2004
Officer 2	Another Officer in the Investigation team who accompanied her
Officer 3	Local Taxation and Benefits Manager, Finance Services