

Case 200800154: The City of Edinburgh Council

Summary of Investigation

Category

Local government: Finance; housing benefit and council tax benefit

Overview

The complainant (Mr C) raised a number of concerns regarding the City of Edinburgh Council (the Council)'s administration of housing benefit for one of his tenants (the Tenant). He complained that the Council failed to properly investigate the Tenant's personal circumstances, or follow the correct procedures, when paying housing benefit, resulting in financial loss for Mr C.

Specific complaints and conclusions

The complaints which have been investigated are that:

- (a) the Council failed to follow their own, and the Department for Work and Pensions, guidance when administering the Tenant's housing benefit account (*upheld*);
- (b) the Council failed to adequately investigate the Tenant's personal circumstances before deciding to pay housing benefit to the Tenant (*upheld*); and
- (c) the Council's communication was poor (*upheld*).

Redress and recommendations

The Ombudsman recommends that the Council:

- (i) pay any outstanding amounts to cover rent arrears for the period 20 November 2006 to 23 September 2007 to Mr C in one single payment;
- (ii) remind their staff of their procedures for advising interested parties of decisions made in relation to Local Housing Allowance accounts; and
- (iii) apologise to Mr C for failings identified in this report.

The Council have accepted the recommendations and will act upon them accordingly.

Main Investigation Report

Introduction

1. Mr C was a property owner and landlord to a City of Edinburgh Council (the Council) tenant (the Tenant), who received housing benefit to enable her to pay rent to Mr C. Mr C said that the Tenant failed to pay her rent over a period of more than eight weeks. When he contacted the Council to advise them of this, he anticipated that the rent arrears, and subsequent rent payments, would be paid directly to him, in line with housing benefit guidance published by the Department for Work and Pensions (the DWP).

2. Mr C learned that the Council suspended the Tenant's housing benefit account while investigating his complaint. Upon reopening the account (in relation to the second suspension), the Council paid over £4,000.00 in housing benefit arrears to the Tenant. Mr C said that she failed to pass this money on to him. Mr C told me that, upon raising this with the Council, they accepted that the Tenant's account had been incorrectly administered and that the arrears should have been paid to him. As the money had been paid to the Tenant, however, it was Mr C's responsibility to recover it from her. Dissatisfied with the Council's response to his complaints, Mr C brought his complaint to the Ombudsman in April 2008.

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

- (a) the Council failed to follow their own, and the Department for Work and Pensions, guidance when administering the Tenant's housing benefit account;
- (b) the Council failed to adequately investigate the Tenant's personal circumstances before deciding to pay housing benefit to the Tenant; and
- (c) the Council's communication was poor.

Investigation

4. In order to investigate this complaint, I reviewed copies of the correspondence between Mr C and the Council, relevant guidance on housing benefit administration and further supporting evidence provided by the Council. I also interviewed Mr C and reviewed the Tenant's housing benefits payment history. 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.

(a) The Council failed to follow their own, and the DWP, guidance when administering the Tenant's housing benefit account; (b) The Council failed to adequately investigate the Tenant's personal circumstances before deciding to pay housing benefit; and (c) The Council's communication was poor

5. Local Housing Allowance (LHA) was introduced in Scotland as a means of paying housing benefit, via regional trials in October 2002. It was adopted by the Council in February 2004. The system's purpose is to provide benefit payments to individuals to cover the cost of property rental, in a way that allows those individuals the freedom to manage their own finances. Recipients can choose whether to use their full entitlement on rent, or to rent a less expensive property to increase their available income. As the LHA system is designed to allow recipients the opportunity to manage their own finances, payments are made, as a rule, to the recipient and they subsequently pay rent to their landlord in accordance with their rental contract. As such, councils have an obligation to pay LHA to claimants. The claimant's landlord has no entitlement to this benefit, and must collect rent in accordance with the rental contract reached with their tenant.

6. The DWP publish a guidance manual for housing benefit payments called the Housing Benefit Local Housing Allowance Guidance Manual (the Manual). Section 4 of the Manual covers the payment of LHA to landlords instead of tenants. It states:

'4.10 In recognition of the risk that some tenants may struggle with the responsibility of budgeting for, and paying their rent, safeguards will be put in place. Local authorities will have discretion to make payment to the landlord if they consider ...

b. it is improbable that the claimant will pay their rent. For example, if the local authority is aware that the tenant has consistently failed to pay the rent on past occasions without good reason, payment may be made to the landlord.

4.12 As now, payment to the landlord will be required if a tenant
- has built up rent arrears of eight weeks or more ...

4.13 If this occurs, the local authority will have discretion to continue paying direct to the landlord when the level of arrears drops to below eight weeks ...'

7. Mr C was a property owner and rented a property to the Tenant. The Tenant received LHA from the Council, which was awarded to her to enable her to pay the rent charged by Mr C. Between April and July 2006, Mr C received no rent payments from the Tenant. She informed him that she was unable to pay the amounts due to him, and explained that she had difficulty managing her own finances. Mr C understood that the Manual stated that, should a LHA recipient fall more than eight weeks behind in their rent payments, then subsequent payments would be paid directly to the landlord. With this in mind, Mr C assisted the Tenant to write a letter to the Council, explaining that she had fallen more than three months behind in her rent payments and that she was unable to cope with managing her own finances. In the letter, which was dated 20 July 2006, the Tenant specifically asked that no more LHA be paid to her and that all future payments be made to Mr C. Mr C told me that he wrote the letter in the Tenant's presence and that it was signed by her.

8. Upon receipt of the Tenant's letter of 20 July 2006, the Council immediately suspended her LHA account, pending investigation. On 22 November 2006 the Council issued a payment to Mr C of £4,242.00 to cover rent arrears. Mr C received the Council's cheque for this amount around 15 December 2006, however, he was disappointed to note that the amount being paid did not include the initial eight weeks worth of arrears. Mr C wrote to the Council on 15 December 2006. His letter indicated that he had spoken to the Council earlier that day by telephone and that he was now confirming formally that the Tenant's initial eight weeks worth of arrears remained outstanding.

9. The Council's Revenue's and Benefits Officer (Officer 1) replied to Mr C's letter of 15 December 2006 on 11 January 2007. His response confirmed that Mr C had been issued with a payment of £4,242.00 to cover rent arrears (including a back payment from the start of the tenancy on 5 December 2005). He further explained that a decision had been taken to make this payment to Mr C, but that subsequent payments would revert back to the Tenant. Officer 1 explained that, in accordance with the Manual, benefit payments are made to the claimant, unless they are considered to be vulnerable. He advised Mr C that he had sent a form to the Tenant to enable them to consider whether or not she could be classed as vulnerable. Officer 1 advised that the Tenant's claim for LHA was suspended to prevent further payment being released until a decision was made in this regard. Officer 1 noted Mr C's assertion that the

Tenant remained more than eight weeks in arrears and asked that he confirm in writing the dates of the arrears, as the Council had no record of them.

10. As requested by Officer 1, Mr C wrote a brief letter to the Council on 15 January 2007, detailing the rent payments that he had received from the Tenant, and directly from the Council, to date. Again Mr C stressed that the Tenant had not repaid the rent arrears that prompted her letter of 20 July 2006. He noted that these arrears were the reason that her claim had been suspended initially.

11. On 18 June 2007, the Section Leader (Manager 1) of the Council's Revenues and Benefits Division wrote to Mr C. Again, the letter noted that a telephone conversation had taken place earlier the same day. Manager 1 noted that Mr C's letter of 15 January 2007 had not been received by the Council. He asked that Mr C re-send the information and advised that further payments to the Tenant would be suspended until contact was made with her. The Council told me that they received the resent details of payments that Mr C had received on 27 June 2007.

12. Mr C wrote to Manager 1 on 28 November 2007 noting that he was still awaiting confirmation from the Council as to what action they proposed to take with regard to the Tenant's claim for LHA. He explained that he had spoken to another member of the Council's staff on 15 October 2007 and had been advised to wait 'for a few weeks' whilst the matter was being dealt with. Mr C noted that he had received a direct payment of LHA for the period of 4 June 2007 until 23 September 2007 but that the period between November 2006 and June 2007, when the Tenant's account had been suspended pending investigation, remained outstanding.

13. On 10 January 2008, another Revenues and Benefits Officer (Officer 2) replied to Mr C's letter. Officer 2 explained that payments for the period from 20 November 2006 to 23 September 2007 had been made to the Tenant. He detailed the dates of payment, the amounts paid and the relevant rent period as follows:

Date of Payment	Sum Paid	Period Concerned
16 February 2007	£1,827.00	20 November 2006 to 11 February 2007
12 March 2007	£624.00	12 February 2007 to 11 March 2007

10 April 2007	£624.00	12 March 2007 to 11 April 2007
7 May 2007	£624.00	9 April 2007 to 6 May 2007
4 June 2007	£624.00	7 May 2007 to 3 June 2007
5 October 2007	£96.00	4 June 2007 to 23 September 2007

14. Officer 2 explained that, as all applicable LHA had been paid to the Tenant, if the Tenant had failed to pass the relevant amounts for rent onto Mr C, then this was a matter that he would need to pursue with her. He stressed that the Council would not make double payments of any amounts paid to the Tenant for the period 20 November 2006 to 23 September 2007. He noted, however, that direct payments were now being made to Mr C and that these covered the period from 4 June 2007 onwards.

15. Mr C complained to the Council, on 14 January 2008, that the Tenant had not passed on any rent payments to him out of the LHA that the Council had paid to her. He complained that the LHA payments should have been paid direct to him in the light of the Tenant's past failure to maintain rent payments. The Council responded to Mr C on 10 February 2008, noting that LHA had been paid to Mr C for the period 5 June 2006 to 19 November 2006, then to the Tenant for the period 20 November 2006 to 3 June 2007 and then direct to Mr C again from 4 June 2007 onward. The Council noted that the Tenant did not respond to their request that she complete the form to establish her vulnerability. As such, payments of LHA had reverted to her. They further explained that no contact was received from Mr C between January 2007 and June 2007. Benefit was then suspended (June 2007) and with no comments forthcoming from the Tenant, payments were issued direct to Mr C. The Council reiterated their view that Mr C should pursue the Tenant for recovery of any rent arrears.

16. As I mentioned in paragraph 10 of this report, Mr C had written to the Council on 15 January 2007 with the information that they had requested in their letter of 11 January 2007. Mr C told me that, as that letter had advised him that the Tenant's account was suspended until further notice pending their investigation, he assumed that this was the case until his conversation with the Council on 18 June 2007. I asked the Council what action had been taken on the account and what their policy was for notifying affected parties of the outcome of their investigations into disputed accounts. The Council told me that, following their request to Mr C for further information on 11 January 2007, they had no contact from him until 18 June 2007. Similarly, the Tenant did not

return the vulnerable status form, which had been sent to her. The Council, therefore, had no evidence upon which they could reassess their decision to pay LHA to the Tenant. The Council reinstated the Tenant's suspended account on 15 February 2007. The Council told me that, even where no information has been provided by a landlord or tenant, it would be their normal practice to write to both parties to advise them of the decision reached. On this occasion, the Council informed me that they have no record of Mr C having been informed of the Tenant's account being reopened.

17. When commenting on a draft copy of this report, the Council noted that Mr C made no contact with them between 11 January and 18 June 2007, suggesting that he could have arranged for direct payments to be made to him earlier, had he actively pursued the matter. The Council found it surprising that Mr C allowed substantial rent arrears to be accrued. Mr C told me that he contacted the Council on more than one occasion during this period but that he was told that there was a backlog of cases and that he should await their decision.

18. A further letter was sent to Mr C by the Council's Performance Manager (Manager 2) on 19 March 2008. This is noted as being in response to a telephone call from Mr C on 10 March 2008. Manager 2 explained that she had investigated Mr C's complaint in full. I have quoted an extract from her letter below:

'In this case there does appear to have been an misinterpretation of the rules regarding when payments can be made direct to a Landlord ... Unfortunately, in a large organisation with a large group of staff this can happen ... [An Operations Manager at the Council] has also issued a reminder to all staff regarding payment to Landlord under the rules of Local Housing Allowance scheme.'

'The decisions made were based on the fact that [the Tenant] has made little contact with this department directly. She did not return the vulnerable tenant status forms and the only letter received from her regarding the rent arrears was on 20/7/06 which was written by yourself.'

'As payments totalling £4419.00 were paid to [the Tenant] we cannot consider making duplicate payments. However, as this customer has rent arrears and is currently receiving £24.00 every 4 weekly in excess Local Housing Allowance, I have decided that this payment will also be made to

you with immediate effect. You will now receive payments of £624.00 every 4 weeks in respect of [the Tenant].'

19. In his complaint to the Ombudsman, Mr C considered that the additional £24.00 per four week period, that he was now receiving in recognition of the rent arrears accrued by the Tenant, constituted compensation in the light of the Council's acceptance of errors on their part. He noted that receiving this compensation in £24.00 instalments meant that it would take him more than 15 years to recover the amounts owed to him. He felt that, as the Council accepted that they had made an error, it should be their responsibility to rectify matters by paying the unpaid amounts due to him and pursuing their recovery from the Tenant. The Council confirmed their position in a final letter to Mr C, dated 11 April 2008. They noted that there was no provision within the Manual to award LHA payments for the same period to the same tenant. Essentially, as the money allocated for payment to the Tenant for the period in question had been paid to her, the Council were not able to make the same payment again, to Mr C. Where LHA has been paid in excess of the amount due to a claimant, this is referred to in the Manual as an 'overpayment'. Where an overpayment is made, due to an error by the Council, this is termed an 'official overpayment'. The Council considered that there had been no overpayment of LHA and that they could not create one that would allow them to pay Mr C the amounts that had already been paid to the Tenant. The Council accepted that the original payments 'perhaps should have been sent directly to' Mr C but noted that the Tenant received payment and should have paid her rent to him.

20. When investigating this complaint, I asked the Council to provide me with evidence that they had paid all of the monies in question to the Tenant. They were able to demonstrate that these amounts had been paid as described to Mr C and that the Tenant had received all payments. They also clarified that the initial £4,242.00 payment, paid to Mr C in November 2006, included amounts to cover the original eight weeks arrears that prompted the letter of 20 July 2006. I asked whether the payments to the Tenant for the period 20 November 2006 to 3 June 2007 had been considered as an official overpayment. The Council told me that, as the amount of LHA paid to the Tenant was correct for the period involved, it could not be considered an overpayment.

21. Given the Council's position that the correct amount of LHA had been paid in respect of the Tenant's account and that Mr C should, therefore, pursue any

arrears from the Tenant, I asked the Council why the additional £24.00 per month from the Tenant's LHA was being paid to Mr C. I also asked that they clarify Manager 2's statement that there had been a 'misinterpretation of the rules' with regard to the Tenant's account. They explained that this was a poor choice of phrase and that what was meant was that, with the benefit of hindsight, the Tenant's account may have been handled differently. They considered that there may have been too much emphasis placed on the expectation that the Tenant would fulfil her responsibility to pay rent to Mr C. The Council noted, however, that when paying LHA to customers, they cannot operate from the starting point that tenants will fail to act responsibly. This, they considered, would defeat the basic principle of the scheme, which is to empower tenants to manage their finances independently. The Council said that Mr C had known that the Tenant was in receipt of her LHA for some time and he, therefore, should have been taking steps to recover rent from her. It was noted that, whilst the Council has the power to pay landlords direct, landlords also have a responsibility to pursue rent payments from their tenants. The Council acknowledged the Tenant's failure to pay rent to Mr C between 20 November 2006 and 3 June 2007 but said that, in the absence of any communication from Mr C or the Tenant, they could not have acted sooner. They said that, once Mr C presented them with details of the arrears that had been accrued the account was suspended and payments made direct to him.

22. Paragraph 5.86 of the Manual states:

'Where direct payments are being made, the local authority has the discretion to make payment of any excess (ie the amount of benefit payable above the level of the contractual rent, if there is any) to the landlord, in order to assist with the repayment of the arrears. LAs should estimate the length of time it would take to clear any arrears by this method and to review the case when it is estimated that arrears should have been repaid.'

23. The Council explained that the additional £24.00 per month was paid to Mr C in recognition of the arrears accrued by the Tenant. The decision to make these payments was not based on any admission of responsibility by the Council. Rather, they were exercising their discretion under paragraph 5.86 of the Manual to make payments to the landlord in order to assist with arrears repayment. The Council acknowledged the length of time that it would take to recover the arrears owed to Mr C, but considered this to be a matter for him to pursue with the Tenant.

24. During the course of my investigation, the Council highlighted to me that, in her letter to Mr C, dated 19 March 2008, Manager 2 committed to clarifying the procedure for making payments direct to landlords with all staff. The Council told me that an internal guidance note was circulated in this regard. I have transcribed the full note at Annex 2 of this report.

(a) Conclusion

25. I accept the Council's position that their obligation is to pay LHA to the Tenant and that it was Mr C's responsibility to make sure that he collected the relevant amount of rent from her, in accordance with their rental contract. LHA guidance does, however, allow for circumstances whereby the Tenant fails to fulfil their obligations under that contract. The Manual states that payment direct to the landlord is 'required' where a tenant has accrued eight weeks of rent arrears. I understand this to mean that payment should be made to the landlord upon the Council being made aware of rent arrears exceeding eight weeks and their being able to confirm those arrears. As such, whilst landlords are required to pursue rent payments from their tenants, the LHA system puts in place procedures to allow the landlord to receive payment to help secure the tenancy where the tenant fails to pay the rent.

26. The Tenant signed a letter, written by Mr C in July 2006, stating that she wished her LHA payments to be made direct to her landlord, as she was unable to manage her own finances. This statement was supported by the fact that, at that time, she had accrued rent arrears of more than three months. I am satisfied that these arrears were confirmed by the Council and subsequently paid to Mr C in the payment of £4,242.00 issued in November 2006. I am also satisfied that this payment took into account the initial eight week period of arrears, which was subsequently disputed by Mr C.

27. Following the payment of arrears in November 2006, the Council decided that subsequent payments should revert to the Tenant. The Council's internal guidance for making payments direct to landlords states that it was agreed at the start of the LHA scheme that the Council would make future payments to the landlord in cases where a tenant falls only one month behind in their rent payments. Under such circumstances, the tenant would be considered unable to manage their own finances. The guidance notes that payments should only revert to the tenant if there is a good reason for this. In Mr C's case, I consider the decision to revert payments back to the Tenant to have gone against the

Council's own policy. However, the Manual, published by the DWP, set the period of arrears, before payment to landlord is required, at eight weeks. The Manual also gives local authorities discretion to decide whether LHA payments continue to be paid to landlords, or revert back to tenants, after the arrears have been cleared. In the context of the formal DWP guidance, the Council's decision to revert payments back to the Tenant may be acceptable. With both sets of guidance in mind, I have considered this complaint in terms of the Council's assessment of the Tenant's vulnerability.

28. In response to Mr C's letter, written on behalf of, and signed by, the Tenant, the Council sent the Tenant a vulnerable tenant status form with a view to confirming whether or not she was able to manage her own finances. The Tenant did not return this form. Similarly, the Council did not receive any further correspondence from Mr C in response to their request for details of the rent arrears that he considered to be outstanding. In the absence of further information, the Council considered there to be insufficient evidence upon which to base a decision to make future payments direct to Mr C and LHA payment, therefore, reverted to the Tenant.

29. Mr C said that he replied to the Council's request for further information about the rent arrears on 15 January 2007. Whilst I have been provided with a copy of his letter of that date, I cannot confirm that it was posted, or that the Council received it. However, I consider this letter to be irrelevant to the decision as to whether or not LHA payments should have reverted back to the Tenant following the arrears payment of £4,242.00. Mr C's enquiry at that time, and the information requested by the Council, related to his assertion that the £4,242.00 arrears payment did not include amounts to cover the initial eight week period of rent arrears. Disputes over the amount aside, the £4,242.00 was paid to cover the period 5 December 2005 to 19 November 2006 (see paragraph 9). The Council's consideration as to who should receive future LHA payments for the Tenant's account should have concerned payments made from 19 November 2006 onwards. Mr C was not asked for information to inform decisions about future LHA payments. Furthermore, the Council's internal guidance for making payments direct to landlords, which sets out the procedure that should be followed when making such a decision, does not mention completion of a vulnerable tenant status form. Whilst I acknowledge the importance of establishing a tenant's ability to make future payments, the Council's internal guidance states that the Tenant should have been contacted and invited to explain why she had failed to pay her rent. Confirmation that the

LHA payments were used to cover other expenses, or failure to respond within 14 days should reactivate the account with payments being made to the landlord. The evidence that I have seen indicates that this procedure was not followed.

30. The Manual set out the circumstances whereby local authorities can make LHA payments direct to a landlord. They are required to do so when the tenant has accrued more than eight weeks' rent arrears. The Manual then gives local authorities the discretion to decide on whether those payments revert back to the Tenant once the arrears have been paid. The Council's internal guidance sets out the procedure that their staff should follow when making that discretionary decision. I am satisfied that the Tenant built up arrears and that these were paid to Mr C direct in line with the Manual. Furthermore, I am satisfied that it was at the discretion of the Council to decide who should receive future payments. For the reasons mentioned above, however, I do not consider the procedure followed by the Council, or the information used, to be in line with their internal guidance for making this discretionary decision.

31. I acknowledge that, during the course of their investigation into Mr C's complaint, the Council accepted that, with the benefit of hindsight, the decision to revert payments back to the Tenant may have been incorrect. I also note that they decided to remind all staff of their internal guidance for making payments direct to landlords and commend them for taking this action.

32. I am satisfied that the correct amount of LHA was paid in respect of the Tenant's account between 20 November 2006 and 23 September 2007. I also accept that, as a discretionary decision had been made to make these payments to the Tenant, no overpayment was made. The Council's position was that, whilst with the benefit of hindsight, payment should have been made direct to Mr C, as the correct amount had been paid to the Tenant and, as it is to the Tenant that they have a responsibility to make payment, then no duplicate payment could be made to Mr C. They advised that it was his responsibility to recover any rent arrears from his tenant. However, upon subsequently arranging to make direct payments to Mr C, additional payments of £24.00 per month were made to him in recognition of the arrears accrued by the Tenant. I acknowledge that the Manual permits the Council to make additional payments of LHA when paying direct to landlords to cover any arrears. I understand that, in doing so, the Council effectively took control of the Tenant's LHA income to ensure that it is used to cover the monthly rent and any

accrued arrears. This situation indicates an acceptance by the Council that rent due to Mr C has not been paid by the Tenant.

33. The Manual also states that local authorities should estimate the length of time that overpayments would take to recover any arrears, so that the payments can be reviewed. In Mr C's case, it will take more than 15 years for the overpayments to clear the accrued arrears. I consider it appropriate for the arrears to be covered by the Tenant's LHA allowance. However, Mr C encountered the arrears following the Council's decision to revert payments back to the Tenant in February 2007. As I mention in paragraph 42 of this report, substantial arrears were accrued due to Mr C not being aware that payments were being made to the Tenant. I consider that he was denied the opportunity to pursue unpaid rent from the Tenant for a number of months. I found the decision to pay the Tenant to be flawed and that payments should have been made direct to Mr C. In these circumstances, I do not consider it reasonable to expect Mr C to have to recover rent arrears from the Tenant, or that he should expect to recover them via small increments over a period of years.

34. I consider that the Council failed to follow their own internal guidance when deciding to make LHA payments to the Tenant and that the subsequent rent arrears accrued by the Tenant were directly related to the Council's decision in this regard. Accordingly I uphold this complaint.

(a) Recommendations

35. The Ombudsman recommends that the Council pay any outstanding arrears for the period 20 November 2006 to 23 September 2007 to Mr C in one single payment.

(b) Conclusion

36. The LHA system for paying housing benefit was designed to allow claimants to manage their own finances independently. The nature of the scheme is to encourage claimants to act responsibly and independently. With this in mind, I accept the Council's position that it would be inappropriate of them to begin with the assumption that a claimant would fail to pay their rent. The Tenant signed a statement, written by Mr C on 2 July 2006, advising the Council that she was unable to manage her own finances. In response to this, the Council sent her a vulnerable tenant status form to establish whether she could be classed as 'vulnerable' and payments made direct to Mr C.

37. I find it appropriate that the Council should investigate the Tenant's ability to pay her rent. However, such investigations should form a part of the normal procedure for deciding whether LHA payments should be made direct to the landlord. The Tenant failed to respond to the Council's request for information. The Council's internal guidance states that a LHA claimant's failure to respond to a request for information as to how they will pay their rent should lead to direct payments being made to the landlord. On this occasion, the lack of a returned vulnerable tenant status form from the Tenant resulted in the conclusion that there was insufficient information available upon which to make a decision to make payment direct to Mr C.

38. The evidence that I have seen indicates that the Council did investigate the Tenant's personal circumstances and I am satisfied that these investigations were instigated at an appropriate time. However, I was concerned that the lack of a returned form from the Tenant led to the decision to revert payment back to her. This decision was made despite previous arrears having been accrued by the Tenant and despite the Tenant having previously signed a statement confirming her inability to pay her rent. I have seen no evidence to suggest that this historic information was considered by the Council or that they made any attempt to clarify the Tenant's status with her. The investigation into the Tenant's ability to pay her rent did not follow the Council's internal guidance on making payment direct to landlords and a decision on her vulnerability appears to have been made without reference to relevant, available information. I, therefore, uphold this complaint.

(b) Recommendations

39. As the Council have already reminded their staff of the correct procedure to be followed when establishing a claimant's ability to pay their rent, the Ombudsman has no recommendations to make.

(c) Conclusion

40. Following receipt of the arrears payment of £4,242.00, Mr C wrote to the Council on 15 December 2006 stating that the payment did not include the initial eight week period of arrears that had led to the Tenant's account being suspended for investigation. During the course of my investigation into this complaint, the Council provided me with a breakdown of the payment, indicating that the full period being questioned by Mr C had been considered when calculating the arrears. I was concerned to note that, throughout the

correspondence between Mr C and the Council, no explanation was provided to Mr C as to the calculations that led to the arrears payment of £4,242.00.

41. Mr C's complaint about the amount of arrears paid to him prompted the Council to request further information from him, as to the amount of arrears that he felt should have been paid. At this time, the Tenant's account was suspended, pending investigation. The Council also sent a vulnerable tenant status form to the Tenant. The Council advised Mr C, in their letter of 11 January 2007, that no further payment would be made in respect of the Tenant's account until a decision was made.

42. As the Council did not receive the letter that Mr C apparently sent to them on 15 January 2007, or the Tenant's completed vulnerable tenant status form, they decided to reopen her account and revert payments back to her. I was concerned to learn that the Council's normal practice of notifying the landlord that payments had recommenced was not followed on this occasion.

43. The implications of this for Mr C were significant. Whilst it was a further five months before Mr C contacted the Council to enquire as to their decision on the Tenant's account, I accept his account of events. I understand that he was awaiting the Council's decision on the assumption that the account was still being investigated as advised in the letter of 11 January 2007. Given the information available to them at the time, the Council considered their decision to revert payments back to the Tenant to be reasonable. Payments recommenced on 15 February 2007. Between this time and June 2007, the Tenant received further LHA payments of £4,419.00 and failed to pass on any rent to Mr C. When Mr C learned of these payments in June 2007 and complained to the Council, their position was that the correct amount of LHA had been paid to the Tenant, and that it was his responsibility to recover the relevant amount of rent from her. By failing to inform Mr C that payments had recommenced in February 2007, I consider the Council to have denied him the opportunity to take action to recover the rent owed to him, in a reasonable time. Furthermore, had Mr C been made aware that payments had reverted back to the Tenant in February 2007, and the Tenant continued to accrue arrears, Mr C would have been able to apply again for direct payment after eight weeks of missed rent payments. This would have limited the amount of arrears built up on the Tenant's account.

44. I consider the Council's failure to advise Mr C that the Tenant's account had been reopened in February 2007 to have had a direct impact on the amount of rent arrears accrued on her account and Mr C's ability to recover those arrears. As such, I uphold this complaint.

(c) Recommendations

45. The Ombudsman recommends that the Council remind their staff of their procedures for advising interested parties of decisions made in relation to LHA accounts.

General recommendation

46. The Ombudsman recommends that the Council apologise to Mr C for failings identified in this report.

47. The Council have accepted the recommendations and will act upon them accordingly.

Explanation of abbreviations used

Mr C	The complainant
The Council	The City of Edinburgh Council
The Tenant	Mr C's tenant
The DWP	The Department for Work and Pensions
LHA	Local Housing Allowance
The Manual	The DWP's housing benefit guidance booklet: Housing Benefit Local Housing Allowance Guidance Manual
Officer 1	A Revenues and Benefits Officer at the Council
Manager 1	A Section Leader at the Council
Officer 2	A Revenues and Benefits Officer at the Council
Manager 2	A Performance Manager at the Council

Edinburgh Council internal guidance for paying LHA direct to landlords

LOCAL HOUSING ALLOWANCE

When we can pay to a landlord

The Housing Benefit Regulations state that when a tenant has rent arrears of 8 weeks or more then we should pay the Housing Benefit [HB] direct to the landlord.

However, it was agreed at the start of the LHA scheme that if a tenant missed one month's rent then future payments should go to the landlord. This situation shows that the tenant is unable to manage their own financial affairs, which is covered by another part of the HB Regulations.

The normal way that we would come across this is as follows:

1. Landlord advises us by phone, letter or e-mail that the tenant has not paid that month's rent.
2. We should suspend the claim so that no further payments are issued.
3. We should write to the tenant asking for them to prove that they paid that month's rent.
4. We should allow the tenant 14 days to respond.
5. If the tenant contacts us and confirms that they used the HB payment for something other than their rent, or does not contact us at all within the 14 days then the claim should be reactivated and payment made to the landlord.
6. If there is an excess LHA payment that would normally go to the tenant we can use all or part of this to help clear any rent arrears. We do not need the agreement of the tenant to do this.

Once any rent arrears are cleared the excess payment should be paid to the tenant.

The case can be reviewed at a later date but there would need to be a good reason for paying HB to the tenant.

Similarly, if a tenant has left a property with rent arrears and claims HB for another address then any entitlement should be paid direct to the landlord from

the start of the claim. Again this is because the tenant has shown that they cannot manage their own financial affairs.

If you have any questions about any of the above please speak to your Section Leader or Process Advisor.

List of legislation and policies considered

Housing Benefit Local Housing Allowance Guidance Manual
Department for Work and Pensions guidance booklet

The City of Edinburgh Council internal guidance for making Local Housing Allowance payments direct to landlords