

Case 200700850: Renfrewshire Council

Summary of Investigation

Category

Local government: Grants, allowances, vouchers and bursaries

Overview

The complainant (Mrs C) complained that she had completed and returned an application form for an Educational Maintenance Allowance (EMA) for her son (Mr C) for the academic year 2005/06 but that Renfrewshire Council (the Council) refused the application. The Council did not consider the application on the grounds that it was submitted after the closing date for applications. Mrs C complained that it was submitted prior to the closing date but that the Council then asked for additional information, not asked for on the original application form and then failed to inform Mrs C of the deadline date to return this information to them.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the closing date for applications to be received by the Council was not included on the application form (*upheld*);
- (b) Mrs C was not subsequently informed, in her dealings with the Council, of the deadline for submitting the application (*upheld*);
- (c) Mrs C submitted all the information initially requested but was then asked for additional information (*upheld*); and
- (d) the Council should have awarded Mr C an EMA for the academic year 2005/06 (*upheld*).

Redress and recommendation

The Ombudsman recommends that the Council increase their offer of a £500 ex-gratia payment to £840, to reflect the basic allowance and bonus payment Mr C would have been entitled to had his application been accepted. The Ombudsman asks that the Council notify her when the recommendation has been implemented.

The Council have accepted the recommendation and will act on it accordingly.

Main Investigation Report

Introduction

1. Mrs C complained to the Ombudsman's office, having applied for and been refused an Educational Maintenance Allowance (EMA) for her son for the 2005/2006 academic year.

2. Mrs C obtained an EMA application form and returned it to Renfrewshire Council (the Council) on 3 February 2006. She was then advised that the Council required information relating to her income and evidence of her single occupancy of her property. Mrs C visited the Council offices on 16 February 2006, bearing proof of her single occupancy. She then was given, by a Council officer (Officer 1), the phone number of Her Majesty's Revenue and Customs (HMRC) and advised that HMRC would be able to provide her with the outstanding information about her income necessary for the Council to consider her application. In making her complaint, Mrs C stated that the phone number she was given for HMRC was incorrect and maintained that she was not given a date by which she was required to submit the outstanding information to the Council. She handed in the outstanding information on 21 June 2006. As this was after the 31 May 2006 deadline, the application was not considered by the Council and, consequently, no EMA awarded to Mr C for 2005/06.

3. The complaints from Mrs C which I have investigated are that:

- (a) the closing date for applications to be received by the Council was not included on the application form;
- (b) Mrs C was not subsequently informed, in her dealings with the Council, of the deadline for submitting the application;
- (c) Mrs C submitted all the information initially requested but was then asked for additional information; and
- (d) the Council should have awarded Mr C an EMA for the academic year 2005/06.

4. Mrs C also complained about the tone of the letters sent to her by the Council in relation to her complaint. However, having considered the correspondence submitted by Mrs C in support of her complaint prior to the start of this investigation, I concluded that such an opinion was subjective and I did not believe that there was anything evident in the correspondence which was obviously inappropriate. This aspect of Mrs C's complaint was, therefore, not investigated by this office.

Investigation

5. In the course of this investigation I considered the relevant correspondence between Mrs C and the Council and also between Mrs C and the then Scottish Executive¹. I also wrote a letter of enquiry, requesting copies of the application form for 2005/06 and 2006/07 and other information, to the Council and received their response on 16 October 2007. During the course of the investigation, the Council intimated to me their willingness to offer an ex-gratia payment to Mrs C of £500.

6. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Council were given an opportunity to comment on a draft of this report.

7. The EMA was introduced in 2005 by the Scottish Executive to provide financial support to young people from low income families and encourage continuing participation in post-compulsory education. Payments are made weekly into the young person's own bank account. The allowance is administered by the local authority who reclaim the money paid out monthly from the Scottish Government. The maximum payment is £30 per term-time week, with up to two additional bonus payments available.

(a) The closing date for applications to be received by the Council was not included on the application form

8. The Council and Scottish Government have confirmed that the closing date for EMA applications in 2005/06 was 31 May 2006. Mrs C complained that the closing date for applications for an EMA for the year 2005/2006 was not included on the application form. The Council accepted, in their letter to me of 11 October 2007, that this was the case but stated that the form used by the Council was based on the model issued by the then Scottish Executive and used by all Scottish local authorities. I have seen the generic form and it does not include a deadline date or indicate a space within the area available for local authorities to do so.

¹ On 3 September 2007 Scottish Ministers formally adopted the title Scottish Government, to replace the term Scottish Executive. The latter term is used in this report, as it applied at the time of the events to which the report relates.

9. This situation was, however, rectified the following year when the application forms for the 2006/07 academic year were issued. These clearly specify on the front page that, 'No application for academic session 2006/07 will be processed after 31 May 2007'.

10. The guidance issued along with the 2005/06 application form did make some mention of deadlines, in a section headed, 'Important. Cut off dates for returning your EMA application' It stated that:

'Students who reach 16 years old between 1 October 2005 and 28 February 2006 [Mr C was born in November 1989 and so fell into this category] can apply for an EMA to start from January 2006 – if an application is made before 18 February 2006 payments will be backdated to the beginning of that term, provided that the attendance criteria has been met. Otherwise payments will be made from the date that the application was received.'

11. Mrs C submitted the application on 3 February 2006, in order to ensure that any payments due to Mr C would be backdated. No mention was made of 31 May 2006 being a deadline date.

12. Mrs C, in progressing her complaint, twice contacted the Higher Education and Learner Support Division of the Enterprise, Transport and Lifelong Learning Department of the Scottish Executive. On the last occasion she received a written response sent on 27 February 2007 which, while indicating that the Executive was unable to intervene in individual decisions and stating that backdated payments cannot be made for previous years, did acknowledge that, '... due to the relative newness of the EMA programme, we currently revise the guidance on EMA each year...'. The same letter also reiterated their statement that payments cannot be backdated and suggested that if Mrs C did not agree with the decision she could pursue her complaint through the Council's complaints process before then submitting it to the Ombudsman's office if she remained aggrieved.

(a) Conclusion

13. It is agreed by both Mrs C and the Council that the deadline for submitting completed applications was not included on the 2005/06 application form and, for that reason, I uphold this complaint.

14. The Council have stated, and I am content, that the reason that the date was not included was because they used the generic form issued by the Scottish Executive which did not include the deadline date or allow for it to be inserted. The Ombudsman therefore has no recommendation to make in regard to this aspect of Mrs C's complaint.

(b) Mrs C was not subsequently informed, in her dealings with the Council, of the deadline for submitting the application

15. Having established that the closing date for submissions was not indicated on the 2005/06 EMA application form, Mrs C also complained that, in her subsequent dealings with the Council, regarding the application she was not then informed of the deadline.

16. Mrs C's EMA application initially reached the Council on 3 February 2006. The Council established that they required more information to process the application, namely details of Mrs C's income for the previous year and evidence of her single occupancy of her and her son's home.

17. Having initially complained to the Council, Mrs C received a response from a Section Leader in the Council's Education and Leisure Services Department (Officer 2). Her response of 15 November 2006 to Mrs C stated that the Council returned the incomplete application form to Mrs C with a note detailing the outstanding information. Officer 2 continued, 'All our returned applications have a standard note enclosed detailing the cut off date for processing applications which is the 31 May'. Mrs C indicated that she did not receive this note.

18. Mrs C then escalated her complaint through the Council's complaints process. On 9 May 2007 the Council's Finance Services Manager (Officer 3) wrote that, 'Having reviewed the correspondence on this issue and questioned members of staff, I accept that the deadline date of 31 May 2006 for the receipt of properly completed applications was not included in the standard EMA documentation. However, I am sure that, in your discussions with staff, the deadline was made clear'. Again, Mrs C denied that, in her dealings with staff, she was made aware of the deadline date.

19. The next stage of Mrs C's complaint working its way through the Council's formal complaints process involved her complaint being considered by the Council's Acting Head of Resource Services (Officer 4). Officer 4 stated in his

letter to Mrs C of 12 June 2007 in relation to this aspect of Mrs C's complaint that, 'While no record exists of you specifically being told that the deadline date was 31 May I do not accept that you were not made aware of this during your meeting with EMA staff and telephone calls to the department'.

20. In response to my letter of enquiry the Council wrote back to me on 11 October 2007. In their letter, the Head of the Council's Legal and Administrative Services (Officer 5) stated that, 'At a meeting on 16 February, 2006 the complainant was advised of the deadline date of 31 May, 2006, for the receipt of properly completed applications for [EMA]...' This response was different from that contained in the Council's earlier correspondence direct with Mrs C. On receipt of this letter I telephoned the Council and queried that sentence. I was informed that it was incorrect and that the Council's position was that there was no documentary evidence that Mrs C was informed of the date on 16 February 2006, or subsequently, but that the Council's internal discussion with the staff responsible indicated that they had no reason to believe that Mrs C was not informed of the date.

(b) Conclusion

21. There is no definitive proof as to whether Mrs C was informed by the Council of the 31 May 2006 deadline date for submitting completed applications. Mrs C states that she was not told and the Council maintain their position that, while there is no documentary evidence to show that she was told, they believe that she was told in discussions with staff. However, it is my view that if Mrs C was told in discussions with staff of the deadline, she would not have submitted the application so long after the deadline date and with no explanation why she was submitting it late. This is reinforced by the fact that Mrs C initially met the deadline of 18 February 2006 stipulated on the application form to allow payments to be backdated, as noted in paragraph 11. Therefore, on the balance of probabilities, I have decided that Mrs C was not informed of the 31 May 2006 deadline and I have decided to uphold this complaint. The application form now gives the deadline date and, given this, the Ombudsman has no recommendations to make.

(c) Mrs C submitted all the information initially requested but was then asked for additional information

22. The Council, in their letter to me of 11 October 2007, stated that the application form submitted by Mrs C on 3 February 2006 was incomplete and that they, therefore, had to request additional information. The Council did this

by returning the form to Mrs C with a request for proof of her single occupancy and details on her earnings for the previous year. It was the delay in obtaining and returning the information relating to her income which led to her application for an EMA for her son not being considered.

23. In making her complaint, Mrs C stated that she completed the application form fully and that the information later requested was not asked for on the form.

24. I have reviewed the 2005/06 application form and it does not request information relating to earnings and household income of people in Mrs C's particular circumstances, nor evidence of single occupancy. The majority of applicants would have been covered by the headings requesting information included in the 2005/06 form. These were 'Social Security Benefits', 'Earnings as an Employee', 'Income from Self Employment' and 'Other Income'. During the period covered by the application, Mrs C did not fall into any of these categories and so did not complete these sections of the application form.

25. The 2006/07 application form had been amended, changing the heading 'Other Income' to the situation that Mrs C had been in the previous year, 'No earnings and do not claim any benefit'. It stated, 'If you did not work during 2005/06 and did not claim any benefits ie housewife you will be required to provide evidence from the Inland Revenue to confirm this ...'.

26. That the requirement to provide this information changed from 2005/06 to 2006/07 was also referred to in a letter which Mrs C received from the Scottish Executive's Higher Education and Learner Support Division of the Enterprise, Transport and Lifelong Learning Department dated 27 February 2007. It stated that,

'... due to the relative newness of the EMA programme, we currently revise the guidance on EMA each year. We will ensure that next year's guidance covers instances of applicants whose parents have no income in sufficient detail, but changes cannot be made to the existing EMA programme, nor the programme as it applied in previous years.'

(c) Conclusion

27. The information requested by the Council following Mrs C submitting her application form on 3 February 2006 was not requested on the form. As noted in paragraph 14, the form used by the Council was the generic one provided by

the Scottish Executive. Other information was requested which did not apply to Mrs C's financial position but she was not prompted by the form to provide evidence of her single occupancy, not having earnings or having been in receipt of benefit. This was asked for the next year, 2006/07, but not asked for on the application form in question.

28. The Council stated in their correspondence with Mrs C, and most recently in their response of 11 October 2007 to my enquiry, that,

'The application submitted by [Mrs C] for [EMA] in respect of academic year 2005/2006 was incomplete in that proof of [Mrs C]'s earnings was not included with the application form when it was submitted.'

29. This is incorrect. It may be accurate to say that the information required by the Council to process her application was incomplete but the application form submitted by Mrs C was complete, in that all the information requested was provided by her. The application form did not ask her for, nor give her an opportunity to provide, information pertaining to her financial situation as such circumstances were not among those detailed on the form. For these reasons, I uphold the complaint.

(c) Recommendation

30. Paragraphs 14 and 27 illustrate that the reason the required information was not requested was not the fault of the Council. The application form the Council issued, and which failed to prompt Mrs C for the information required to process her application, was that provided by the Scottish Executive and used by all local authorities in Scotland. The form was changed for subsequent years but this does not address the injustice suffered by Mrs C. The Council have indicated their willingness to offer an ex-gratia payment of £500 to Mrs C and, while the Council are to be commended for making the offer, it does not equate to the equivalent amount lost by Mrs C's son through events not her fault. The Ombudsman recommends that the Council increase this offer to £840, in recognition of Mr C not receiving an EMA for the academic year 2005/06 and to better reflect the value of award he would have received had the application been considered. My calculations in recommending a payment of £840 are outlined in detail in paragraph 36 of this report.

(d) The Council should have awarded Mr C an Educational Maintenance Allowance for the academic year 2005/06

31. Mrs C handed in the application form for Mr C's EMA on 3 February 2006. As can be seen in paragraph 13, the deadline for receipt of the application form was not written on the form. As can be seen in paragraph 29, the application form was complete and contained all the information asked for relevant to Mrs C's financial position. It did not, however, contain all the information required by the Council to process the application. Mrs C was informed of this and returned to the Council on 16 February 2006 with proof of her single occupancy. She was given a phone number for HMRC and advised to contact them to obtain evidence of her financial situation for the previous year. Mrs C maintains that the phone number she was given was incorrect and that she was not informed of the date by which this additional information had to be returned.

32. Mrs C has provided me with an extract from her telephone bill that shows a telephone call was made to HMRC at 15:11 on 28 February 2006. The phone number dialled, and which Mrs C contends was given to her by the Council, was for the HMRC's Tax Credit Helpline who were unable to assist her with her request for documentary proof that she did not work or claim benefits for the previous year. The number which should have been called, and which is included on subsequent application forms, is for HMRC's Customer Service department.

33. Mrs C's telephone bill shows that she then phoned the EMA help telephone number at the Council at 15:18 hours on 28 February 2006, immediately after telephoning HMRC. In making her complaint she stated that, on being told that she could not get the required information from the HMRC Tax Credit hotline telephone number, she then telephoned the Council to ask them what she should do. Mrs C stated that she was told that someone would telephone her back. In making her complaint, Mrs C stated that this telephone call from the Council was not returned although the Council's view, as stated in a letter sent to Mrs C by Officer 3, is that Council staff were not given a telephone number on which to contact Mrs C and so could not return her call.

34. In May 2006 Mrs C received an application form to apply for an EMA for the academic year 2006/2007. This form gave a telephone number for HMRC's Customer Service Department and Mrs C then telephoned HMRC and wrote to them requesting confirmation of her lack of earnings or income through being in receipt of benefit for 2004/2005. Mrs C stated that HMRC wrote to her in

June 2006 and she passed their letter to the Council in July 2006. The Council said that the information was too late and that Mr C would not, therefore, receive the EMA.

(d) Conclusion

35. Mrs C did complete the application form fully, in that each section relevant to her financial position was filled in. She then returned the form in time to meet the deadline written on the form to allow her son to have EMA payments backdated, as seen in paragraph 11. In taking these actions, it could be reasonably assumed that Mrs C did all that could be expected of her in submitting the application on behalf of her son and that her son was, therefore, entitled to receive the 2005/2006 EMA. The Council have indicated to me that, had they considered Mrs C's application, her son would have been entitled to receive the allowance and I, therefore, uphold the complaint.

(d) Recommendation

36. As specified in paragraph 30, the Ombudsman recommends that the Council make a payment to Mr C in line with the basic EMA and bonus payment for which he was eligible. The EMA for the year 2005/06 amounted to a maximum of £30 per week, up to a maximum of 42 weeks, with up to two bonuses of £150. Renfrewshire Council's 2005/06 academic year equated to 17 weeks in the autumn term, 12 in spring and 11 in summer. Mr C turned 16 years old in mid November 2005 and, therefore, was not entitled to apply for EMA for the autumn term, leaving 23 weeks. His date of birth also meant that he was eligible for only one of the scheme's two potential bonuses. This equates to a basic EMA payment of £690, with an additional £150 bonus payment, giving a total of £840.

37. The Council have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Council notify her when the recommendation has been implemented.

Explanation of abbreviations used

Mrs C	The complainant
EMA	Educational Maintenance Allowance
Mr C	Mrs C's son, a school pupil, on whose behalf the EMA application was made in 2005/06
The Council	Renfrewshire Council
Officer 1	The Council Officer who passed the HMRC's telephone number to Mrs C on 16 February 2006
HMRC	Her Majesty's Revenue and Customs
Officer 2	Section Leader in the Council's Education and Leisure Services Department
Officer 3	The Council's Finance Services Manager
Officer 4	The Council's Acting Head of Resource Services
Officer 5	The Council's Head of Legal and Administrative Services

